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GOOD GOVERNMENT,
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HUMAN COMPLEXITY

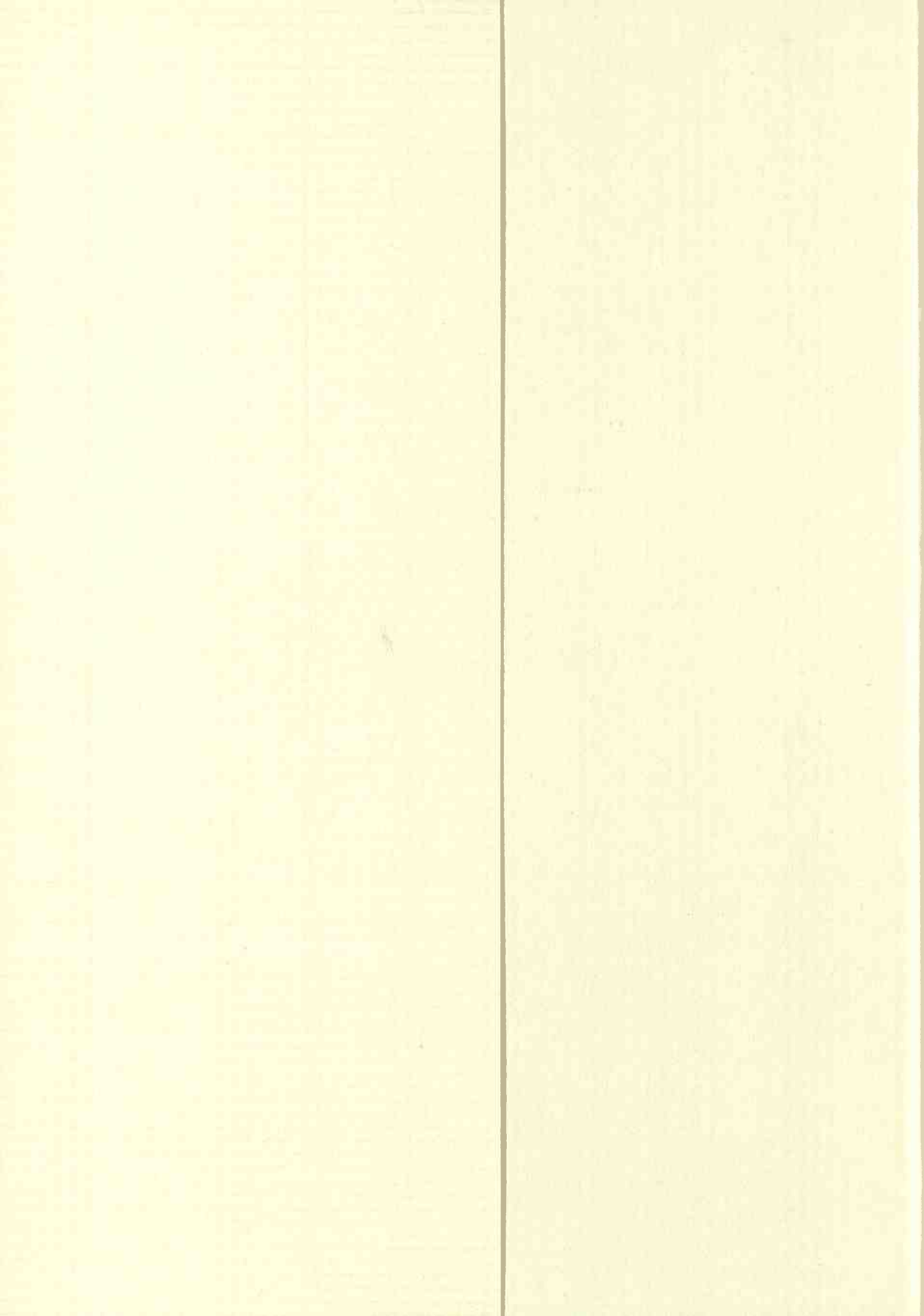
Luigi Einaudi's legacy and
contemporary societies

Edited by

PAOLO HERITIER and PAOLO SILVESTRI



Leo S. Olschki editore
Firenze
2012



Memories Luigi Einaudi

and

30

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GOVERNANCE,
HUMAN COMPLEXITY

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contemporary societies

Edited by
PASCAL BOURDIN and PAOLO MIGNON



Centre for Economic Studies
Geneva
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Paolo Haimon and Paolo Spavanti



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PAOLO HERITIER – PAOLO SILVESTRI

INTRODUCTION.

LUIGI EINAUDI: POISED BETWEEN IDEAL AND REAL *

1. AN UNUSUAL PREMISE: THE ROOTEDNESS OF THE MAN AND HIS WORK

Luigi Einaudi (1874-1961) was a liberal thinker, a leading economist and journalist, and one of the most eminent political figures in the pantheon of Italy's founding fathers: a member of the Constituent Assembly, governor of the Bank of Italy, minister for the Budget and first elected president of the Republic. Although among scholars he is best known for his works on public finance, his long-lasting research into the foundations of a good government, broadly understood as good polity or good society, still remains today an unknown and unexplored field. This book, for the first time, provides the English-speaking world with a collection of essays aimed both at focusing on Luigi Einaudi's good government and questioning its fecundity and relevance in contemporary human society.

Accordingly, and in an attempt to give shape to a new research path prompted by the "Osservatorio sul buon governo" [Observatory on good government], which follows on from initiatives already developed by the "Associazione Polis", in 2009 the editors of this volume organized a conference on "The ideal of good government: Luigi Einaudi and the nexus between individual and society" (Cuneo-Dogliani, November, 26-27-28, 2009). A number of the articles in this volume are revised drafts of contributions first presented and discussed at the conference; others come from scholars who kindly gave us their contribution, expanding, piece by piece, our perspectives and representations of good government.

* We wish to express our debt of gratitude to Luigi Roberto Einaudi for his trust in us, for his continuous support and for having believed in this volume, even in the most adverse circumstances. Special thanks also goes to Rachel Barritt Costa for having supervised and reviewed the English language of some of the contributions here included, as well as this introduction and the afterword.

The focus on the issue of good government, by its very nature interdisciplinary and elusive, called for the involvement of scholars from a number of different disciplines: history and philosophy of politics, law and philosophy of law, economists, philosophers and epistemologists. The main objective of the conference was to reopen an interdisciplinary inquiry into the issue of good government, understood in the Einaudian sense as a unitary figure related to both the individual and institutional level. What guidelines were to be pursued in this research path which, starting out from Einaudi's quest, lead us beyond Einaudi, into the heart of many contemporary debates?

As a starting point for our reflection we suggested an 'ideal' *locus classicus* of the Einaudian search for good government, to which the choice of the 'real' *locus* of the conference was profoundly linked, for it would have been impossible to address the topicality of the good government issue without symbolically restoring Einaudi to his beloved birthplace from which his quest for good government drew sustenance and inspiration. The inaugural session of the conference was held in what was from the very beginning the elected place of Einaudi's teachings (and preachings): the Faculty of Law of the University of Torino and, in particular, in its relatively new detached site in Cuneo, whereas the second part was held in Dogliani (Cuneo), the land to which Einaudi always returned, as every man travels back to his home to rediscover his roots and draw afresh on the symbolic and trusted resources – constantly to be reappraised in the light of the ever-changing contemporary scene – without which no "crisis", whatever its nature, can be overcome.

The 'ideal-real' *locus classicus* of Einaudian research is the introduction, written *in memoriam*, to the *Appunti per la storia politica e amministrativa di Dogliani dell'Avv. Francesco Fracchia* [Notes on the Political and Administrative Life of Dogliani by the Lawyer Francesco Fracchia] (1922). These *Notes* were a collection of writings by Einaudi's uncle, selected and edited by Einaudi himself, as if to gather together and build on the legacy of this symbolic figure, who, after the death of Einaudi's own father, welcomed the young boy into his family home, and whom Einaudi, in turn, "worshiped like a father". The introduction, written while the old liberal system was being swept away by World War I and during the ensuing social and economic crisis, recalls this father figure, dwelling on many of his characteristics, for instance "his predilections" for "facts and monuments" of the city, in particular its institutions that were at one and the same time both concrete and symbolic, "highlighting *the forces that hold steadfast the machinery of human society*". These reflections also underpinned the Einaudian quest for the foundations of a good society, searching for a dynamic equilibrium between private and public, past and future:

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 19th 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] 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 dedication to the homeland and the spirit of sacrifice which, alone, is capable of nurturing the young shoots that will burgeon into sound states.¹

This 'picture' can also be likened to another topical moment of Einaudi's search for good government, which evokes the ethos of those components of the middle class who

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 administering which they adopted in private affairs.²

Last but not least, this allusive-narrative mode of portraying good government seems to assume particular significance when the then president of the Italian Republic interspersed within his collection *Il buon governo* (1954)³ a few details of Ambrogio Lorenzetti's fresco, *The effects of good and bad government*, as if he sought to bring to light, in a condensed and allusive form, an aesthetic-ethical foundation of the good society.

Hence, there are several reasons that prompted us to start out again from this 'ideal-real' *topos* of Einaudian speculation. But above all, this research and the related conference were also driven by a sense of dissatisfaction or lack which is still far from being overcome. The frustration springs from the fact that a liberalism seeking to champion liberty must better thematize and develop a reflection on the 'institutional' from a philosophical-anthropological perspective. By 'institutional' we mean not only the statual, governmental, political, legal and economic sphere but also that of culture, within which religion, myths, narratives, images, values, beliefs, traditions and norms

¹ L. EINAUDI, "Avvertenza del compilatore" [1922], in *Pagine doglianesi, 1893-1943*, ed. by the Municipality and the "Luigi Einaudi" Civic Library, Dogliani, 1988, pp. 32-34. On the significance of this essay, "a key text to fully understand Luigi Einaudi's thought", see M. EINAUDI, *Presentazione*, in *Pagine doglianesi, 1893-1943* cit., pp. 11-12.

² L. EINAUDI, *La condotta economica e gli effetti sociali della guerra italiana* (Bari, Laterza, 1933), p. 400.

³ *Id.*, *Il buongoverno. Saggi di economia e politica (1897-1954)*, E. ROSSI (ed.) (Bari, Laterza, 1954).

should be encompassed. A concept of ‘institutional’, therefore, broadly understood as ‘instituting’ ‘educating’ or ‘founding’ the human, but without falling into the sociological and/or holistic view which results in an annihilation of the individual into the whole.

From this perspective, we felt it was still meaningful to note that in Einaudi’s *sui generis* liberalism there remains a fruitful tension, a duality, which is interesting precisely because it is not resolved into a dualism or a monism. On the one hand, there is an institutional sphere that is, *lato sensu*, foundational, while on the other there is also, undoubtedly, an anthropological-individualistic foundation of the good society, that makes an appeal to the freedom, responsibility and dignity of every individual man.

If one wishes to achieve a more penetrating insight into Einaudi’s anthropology, the above-mentioned ‘ideal-real’ *locus classicus* must be borne in mind and compared with a second and more famous *topos* of Einaudian speculation, *The beauty of struggle* (1923). There he declares his “repugnance” for any form of paternalism and his “sympathy” for the “efforts of those who desire to elevate themselves under their own impetus and who, in this struggle, fight, falter and rise again, learning at their own expense how to win and to better themselves”.⁴ Indeed, this is nothing short of a veritable eulogy of the modern *homo faber fortunae suae*, of man as the free, responsible maker of his destiny, but also of *fallible* man, who learns through experience by “trial and error”, always open to “risk” and the “unknown”. This is the Einaudi who is prompted by the awareness that there is no father, law, science, institution or welfare state capable of shielding us from the risk and contingencies of life, but also that this original deficiency intrinsic to human beings is the very element which opens up the potential for life and the emergence of novelty.

By the same token, it is these fallibilities themselves, this ignorance and deficiency within mankind, this impossible perfection, which kindle that tension, that reaching out “towards”, expressed by Einaudi in the title *Verso la città divina* [Towards the divine city], another veritable eulogy,

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.⁵

⁴ 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.

⁵ L. EINAUDI, “Verso la città divina” (1920), in ID., *Il buongoverno* cit., pp. 32-33.

Such considerations, in our view, are also closely linked to the Einaudi who, as was recently recalled, had always heeded the moral commandment “never forget the common man”, which he was wont to express with the motto “the only person who knows whether the shoes really fit him is the one who is wearing them”. By this he implied that “the intellectual and the politician have no right to decide what’s good for the peasant or the worker”, thereby expressing “a profound conviction of the individual value of the person and the respect due to all persons irrespective of their social status, and without political sectarianism”.⁶ Perhaps this view may illuminate Einaudi the storyteller of tales from the life of everyday people, in whose circles he moved comfortably and from whom he picked up more useful teachings than those drawn from the learned:

If I took in little from intellectuals or politicians I learned much every time I had the chance to enter into conversation with tradespeople, industrialists, bankers, businessmen [...]: each one of them, in talking about his own affairs, utters truths based on observation, which theoretical economists are sorely wrong not to take to heart.⁷

Here we have not only a lesson in epistemological humility, but a testimony of Einaudian awareness that no form of knowledge, nor any scholar, should fail to be mindful of the freedom of each individual; it also demonstrates that the goal of human sciences and scientists should be a representation, however asymptotically ideal, of “*the whole man*”, that is to say, a representation of the human that is not fragmented and split up by the different branches of knowledge. Accordingly, in his spiritual last will and testament, *Politici ed economisti* [Politicians and economists] (1961), Einaudi wrote:

The task of the economist who is not only an expert in one or several branches of social and economic science is that of considering the relationships between the economic operation and the political or moral or spiritual action.⁸

⁶ L.R. EINAUDI, “Le molteplici eredità. Un ricordo personale di Luigi Einaudi”, in *Luigi Einaudi nella cultura, nella società e nella politica del Novecento*, R. MARCHIONATTI – P. SODDU (eds.) (Firenze, Olschki, 2010), pp. 319, 320, 322.

⁷ L. EINAUDI, “Prefazione”, in ID., *Cronache economiche e politiche di un trentennio (1910-1914)*, vol. III (Torino, G. Einaudi, 1959), pp. XXIV-XXV.

⁸ ID., “Politicians and economists”, *Il politico*, XXVII, 2 (June 1962), pp. 253-263: 260. On the complexity of the Einaudian methodological approach see F. FORTE – R. MARCHIONATTI, “Moralista, storico, economista. L’economia liberale di Luigi Einaudi”, in *Luigi Einaudi nella cultura, nella società e nella politica del Novecento* cit., pp. 3-56.

In conclusion, keeping in mind the above mentioned two *topoi* and the suggestions highlighted as a sort of starting point for contributors, we may sum up the issues here briefly introduced as follows: *Einaudian anthropology* is still deserving of attention precisely because it takes shape within a *fertile line of tension between institutional and individual, rootedness and restless wandering, heteronomy and autonomy, tradition and innovation, state and market, science and life, model and reality, theory and practice, law and freedom.*

2. THE STRUCTURE OF THE BOOK, POISED BETWEEN IDEAL AND REAL

The collection of essays presented thus appears poised, as it were, between past and present, between the theoretical and the practical, between interpretation of the work of Einaudi and a rereading of his *oeuvre* in the light of problems that illuminate it in a contemporary perspective. The book offers a miscellany of studies, some referring explicitly to Einaudi and others which, while presupposing his work, do not make specific mention of his writings. This methodological approach was prompted by two underlying assumptions:

a) the conviction that a first stage in the analysis of Einaudi's thought, above all as far as his reflections in the economic or historiographic-institutional sphere are concerned, has to a large extent already been carried out during the fifty years that have elapsed since his death – although the potential lines of enquiry are far from having been exhausted – and that a number of conclusions have been reached;

b) the belief that Einaudi's thought can continue to kindle theoretical and practical effects that extend far beyond the studies and research already published, in particular if the composite body of his works is read as a complex and structured whole, midway between the ideal and the real, spanning a variety of different genres and disciplines.

This book seeks to outline an attempt within this perspective, proceeding along a line of research that endeavors to hold together, in a manner that may not always appear orderly and systematic, insights of a theoretical but also of an exegetic nature, as well as interests of relevance for the contemporary world, in the recognition that such traits belonged at one and the same time to the lifelong work and production of Einaudi but also to his personality. Indeed, this very feature can highlight an element that would otherwise remain in the background: the Einaudian conception and interest in a global vision of man. But it is a vision that never became an organic and self-contained philosophical system: rather, it was an open-ended conception which

never forgot the concrete and practical action of man, yet also appealed for an in-depth appraisal of the epistemological status of social science and earnestly pleading not to be mummified in a cult of achieved results or of personality. On the contrary, in order to maintain its vital spirit, it begs to be succeeded, yet without being merely set aside and stored in the attic.

Einaudi still has something to say with regard to the contemporary scene – something which has perhaps not yet been fully grasped, and not merely “unimplemented” (starting from his *Useless Preachings*). This is the challenge the book seeks to launch, circumscribing a specific theme (but the same operation could be attempted in other settings): namely, the relation between the ideal of good government and the practice – still conceptually undefined but currently very much in vogue – of governance.

The book is divided into three parts, as follows.

I) *The Einaudian legacy: good government, and the relation between private and public*

Part I gathers together the essays more directly aiming to re-read the sense of the Einaudian quest for good government. This part is opened by Massimo L. Salvadori, *Luigi Einaudi. Reflections on the lifelong journey of a great Italian*. Retracing Einaudi’s life path, Salvadori paints an introductory fresco of one of the most prominent Italian intellectuals, a great master and journalist, liberal economist, statesman and protagonist of Italy’s rebirth and reconstruction. Through the analysis of three momentous issues in Einaudi’s extended speculation – his quest for the good society and good government; his search for the good élite and, in this context, his praise of the *pars sanior*; his position midway between the conservative liberal and utopian Europeanist – Salvadori highlights the ultimate foundation of Einaudi’s good government as residing in “civil ethics, honest hard work, the enterprising spirit and courage of industrious individuals”.

Francesco Forte, in *The architecture of Luigi Einaudi’s good government*, offers an original rereading and reinterpretation of some of Einaudi’s lesser-known pages, and casts new light on the typical Einaudian “*distensio*” (which indeed is also a tension) between private and public, *oikos* and the public sphere. Forte maintains that Einaudi’s vision of good government can be construed as an urban, social and political ‘architecture’ characterized by “imperfectism”, not “perfectism”. It represents a variegated society, allowing the possibility of social ascent but free from excessive social inequality, in which the middle class plays a fundamental mediating role. In conclusion, the *ethos* of the Einaudian *oikos* and local community not only emerges as the ultimate

and concrete foundation of good social bonds but also constitutes the scaffold of the resulting institutions of liberty.

In *Government and market failures in Luigi Einaudi and today*, Franco Reviglio examines Einaudi's good government with special reference to the government-market paradigm. Charting identities and differences, Reviglio offers a comparative assessment of Einaudi's thought and the more recent debate on liberty, equality and opportunity (Rawls, Sen and others), underscoring the continuing relevance of Einaudi's contribution to the definition and correction of market inefficiencies caused by Government.

Giuseppe Garofalo's article, *Luigi Einaudi and Federico Caffè: outlines of a social policy for a good governance*, opens with an approach which, in sketching a comparative picture of the two thinkers, endeavors to free them from old stereotypes and mistaken interpretations. After outlining Caffè's thought in relation to the Italian liberal tradition, Garofalo goes on to explain why Einaudi's thought cannot be reduced to an argument in favor of an unbridled market. In his conclusion, he illustrates how the proposal of a social, liberal-democratic, reformist policy aimed at good governance can emerge from a synthesis of their work. In this perspective a 'good' policy for an open society should be based on ethical values, a long-term perspective, efficiency and equity, individual and collective responsibility.

In the article that concludes the first section, *The ideal of good government in Luigi Einaudi's thought and life: between law and freedom*, Paolo Silvestri offers an appraisal of some crucial nodes in Luigi Einaudi's speculation, construed as if they were five variations on the law-freedom nexus. "Law" is assumed here, *lato sensu*, as a figure of the limit, and limits are taken as the foundation or conditions of possibility, as much on economic, political and legal institutions as on thought and human action. Consequently, it can be argued that in Einaudi's thought there emerges phenomenologically an awareness that the question of freedom involves not only the relation of individuals with their own respective limits, or a community's relation with its limits, but also the problem of overcoming such limits in the pursuit of novelty and improvement. "Good government" and Einaudi's allusive reference to the Lorenzetti fresco thus seem to take on importance precisely as an "ideal" tension, by virtue of which the gap between reality and possibility, law and liberty, cannot and must not be bridged.

II) *Good government and public governance*

In part II, we asked contributors to freely reinterpret or focus on the Einaudian search for good government in terms of the current issues or theories

of (good?) “governance”, in this case referring to public powers or legal-political institutions.

In *Patterns of identity in the perspective of European governance*, Alessio Lo Giudice analyses the different approaches – mainly essentialism and constructivism and those derived from or related to these – to the problem of identity at an individual and collective level. He then shows to what extent the legal and political translation of these approaches to collective identity leads to several useful models that could be of relevance in shaping the political and legal *mise en scène* of European governance.

János Frivaldszky, in *Good governance and right public policy*, beginning with a brief analysis of the transition from the 18-19th century models of parliament, government and governance to the contemporary models of good governance, raises the question of whether ‘good governance’ and ‘good government’ should be considered as opposites or whether, instead, there is a need to find a third model. In Frivaldszky’s view, if the goal to be pursued is that of guaranteeing the principles of the common good, personalism, justice and participation, then the paradigm of the subsidiary state provides the answer. He concludes by sketching some guidelines of good governance and the most suitable political form, in an attempt to propose a normative concept and the institutional reality of a global political community.

The following two articles address the issue of good government from a public law perspective. Roberto Caranta, in *Good administration in the age of governance*, after a few opening remarks on the pre-administrative State approach to ‘*buon governo*’, directs his attention to the legal rational government model and then analyses the emergent patterns – especially governance and new public management – in order to investigate how they have changed our understanding of ‘good administration’.

András Zs. Varga’s *Legal control of administration: premise of good government* argues that traditional instruments of control of public power, such as democracy and the rule of law, as well as legal remedies against abuses attributable to the public administration, are sometimes, and in some specific situations, ineffective and need to be completed with special institutions and procedures. Ombudspersons, public prosecutors and ordinary civil proceedings of courts could have important roles in effective legal control of administration and could lead to a better government.

In *Freedom of contract and good government*, Alessandro Ciatti, taking his cue from Einaudi’s critique of the concept of “social usefulness” (as stated in art. 41 of the Italian Constitution) and from the Einaudian search for the good law that governs the market – “law as a frame” (or *nomoi* in Hayek’s sense) –, interprets “good government” from the specific point of view of a civil-law

scholar, seeking to find a workable equilibrium between freedom of contract and social usefulness.

This second section is concluded by Alberto Andronico's *The dark side of governance*. It is a philosophical reflection on the notion of *Governance* and its use (and abuse) in legal, political and economic discourse. Starting from the paradox according to which "governance" is "a word without sense", he analyses the ways in which governance, after the decline of the state – "too big and too small" – seems to have become a sort of passepartout to govern the complexity of contemporary society, in the name of its alleged immanence and capacity to produce an "intrinsic" order, thus without an "external" authority and/or law. Nevertheless, "shadows" appear on the horizon: it may well be that the governance discourse is just another (new) mask of the (new) powers.

III) *Governance and liberty: the complexity of the human*

Part III takes as its starting point some elements and results already obtained by the Einaudian interpreters in the contributions of Part I, but it is also spurred by the impetus to introduce novel questions not typically addressed in studies which, as in Part II, inquire into Einaudian thought. Thus, in a perspective poised between the ideal and the real, between the contemporary world and that of the past, a range of considerably diverse elements are presented, such as the theory of complexity, the classic themes of liberalism and rationalism as well as new anthropological and aesthetic readings of Einaudi's works. These elements are framed within a horizon which, although by no means professing to be theoretically organic and complete – given the heterogeneity of the contributions and the themes analyzed – nevertheless endeavors to identify features of vitality and new research lines traceable to the Einaudian heritage (objectively difficult though it may be to pinpoint them exegetically within his works).

This book does not make so bold as to claim among its overall accomplishments the presentation of theoretical results or practical formulas applicable to genuine problems. But it is our hope that it will be regarded as an endeavor not to dismiss that unitary feature of Einaudi's theoretical vision and social action, both private and public, that feature which, however challenging the task may have appeared – and even though admitting of no easy solution – stood for the foundation of the freedom and life of the institutions.

The first two articles of the third part present the question of complexity in reference to social sciences and economic theory. Flavia Monceri's *Rethinking 'good governance'. Complex societies and individual differences*, is a critique

both of the idea of “good” and of that of “governance” implied by the notion of good governance, and presents arguments in defence of individual differences, even the most radical ones. The critique and the defence are argued from the perspective of radical constructivism, system theories and the epistemology of complexities theories, applied to contemporary societies.

Magda Fontana, in *Policy in complex social systems*, adopts the complexity perspective, examining the issue of governance in terms of policy. She formulates the hypothesis that the cause of policy failures is not to be found in economic theories: rather, it resides in their underlying ontology – such as assimilation of the economy to a machine ruled by equilibrium. Complexity implies a radically different perception of the nature of economic phenomena (in comparison to the mainstream view), as complexity relies on heterogeneity, processes and evolution. In turn, with regard to economic theorizing and modelling, this results in rejection of several crucial notions, namely not only linearity, the perfect rationality postulate, equilibrium, reductionism, but also economics as a purely mathematical science, and last but not least, the notion of prediction on which many policies are based. All in all, any aprioristic position must be reconsidered in the light of the uniqueness of economies in time and space.

The next two articles are an attempt to provide an epistemological foundation for good government, here taken to mean open society. Francesco Di Iorio’s article, *Mind, market and open society in Hayek’s thought*, underlines the linkages between Hayek’s political philosophy and his theory of mind, also highlighting the connections by comparing Hayek’s work with some recent contributions from the cognitive sciences, namely the neurophenomenological paradigm of the self-organization of the mind in the framework proposed by Maturana and Varela. From a neurobiological point of view, Hayek’s theory justifies Gadamer’s idea of the “historical finitude” of man by offering arguments in favour of pluralism and an open society.

The laic chooses critical reason, by Enzo Di Nuoscio, may be interpreted as a comprehensive attempt to develop – in societies characterized by religious pluralism – a sentence from Einaudi which Di Nuoscio places as an epigraph to his paper: “‘Trial and error’, the possibility of making an attempt and being mistaken; freedom of criticism and opposition; these are the characteristics of free regimes”. The argument is developed through five central propositions: the laic is such precisely by virtue of being critical; but this does not mean that for the laic everything is possible; the advocates of laicity and confessionality are not laics; we must be laic because we are fallible and ignorant; we must be laic if we seek to achieve the best fulfilment of religious sentiment.

In *The economy of images, or the symbolic horizon of social exchange*, Graziano Lingua takes his cue from Einaudi's choice to include the images of Lorenzetti's frescoes on Good government in his collection of essays, *Il buongoverno*, taking up again, albeit from a different vantage point, the aesthetic references present in the articles of Part I. Lingua then reflects on the political significance of images, and thus on their role in the social construction of sense and, more generally, the comprehensive symbolic frame of "living in common", which he also terms the "general economy of exchanges of sense that constitute the bond of a society".

With a title that suggests a critical perspective, in *Useless non-preachings? The critical point and the complex anthropology of freedom in Luigi Einaudi*, Paolo Heritier proposes an anthropological and philosophical-juridical reading of a specific text, the third part of *Lezioni di politica sociale* [Lectures on social policy], considering the text as though it were a "fresco made of words". In such a perspective, this work by Einaudi is seen as embodying an ideal and figurative vision of the human, equivalent to the reference to Lorenzetti's fresco on Good government, which formed the theme of the articles in the first part of this book. Heritier attempts to forge a link in which the "sacrificial" vision of the theory of savings and the family emerging from the Einaudi of the *Lectures* ties up with contemporary readings of the intersection between economics and the sacred in terms of social complexity. Heritier thus raises the problem of a research program on the anthropology of freedom, connected to the work of Einaudi, in a critical perspective as well.

In the afterword, Silvestri, drawing some conclusions in an attempt to further re-launch this research program, will return once more, as a token of literary and quintessentially allusive leave-taking, to this anthropological-aesthetic reading of the Einaudian *oeuvre*, suggesting analogies between the search for good government and Italo Calvino's (re-search for) *invisible cities*. Are there unfrequented paths of Einaudi's journey in search of a good society?

Milano, 1967

TORREANAPIS
REFLECTIONS ON THE EITELING
JOURNALS OF THE ITALIAN
PART ONE

**THE EINAUDIAN LEGACY:
GOOD GOVERNMENT AND THE RELATION
BETWEEN PRIVATE AND PUBLIC**

Luigi Einaudi, the founder of the Einaudi publishing house, was a man of great vision and energy, who devoted his entire life to the service of the Italian people. He was a statesman, a philosopher, a writer, and a man of letters. He was the first President of the Italian Republic, and he played a central role in the development of the Italian economy and society. His legacy is a model of good government and of the relationship between the private and the public sectors.

[Footnote text, partially illegible]

It is the duty of the government to provide for the welfare of the people. The government is responsible for the health, safety, and well-being of its citizens. It must ensure that the laws are just and that the courts are independent. The government must also ensure that the rights of all citizens are protected and that the rule of law is maintained.

The government is also responsible for the economic well-being of the country. It must ensure that there is a stable and growing economy that provides opportunities for all citizens. It must also ensure that the environment is protected and that the resources of the country are used wisely.

THE CANADIAN LEGAL SYSTEM

The Canadian legal system is based on the common law. It is a system of law that has developed over centuries and is based on the principles of justice and fairness. The common law is a system of law that is based on the decisions of judges. It is a system of law that is flexible and that can adapt to the needs of society. The common law is a system of law that is based on the principles of justice and fairness.

The Canadian legal system is also based on the principles of democracy and the rule of law. The government is responsible for the welfare of the people and must act in accordance with the law. The courts are independent and must ensure that the law is applied fairly to all citizens. The Canadian legal system is a system of law that is based on the principles of justice and fairness.

MASSIMO L. SALVADORI

LUIGI EINAUDI.
REFLECTIONS ON THE LIFELONG
JOURNEY OF A GREAT ITALIAN*

Luigi Einaudi disliked utopias, which he considered to be an escape from reality and destined either never to be realized or to be dramatically changed into their contrary. But equally, he disliked *Realpolitik*: devoid of moral sense as it was, and flaunting its pretension to adhere strongly to reality, *Realpolitik* ended up blocking the path to the innovative actions aimed at improving the conditions of human life. Einaudi was an economist, historian, journalist, professor, politician, statesman, the first elected president of the Italian Republic. Although never indulging in strictly philosophical speculation, he built up his political philosophy, his ethics, his vision of the world in a clear and effective manner. He enjoyed a prominent position in the national public debate, and can be ranked alongside eminent figures such as Croce, Salvemini, Gentile and Gramsci on the 20th century Italian political-cultural scene. Like other men of his generation, Einaudi experienced the dramatic crises which struck his country between 1898 and 1900, 1919 and 1925, 1943 and 1945, with an inexorable escalation of intensity; he lived through the tragedy of the two world wars brought about by the conflicts among Europe's major powers, and he witnessed first the eclipse of that XIXth century which, by virtue of its economic and civil progress, he had felt to be one of the happiest periods of the old continent. Then, first in 1917 and again in 1939, in the so-called era of modern tyrannies, he also witnessed the spread of authoritarian and totalitarian regimes, in a context of violent social and political conflicts, cruel civil

* This is the English translation of the text of the *Lectio Magistralis* held in the presence of the President of the Republic Giorgio Napolitano, inaugurating the exhibition "L'eredità di Luigi Einaudi. La nascita dell'Italia repubblicana e la costruzione dell'Europa" (Roma, Quirinale, May 18, 2008). Published in Italian in «Annali della Fondazione Luigi Einaudi», XLII (2008), pp. 147-154. Translated into English by Paolo Silvestri and revised by Rachel Barritt Costa.

wars, and devastating economic crises. Yet he also had the good fortune to be a participant in periods that were times of social and civil growth in Italy, when the country was being revitalized by institutional reconstruction and economic progress. In particular, improvement began in the decade led by Giolitti, whom Einaudi – despite uttering words of harsh criticism against Giolitti's manner of governing and administrative actions – acknowledged as having had the great merit of deep awareness of the need to promote the rise of the working masses. Thus Luigi Einaudi remained an eminent protagonist throughout the fifteen years of Italy's rebirth and reconstruction.

In an era of great upheavals, in which ideologies, classes, social groups, movements, political parties and States were locked in ferocious combat and hatred, Einaudi remained steadfast, supported by two principles which never failed him: first, faith in the superiority of freedom and of exchange of ideas within society as founding principles of good government, and second, the conviction that as soon as the premises of civil life are threatened by all-out war and strife among the different components of society, it is necessary to re-establish the authority of the State. When, after the first world war, the attack on private property by "pro-Bolsheviks", together with the weakness of governments during the organic crisis of the political and institutional system, led him to realize that the hegemonic capacity of liberal forces had run its course, he invoked and insisted on restoration of the authority of the State. This affords some insight into the reasons that initially prompted Croce, Giolitti, Orlando, Salandra and other illustrious liberals to applaud the policy of fascism, under the illusion that it could not only re-establish the authority of the State, but also fulfil this task as a reincarnation of the spirit of liberalism. Nevertheless, when the illusion was revealed for what it was, Einaudi himself joined the chorus of the opponents of Fascism, voicing sharp criticism against what was fast becoming a dictatorship.

During the twenty years of the Fascist regime, he held firm to his values, continued his studies, and engaged in research and teaching. With the moral support of Croce, he overcame the torment of conscience caused by the humiliating oath imposed on university teachers in 1931, convinced as he was that one's first duty should always be to spare no effort in pursuit of the task of educating young people. And he continued to work tirelessly and ceaselessly, like the industrious bee he had always been and would forever be.

When the regime collapsed in 1943 and the most tragic period of the entire history of united Italy began, Einaudi eluded Republican Fascism and fled to Switzerland. While the defeat of Hitler and his allies became increasingly certain, his thoughts turned to how to rebuild Italy. During his exile he made plans and outlined the political and social rebirth of Europe, and formulated in his mind the reconstruction of Italy after the ravages of destruction, accord-

ing to his own feelings and beliefs, in a spirit of lively and even sharp controversy with the opposing political forces.

Upon returning to liberated Rome in 1944, he took his place, as if by destiny, in a ruling class engaged in the most difficult task a country could ever face: rebuilding a destroyed nation. The economist then became a statesman, who within the space of the next few years held the office of Governor of the Bank of Italy, became a member of the "Consulta nazionale" in 1945, was elected to the Constituent Assembly in 1946, and subsequently became Deputy Premier and Minister for the Budget in 1947; in 1948 he became a Senator by Right in 1948, and then, on May 11 of that same year, he was elected President of the Republic. After completion of his term of Presidency, he returned to his studies, and to the useful "sermons" which, although paradoxically dubbed as "useless" by Einaudi himself, had indeed always been the salt of his existence.

Einaudi was a great educator and master, revered by those who read his articles, essays, books, by the students who attended his courses, the young scholars and men of action who, expressing their own free and (in many respects) even divergent feelings, drew inspiration and example from their master. Three among them rose to become leading figures in the cultural and civil history of Italy: Piero Gobetti, Carlo Rosselli and Ernesto Rossi, and it is interesting to note that Einaudi shared these same pupils with another unique yet quite different master: Gaetano Salvemini.

1. IN SEARCH OF THE GOOD SOCIETY AND GOOD GOVERNMENT

The lifelong journey of a man who was active in a vast range of fields for over half a century is inevitably affected by changes, enrichments and route adjustments. Yet at the same time, the path taken by Luigi Einaudi was marked by strong elements of continuity. In this sense, he was the one who, among the above mentioned great protagonists of the cultural and national political life of his day, was best equipped to bind together the stages of his existence with a *Heri dicebamus*. The alpha and omega of his sense of mission centered on the defense of freedom and of cultural and social diversity, upholding the concept of a life-giving struggle designed to increase the capacity for initiative and enterprise necessary to achieve civil progress, whilst guarding against any degeneration into a war of everyone against everyone. Thus his quest focused on the search for a ruling class that would be capable of ensuring good government and would guarantee coexistence by preventing one party from oppressing another; furthermore, he exhorted all those involved to respect the positive hierarchies produced by history, which he regarded

as vital for the proper functioning of the social machine. Accordingly, his vision included a strong defense of the institutions that would safeguard the possibility of promotion of the most worthy citizens, together with an acknowledgement of the legitimate aspirations of the working classes to achieve an improvement in their conditions through a number of important reforms and within the legal order and, finally, an exhortation to preserve the values and the most precious convictions that the bygone generations pass on to the living. These beliefs are expressed in Luigi Einaudi's political and economic liberalism and, at the same time, in his conservatism and reformism, as well as in his ideal of good government.

Among the many passages of Einaudi's writings that shed light on his social and political philosophy, there is one that comes springs to mind on account of its significance and its exemplary nature. It is a passage written in 1942, when Europe was already in the throes of terrible disruption. The theme is the identification of the "ideal types of the good society" and the means by which "to revive" the social classes "in which a sound society flourishes". In describing these ideal types, Einaudi remarkably awards the most prominent position to the category of "smallholders who own sufficient land for the lives of their families". Such a choice may appear to be little more than a manifestation of conservative nostalgia, especially if seen from the perspective of an era dominated by big businesses, big mergers and financial markets. However, in Einaudi's thought the peasant who farms his own land is the living metaphor of human independence and productive industriousness which, in Einaudi's perspective, are the supreme values. In second place after the peasant farmer he sets the independent craftsman, the entrepreneur running a small or medium-sized business, the trader and the self-employed professional – provided that such figures operate with probity – and the unbiased, the good soldier, the official devoted to "the tradition of service rendered to the state". The revival of these classes – Einaudi stresses – can be obtained through "the laws, through custom, by example, by preaching". These positive social figures are set against "large firms, giant industries, megastores, the working class council estates and projects, the monstrous cities" of which "the extension is to be reduced", because it is within such agglomerations that there lurks the danger of gray uniformity, the spirit of drab sameness, the mortification of individuality.

What Einaudi believed, ideally inspired by an ancient line of thinking that can be traced back even as far as Aristotle, was that good government of society could not be accomplished if the middle class, which constituted the backbone of society, was weakened or even eliminated. And it should be noted that Einaudi's "middle class" is not simply an economic class: rather, it is

primarily a moral subject. It is the class in which dwells the spirit of self-reliance, that spirit by virtue of which individuals, through the everyday performance of their duties, are educated to the concept of exercising the self-governance that is the primary unit of the government of society and of the spirit of freedom. Here is the key point of Einaudi's political philosophy, and it is also the explanation of the attitude which, for much of his life – indeed until he acknowledged an irreversible turning point – prompted him to share with so many liberal thinkers the hostility towards universal suffrage, considered an element of that homogenization which was undermining the central role of the middle class as the cornerstone of the liberal system.

Einaudi was keenly aware of the danger of homogenization and conformist uniformity, which are the enemies of common and individual freedom. Uniformity, he felt, risked quashing the spirit of independence, diversity and therefore of cultural political and social pluralism – a danger that he also perceived under the powerful stimulus of thinkers such as Tocqueville, Mill and Burckhardt. In Einaudi's thought these threats stem from three different lines, but converge in the disasters they cause. He argued that their origin lay in three different types of project: that of statist collectivism, supported by so-called scientific socialism, that of a capitalist, industrial and financial plutocracy, aiming at monopoly and favors from the state, and, finally, that of a political order threatened and weakened by an authoritarianism that extinguishes the vital social and political dialectic without which there can be no healthy public life. The common outcome of these three approaches, he believed, was the reduction of people to automata, to a routinization, a distressing uniformity, where the "beauty of the struggle", of competition, of the selection of the best was violently denied.

Within this conceptual and problematic framework, between 1927 and 1943 Einaudi conducted a polemical debate with the other great exponent of Italian liberalism of the twentieth century, Benedetto Croce. Arguing against the philosopher's claim that freedom, conceived as the irrepressible and immanent force in history, could possibly disengage from economic liberalism and private property and, in certain circumstances, even adapt to communist collectivism, Einaudi staunchly maintained that the spirit of freedom lives through struggle, competition and economic pluralism, and that "the liberties are related to each other". He insisted that they cannot live "in a 'coercive' communist society or in a 'closed' capitalist society"; freedom dies, with all its manifestations, wherever and whenever there is "a single force – communist bureaucracy or capitalist oligarchy – capable of dominating the other social forces".

In contrast, Einaudi's attitude towards reformist socialism and towards the working classes that looked to its precepts for guidance was favorable, as he considered them vital and necessary components of a dynamic liberal

system. But he condemned Marxism, and with it the purportedly scientific socialist doctrine which, in his eyes, had very little of the scientific to it. Moreover, like Mill, he believed that figures such as Owen, Saint-Simon, Fourier, who had sought positive ways to support the rise of the workers, should not be ranked among the utopian socialists: rather, such a designation should be reserved for Marx and Engels with their communism that was unrealizable other than by reversing its own ideal presuppositions. In the Italian context, Einaudi showed overt sympathy, from his early articles onwards, for the workers' struggles to improve their wages and working conditions and to defend the right to organize and to strike, but he displayed equally open hostility to the trade union struggles in support of revolutionary plans aimed at abolishing private property. Therefore, yes to unions, yes to cooperatives, yes to reforms and reformism in the manner of the Labour movement, yes to the action of the State in protecting the right to strike and more generally in seeking to create opportunities for the weaker classes, but no to monopolistic trade unions and to restrictions on freedom of work and enterprise. Einaudi as a liberal economist came to accept – as can clearly be seen in the *Lezioni di politica sociale* – a program of *Welfare* as long as it was not corrupted by an interventionist bureaucratic state that overstepped the line separating the promotion of opportunities, especially for young people and in support of the socially most vulnerable, from parasitic behavior and inertia.

2. PRAISE OF THE *PARS SANIOR*

Einaudi conceived society as a system which, if it was to give of its best, was to stand on two pillars, which were not naturally given, and therefore needed to be renewed day by day: a ruling class, which would be such only if it were capable of attaining moral, intellectual and political prestige, and a middle class capable of embodying and promoting economic and social initiative in a framework of diversity and pluralism. In Einaudi's vision, free debate within public opinion (in a Kantian sense), social, political and electoral struggles, the functioning of representative institutions, together with the free market that should be subject to the rules established by the institutions and the laws, constituted the basis for a virtuous selection of the *pars sanior* of society, culminating in the formation of the ruling class of a country and a State. In his early works Einaudi had subscribed to Mosca and Pareto's theory of the political class, but by the 1930s he had developed a certain intolerance towards their stark realism which, similar to that of Marx, "sees the world as composed only of the oppressed and their oppressors, subjugated classes and dominator

classes". Einaudi thus lent his support to the conception of the French thinker Le Play, who claimed that the "select class" – as Einaudi wrote in 1953 – was not to be construed as the class which exerted its superiority in terms of political and social power, but rather as the entire set of "social authorities" capable of providing society with moral and civil guidance. It was that guidance which political authoritarianism, bureaucratic statism, 'massification', communist collectivism and capitalist plutocracy tended inexorably to mortify and destroy.

3. THE CONSERVATIVE LIBERAL AND THE UTOPIAN EUROPEANIST

Luigi Einaudi is often characterized as a "conservative liberal". This is a definition that is extremely apt if it is taken within its own demarcation: i.e. without disregarding the significance of a liberalism which emphasized the value of struggle and social and cultural innovation, and appeared not only open to the rise of the working masses but indeed strongly supportive of their endeavors, as we have already seen. It is said, rightly, that Einaudi had the same spirit as Burke. Effectively, he had great disdain for what he termed abstract ideologism as well as for that form of rationalism which contrasts with the lessons of history: he viewed Rousseau and the Jacobins and their modern Communist heirs as wild beasts, and had boundless admiration for Cavour, the statesman who represented a perfect blend of the talents of the innovative idealist, the realist builder of good events and the intelligently selective conservative. It was Cavour, he asserted, who bestowed great prestige on the Monarchy of his beloved region of Piedmont, that driving force of the *Risorgimento* which Einaudi, inspired by the thought of Constant, continued until the institutional referendum of 1946 to consider as the moderating mainstay and guarantee of the institutions. It was likewise Einaudi's conservative approach that long impelled him to favor liberalism over the form of democracy expressed through universal suffrage, until the reality of facts led him to resolve the dilemma and to accept both democracy and the republic.

Nevertheless, there was one field where the man who had consistently preached the worship of good traditions and criticized the tendencies that set the present in opposition to the past did decisively assume the role of the Utopian, planning a place that was nowhere to be found yet urgently needed to be found. This was the field of Europeanism, an idea that was first awakened in him during the First World War and was later revived by World War II. In this field Einaudi became a Rousseau, paradoxical though this may seem. Responding to the catastrophes of the two world wars, he declared that Europe was sick, that it was necessary to radically turn over a new leaf, to

close the book on the old story and make a fresh start. He criticized the Europeanism of the cautious, of those who in the name of outworn traditions, precautions and compromises, first sponsored the League of Nations and then, during World War II, remodeled the ongoing process of integration according to a confederal-functional approach. On the theme of Europeanism, Einaudi composed the pages of his most impassioned and most original political thought, and the fruit of his reflections begun as early as 1918 opened up the route that would substantially be followed by Altiero Spinelli and Ernesto Rossi two decades later. Einaudi issued a harsh verdict on the concept and reality of the “absolute sovereignty” of the European states that had sown war, political authoritarianism and economic and social crises. He berated the timid and the traditionalists: the flag he raised was that of the “United States of Europe”, turning his gaze towards the examples of the great expanses of America and the little country of Switzerland, in the name of peace, free government, economic reconstruction of the continent and a renewed European civilization.

4. THE MESSAGE OF A PRESIDENT

Upon his election as President of the Republic, on May 12th 1948, Einaudi addressed a memorable message to the two Chambers, where he affirmed his support for the republican regime and his conviction of the complete reconciliation of the dichotomy between liberalism and democracy. In his speech, he recalled the “two solemn principles” – principles in which the foundations of his own conception of freedom and social progress could be clearly recognized – set forth in the constitution, which, in the stirring words of the great Italian, stated: “the commitment to preserving, of the current social structure, all and only that which is the guarantee of the human person against the omnipotence of the state and overweening private arrogance; and to guarantee that all persons, irrespective of the accident of their birth, shall enjoy the greatest possible equality at the starting points”; finally, he urged the country to cooperate strongly with the other countries of the continent for the reconstruction of Europe.

To conclude, it is worth mentioning another memorable moment of Einaudi’s presidency: the meeting, held on January 17th, 1954, with the old farmer who had become known as the “Father of the seven Cervi brothers”, all seven of whom had been shot by the firing squad in December 1943. Two old men, upheld by the wisdom of their age, face to face: the farmer, his face furrowed by his seven plagues and by toiling on his beloved land; the great statesman, who in turn deeply loved the land and the work that makes it flourish.

The father tells the story of his life and that of his sons, a story which deeply touches the heartstrings of the President, who finally asks, "Do you believe the seven brothers would have sacrificed themselves if they had not been slightly crazy builders of their land and if their father had not been a wise creator of good laws for his family?" In these words one can perceive the essence of Luigi Einaudi's political and social philosophy and his untiring preaching of good government, which has its primary foundation in civil ethics, in honest hard work, in the enterprising spirit and courage of industrious individuals. Unquestionably, the President recognized in the Cervi family the concrete embodiment of the first of his ideal types of societies – the figure of the peasant farmer, the smallholder who owns that which is sufficient to provide for his family – of which he had woven a eulogy in 1942 as the symbolic expression of all those who work in a productive manner, reaping the fruits they deserve, serving society with a spirit of independence and responsibility towards the overall community.

The history of the Republic of India is a story of a people who have shown a remarkable capacity for self-reliance and self-determination. It is a story of a people who have shown a remarkable capacity for self-reliance and self-determination. It is a story of a people who have shown a remarkable capacity for self-reliance and self-determination. It is a story of a people who have shown a remarkable capacity for self-reliance and self-determination.

4. The address of a President

Upon his accession as President of the Republic, on May 12th 1960, Dr. Zakaria made a remarkable message to the Members of the Constituent Assembly. He affirmed his respect for the republican spirit and his conviction of the complete realization of the ideal of a free, liberal and democratic India. In his speech, he recalled the "new vision principle" - principle in which the foundation of his own construction of freedom and social progress could be laid. He expressed his faith in the future of India, which, in the words of the great Indian statesman, Mahatma Gandhi, is the "land of the pure". He emphasized the progress of the Indian nation, all and only that which is the power of the human person against the interference of the state and oversteering power's interference and to guarantee that all persons, irrespective of the accident of their birth, shall live in the greatest possible equality and harmony. Finally he urged the country to cooperate strongly with the other countries of the continent for the reconstruction of Europe.

1. To conclude, it is worth mentioning another memorable moment of Dr. Zakaria's presidency: the evening, held on January 17th, 1954, with the old farmer who had been known as the "Father of the Aged Care Institute", all were a scene had been set by the rising sun in December 1940. Two old men, seated by the window of their one-story house. One, the former, his face lit up by his septuagenarian smile as he looked back the great chairman, who in turn, looking at the old man, the old man's face lit up.

FRANCESCO FORTE

THE ARCHITECTURE OF
LUIGI EINAUDI'S GOOD GOVERNMENT*

AN INTRODUCTION THROUGH HIS WRITINGS IN *IL MONDO*, THE LETTERS TO
PANNUNZIO AND THE *PAGINE DOGLIANESI*

1. An in-depth treatment of the topics considered in the title of this paper would be a very ambitious task, going far beyond the purposes of this collection. In Einaudi's vision, good government can be construed as an 'architecture' of the community in which man lives and fulfils the role of steward of his home and country, and as the scaffold of the resulting institutions of liberty (not only in the economic but also in the political and social sense). Thus an inquiry into the ideals that inspired Luigi Einaudi implies touching deep chords of the human soul, probing the sentiments, values and utopias of a statesman who was not only an economist or a 'theoretical economist', but a 'complete' man of vast and versatile interests. In his long and complex life, he not only combined the duties and challenges of a professor with his role as the leader of a scientific school, but he was also an authoritative journalist, an editor and director of scientific reviews, Governor of the Bank of Italy from 1945 to 1948, an eminent member of the Parliament and the first elected President of the Italian Republic. Furthermore, his multiple activities included managing his farming estate and fulfilling the role of an architect for his landed property, his mansion and his library. To begin to address the great range of issues involved in the concept of good government, I feel that a good starting point of the present paper would be to focus closely on the title of this meeting: "*The Ideal of Good Government: Luigi Einaudi and the nexus between the individual and the society*". This alludes to a period in Einaudi's life¹ when he was exploring the possibility of reconstructing the

* Translated into English by Paolo Silvestri, revised by Rachel Barritt Costa.

¹ As indicated by the organisers of the convention and the editors of this volume.

liberal institutions that had been destroyed by fascism and the civil war. Evoking the *modus agendi* of the components of the Italian middle class, Einaudi underlined that the pre-war period had been characterized by “the great fortune” that social classes genuinely representative of Italy, composed of small and medium-sized entrepreneurial firms, landowners, tenant farmers, merchants and craftsmen, all of them very industrious, 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 public service and held government office. Righteous and hard-working, they believed that the most consummate art of statesmanship lay in ensuring *good government* of public affairs, where “good government” was to be understood as “the same wise and *prudent* manner of administrating as they adopted in private affairs”.² I will develop my reflections on Einaudi’s “good government”, in the perspective of this *distensio* between “public” and “private”, and my investigation will highlight the link between these Einaudian writings and another Einaudian text of a profoundly autobiographical nature known as the ‘*Pagine Doglianesi*’ [Dogliani Pages], to which I will refer in the conclusions.

“*Il buon governo*” is also the title which Ernesto Rossi, under the careful guidance of Luigi Einaudi, the then President of the Italian Republic, gave in 1954 to a book of collected papers and short articles by Einaudi on economics and politics, written between 1897 and 1954. Rossi, a devoted disciple of Einaudi, felt that his collection of Einaudi’s writings built up an eloquent picture of the ideals and principles of Einaudi’s good government. The book is subdivided into seven parts with the following titles: “*Good Government, Social and Economic Policy, Assault on Public Money, Trade Unionism and Corporativism, the Problems of Schools, Newspapers and Journalists, the European Federation*”. These subdivisions indicate Rossi’s view that Einaudi’s conception of good government had perspective extending considerably beyond the economic sphere. The book-cover features an architectural image of a city ruled by a good government. Likewise, in the first edition, the text was interleaved with parts of the famous painting by Ambrogio Lorenzetti on “The Effects of Good and Bad Government in the City and in the Country”. The architectural image of the city with a good government suggests that the idea of good government is, in itself, a concept embracing an wide range of aspects, which first and foremost concern the private family, the family home and the farm, and then broaden out to include social life and the gov-

² L. EINAUDI, *La condotta economica e gli effetti sociali della guerra italiana* (Bari, Laterza, 1933), p. 400.

ernment of the city, as well as the buildings that house the democratic government and the other public offices. The good government of the *domus* and of the *civitas* would not be complete without the schools and the libraries. These are located partly in public buildings, where "public" means that they are open to the public – not necessarily that they belong to the municipality or to the state – but partly also in the home.

This far-reaching architectural notion of good government as an architecture of the home, the farm and the city, partly private and partly public, in which each person is "lord" of his life and property, can be traced back to the Italian tradition of political and economic thought of the late Middle Ages and Renaissance. The concept first appeared in Brunetto Latini's verse composition, *Il Tesoretto*:

Ond'io non so nessuno
 Ch'io volesse vedere
 La mia cittade avere
 Del tutto a la sua guisa
 Né che fosse divisa;
 Ma tutti per comune
 Tirassero una fune
 Di pace e di ben fare.

It was further developed in the fifteenth century with Matteo Palmieri's book *La Vita Civile* [Civil life]; Leon Battista Alberti's essay *Momus sive De Principe* [Momo or on the Prince]; Diomede Carafa's, treatise *Doveri del re e del buon principe* [Duties of the King and of the Good Prince]; Francesco Patrizi's two treatises *De istituzione res publicae* [On the institution of *res publicae*] and *De regno et regis institutione*" [On the institution of the reign and the King]; the book by Bernardo Sacchi, who was known as 'Il Platina', *L'ottimo cittadino* [The Excellent Citizen] and Gerolamo Savonarola's *Trattato del Reggimento degli Stati* [Treatise on the Regiment of the States]. in the sixteenth century. Subsequently, after the realistic analyses of Government by Machiavelli and Guicciardini, the Italian tradition of research on "Good Government" was further enriched by Donato Giannotti with *La Repubblica Fiorentina* [The Florentine Republic], Gianfranco Lottini with *Avvedimenti Politici* [Political Wisdom] and Silvestro Gozzolini with *I modi come i principi hanno denaro* [The Ways by which Princes have Money]. The treatment of the theme of the Good Government later became more specialised and its connection with the family and urban life faded. For instance, this perspective is no longer to be found in Botero's *Ragion di Stato* [Reasons of State] or in his *Discorsi sopra Cornelio Tacito* [Reflections upon Cornelio Ta-

citus], where 'the reasons of state' are not regarded as the ruling principle but rather as a principle to be adopted in exceptional circumstances. In Campanella's utopian *Città del Sole* [City of the Sun] the concept of Good Government is reversed. In the political economy treatises of Broggia, Genovesi, Beccaria, Verri and Romagnosi the concept of good government of the state is no longer linked to that of the home and the farm and bears no relation to the architectural and city planning perspective. Nor is the architectural figure to be found (apart from sporadic mentions) in the economic-political-technical treatment of Carlo Cattaneo.

2. Einaudi's conception of Good Government, as noted above, concerns the ideals of the "complete" man-lord and is intimately related to architectural design. But since the present paper is designed to be merely an introduction to Einaudi's thought, I will restrict myself to sketching an outline, quoting from some of his non academic writings published in the weekly periodical *Il Mondo*, and from his correspondence with Mario Pannunzio, the former editor of the weekly *Risorgimento Liberale* and subsequently of *Il Mondo*; I will also draw on Einaudi's *Pagine Doglianesi* and his *Introduction* to Francesco Fracchia's *Note sulla vita politica e amministrativa di Dogliani* [Notes on the Political and Administrative Life of Dogliani].

I will begin with Einaudi's letters to Mario Pannunzio³ in *Il Risorgimento Liberale*. In a brief letter of March 27, 1945, Einaudi wrote: "a situation of state monopoly in international trade and foreign exchange causes a very notable and fatal restriction affecting both imports and exports, more so for the latter than for the former". The more the obstacles are eased up the better the Italian economy will be. Einaudi, as Governor of the Bank of Italy, had been accused of triggering inflation by liberalizing the use of the foreign money that exporters obtained with their sales. The credit restriction Einaudi subsequently enacted was claimed to derive from his realization of the undesired inflationary effects of liberalization, which he sought to remedy by a deflationary intervention. This criticism is groundless. Under Einaudi's principles of good Government of money, the liberalization of foreign exchange was a necessary step: allowing enterprises to utilize as they wished the foreign currency obtained through exports had the aim of restoring a free market economy. The increase in the velocity of money circulation resulting from this

³ The Einaudi-Pannunzio correspondence taken from the Einaudi archive consists of 29 letters, of which 20 are by Einaudi – some of which are very long. One, however, consists of a single line of 'accompaniment' to three articles to be published on the *Risorgimento Liberale* and so is to be eliminated from the correspondence list. The nine by Pannunzio are short or very short.

liberalization was a physiological fact of the market economy. The consequent excess of money was to be sterilized by a global maneuver involving reduction in the supply of bank currency, via an increase in bank reserve parameters in order to achieve the goal of monetary stability. Einaudi's action thus aimed at two converging objectives, with two orthodox 'instruments': foreign exchange liberalization to restore the free international market, and the increase in compulsory bank reserves to stabilize price levels and assure monetary stability for savers and for market transactions in general.

On December 15, 1945 Einaudi wrote to Pannunzio, criticizing Luigi Barzini's proposal that newspaper editors should be allowed to express their judgement of the government by voting rights proportional to their newspapers' circulation. Einaudi maintained that such a criterion was unacceptable, pointing out that in countries with parliamentary experience, for example the United Kingdom, low circulation newspapers such as the Times, the Manchester Guardian and the Scotsman had a stronger influence on voters than papers with a circulation of a million copies like the Daily Mail and the Daily Sketch. Behind this argument lay Einaudi's theory of the elite, which held that in a democracy the majority is oriented by an informed minority who represent them on the decision-making level. Doctrinaires, Einaudi believed, had little impact; rather, the major policy decisions were based on practical considerations, but those involved in policy-making were neither ignorant nor demagogues.

3. Of the nine articles by Einaudi in *Il Mondo* of May 1949 and May 1955,⁴ three published in May-June 1949 were letters to Ernesto Rossi, written in the period from 1942-43 when Rossi was a political prisoner banished to the Island of Ventotene. The titles of two of these are: *Il Contadino Signore* [The Farmer Lord] and *L'uomo libero e la terra* [The Free Man and the Land].

The first letter-article⁵ is sharply polemical towards the proposal of agrarian reform championed by Ernesto Rossi, who favored the expropriation of all large and medium-large farming estates. The letter focuses on good government of agriculture by the owner of such farms, and maintains that they are essential for the market economy as they allow the emergence of innovators who, with their novel projects, become a model for the modernization of farms undertaken by other smaller entrepreneurs following their example.

⁴ These were years when Einaudi had important duties, such as holding the office of President of the Republic, which absorbed a great part of his time. Nevertheless, Einaudi was an assiduous reader of *Il Mondo*.

⁵ L. EINAUDI, "Il contadino signore", *Il Mondo* (28 May 1949).

The productive developments thus spurred are greater than those obtained by any form of public intervention. The innovative entrepreneur, “vineyard architecture” and technological progress in agriculture are the striking dominant figures of the article:

A ‘foolish’ entrepreneur managing a large or medium sized company (“foolish” in the sense described elsewhere of a man gifted with imagination, endowed with patience and resigned to being judged adversely by peers and inferiors, who scorn his use of superfluous money which he may have borrowed at 5% or 6%) is worth more than any “economic plan” to promote improvement in the cultivated property, more than many articles in agricultural journals, more than the innumerable recommendations from itinerant professors and more than many legislative provisions.

In further remarks on these issues, Einaudi commented on the experience he had acquired in his property in Dogliani.

When I began in 1917, I was among the very first to set up vineyards on American rootstocks, breaking up the land a meter deep and ramming small branches of wood with their roots trimmed short into the naked earth (without compost, without manure, without faggot-joining bundles – in contrast to the ancient tradition). Often the local farmers stopped in passing to pronounce: ‘*the professor has money to throw away*’. But a few years later they saw that I had managed to harvest my grapes whereas they had a very poor crop, let alone to any grapes to sell, or wine to drink; and they also saw that those who had constructed the vineyards in the traditional way with ditches, manure and bundles would produce weak and ugly vines, while mine were strong and beautiful. Only then did they begin to adopt my method, and now these small properties are saved. Not only thanks to myself, but also to others like me who set a good example.

And here is the conclusion:

I had some merit, though I will not go into all the details except⁶ to put forward a small argument in favor of the claim that personal factors may at times be worth just as much as the most widely praised legislative provisions.

Then Einaudi paints a lively picture that icastically represents his ideal of the state as an actor promoting good government in a market economy. The letter features a dialogue between a Professor Lorenzoni and some farmers in

⁶ It is worth noticing that this was originally a letter to an internee, not an article composed for a weekly journal.

Dogliani, interviewed by Lorenzoni in the framework of an official agricultural enquiry. At the end of the interview the Professor addresses the group of farmers with the following question: "What do you ask from the government?": Einaudi's depiction shows them reflecting on the issue, and he notes that the essence of their position could be epitomized in the following comment: "the government should improve our roads, shouldn't make us pay too much tax; and then leave us to take care of all the rest".

In the second of the letter-articles to Ernesto Rossi which appeared in *Il Mondo* on 4 June 1949, Einaudi sketched the optimal conditions that would be enjoyed by citizens under "Good Government", arguing that a farmer, under such a government, would be "a hundred times more a lord than multimillionaire industrialists who have to depend on those who commission them to engage in production, or than clerical employees who are dependent on their principals for their careers, or than all those who have wishes that only others can satisfy". For the farmer is a person who "lives on his farm and exploits it in a rational manner; who brings up his children in harmony with their environment; who is proud of the dignity of his status (even if he may not be fully aware of it and never boasts of it), who is no servant to anybody, and has no fear that another may take away his bread".

In the last of the three letter-articles to Ernest Rossi published in *Il Mondo* Einaudi again contests Rossi's project of radical agrarian reform, which Rossi insisted should be brought into action immediately. Einaudi argues that

in order for the reforms to be seriously effective I persist in saying that they must be gradual. Radical reform is a concept that is similar to a constituent assembly. Nothing more: a leap in the dark. Where do the masses enjoy a higher standard of living? Switzerland, Holland, Scandinavia and Great Britain. And these are countries that are averse to radical reform and love gradual introduction of change which slowly modifies existing situations here and there, section by section of territories and of the world of work. By proceeding one step at a time, great distances can be covered. By doing things on the spur of the moment, disasters may strike. Disaster befell France because of this mania for logic, perfection, orderliness. [...] Reforms of the existing state of affairs must be discussed and meditated upon and carried out as progressive experiments.

This cautious reformism earned Einaudi a reputation as having somewhat antiquated ideas. But now that his theory of Good Government is being rediscovered, one should not make the mistake of considering it to be rationalist. "Imperfectism", not "perfectism", characterises the manner of operation of Einaudi's Good Government.

In a letter of late 1952 to Mario Pannunzio,⁷ the then editor of *Il Mondo*, Einaudi took a stance against an article by an English or American journalist that came out in Pannunzio's publication. Einaudi protested that the journalist

reveals in his article that he does not have the faintest idea of what can be done and what cannot be done in agriculture. [...] He praises what they are doing in Pomposa but adds that they are doing it on an absolutely insufficient or barely sufficient scale. Instead of millions, he wishes to spend billions of liras. Improvements, in his view, are evidently supposed to have spectacular characteristics. He wants reclamation projects to be set in motion more quickly. Everything that has to be done must be done immediately and on a grand scale. [...] These superficial journalists, who imagine that in agriculture great things can be done at a great speed and that billions can be found on every street-corner should be banned from newspapers like *Il Mondo*. No one can bitterly accuse those who are working for reclamation of making mistakes, because any large-scale agricultural project is inevitably going to contain a fairly high proportion of wrongly chosen investment. Everything good we see in Italian agriculture has been created with the sacrifice and disenchantment of those who came before us.

Einaudi believed that this line of reasoning, based both on his theory and on his private experience with agricultural work, could provide support for his criticism of the Keynesian argument that an increase in aggregate demand will automatically lead to an increase in supply, with the benefit of additional economic growth. Savings are not the only element needed to finance investments. There is a need for entrepreneurial capabilities, sensible projects, and skills and know-how, but these cannot be improvised. There are no automatisms. The approach to growth on the supply side needs patience and perseverance.

4. "Good Government" is imagined in the dimension both of urban architecture and social architecture, in an article that appeared in *Il Mondo* in March 1951. It was drawn from a short travelogue he wrote in 1926 during a trip to the United States, in which he visited New York, Chicago and San Francisco.⁸ Here Einaudi describes the urban landscape of New York and San Francisco where "private houses give the impression of seeking to blend into the road and into public property so as to obtain enrichment of spirit and of light". He adds an interesting comment:

⁷ Of December 20 1952. The journalist was Stephen Spende.

⁸ L. EINAUDI, "Ricordi di viaggio di un tempo lontano", *Il Mondo* (10 March 1951), p. 3.

I saw no gates and garden walls around the detached houses. Often I couldn't see any closing fixtures on the windows except on windows that open vertically, which seem easy to use because they open from the bottom and from the top, and they are attractive since one window alone occupies its entire casement space. [...] There is continuity between the land belonging to the house and the area of the road. Thus the private garden continues and merges with the grassy verges of the road and the avenue. This often gives the impression of walking in an immense public park where – here and there – are scattered large and small houses, sometimes assembled together; and at other times in isolated groups or alone.

Such a place, Einaudi felt, was a “humane city” in the city planning sense of the term. In Chicago, when visiting the University, Einaudi noted that the concept of a ‘University degree’ as a qualification having legal effects would be meaningless in the USA because only a small minority of Universities were state owned, most of them being private foundations, with varying levels of accreditation. Thus the value of the degree issued by these institutions was exclusively moral and not legal. He then went on to reflect that the Italian system, where a university degree is an official qualification with legal value, tempted the academic bodies to lower their standards in order to compete for students and thus increase their student enrollments. The result was a devaluation of university degrees. “In contrast, when these titles have a mere moral value the academic bodies will aspire to make that value grow and they will be unable to achieve that goal unless they limit their market supply”. It was this personal experience during his American trip in 1926 that gave rise to the Einaudian suggestion of abolishing the legal value of Italian university degrees. His idea, as mentioned, was that the rules of the game should allow universities to compete not for a reduction but for an increase in the quality of the supply, at the expense of quantity if necessary, in order to help the best students to achieve their full potential. This was one of the pillars of his architecture of Good Government, in which the cultural elite have an important role but are not identified merely on the basis of possessing a legal certificate.

5. A letter of 26 December 1951 from Einaudi to Pannunzio, the editor of *Il Mondo*, against off-balance earmarked taxes, is little short of a small treatise on Good Government of the public budget. Einaudi outlined his criticism by illustrating a specific example, namely the fact that the tax on theatre and movie performances was destined by law to cover the financing of opera houses. In Einaudi's eyes, such a tax should be considered as revenue forming part of the general budget, because the size of the funds allotted to operatic institutions should be determined according to the citizen-taxpayers' evaluation of

the various public wants, making a comparison between the costs involved and the personal cost of foregoing the satisfaction of the private needs. An evaluation of this kind has no logical connection with the expenses of consumption of movie and theatre performances. The funds taxpayers are willing to assign to opera could, in actual fact, prove to be lower or higher than this expense. However, it is usually the case that if this connection is established and the revenue from the earmarked levy exceeds the sum thought to be appropriate for the operatic institutions, then their financing is increased above the level the tax payer would consider appropriate, thus depriving the taxpayer of a revenue that would have been better devolved for some other purpose. It is clear that the Einaudian critique of earmarked taxes has no bearing on taxes linked to the benefits accruing to taxpayers such as the social contributions devoted to financing pensions and local waste disposal taxes. But Einaudi's caveat that it would be wrong to allot any increase in revenue to an increase of expenditure is also relevant in the case of taxes that are the fiscal price of compulsory public services. Thus if there is an increase in the earmarked revenue exceeding that of the ordinary trend of expenditure, the possibility of reducing the tax should be contemplated, instead of automatically increasing the expenditure.

In a longer letter of December 1953 to Mario Pannunzio⁹ Einaudi addressed the issue of the Mezzogiorno, beginning with an examination of the massive migration from the south to the north of Italy. Einaudi observes:

Certainly we cannot wait for absolute or relative depopulation... and for the effect of the increase in agricultural salaries. Depopulation will eventually come about in the South as well, but it will take decades. Therefore the best course of action should pursue the following aims:

- the "Cassa per il Mezzogiorno" [the Special Fund for Southern Italy] should offer and promote temporary as well as permanent opportunities for jobs;
- a program should be established for the building of primary schools well equipped with playgrounds and school dinners, so that there will be less of a tendency simply to send children out to work at a tender age;
- vocational training should be intensified in order to create a pool of technically qualified young people in response to the market demand for skills, as opposed to the present situation where students receive a generalist education that serves no useful purpose;

⁹ The letter was reproduced in Einaudi's book *Lo Scrittoio del Presidente* with the title "La tratta degli alani" [The slave trade in great danes], a metaphor referring to the conditions of migration from Southern Italy to the North.

– restrictions on imports and other form of protectionism (which favor the concentration of industries in the north) should be abolished, in order to allow a more natural distribution of labor in the various parts of the country;

– etc. etc.: because the list of innocuous measures that should be enacted could be extended, as could the list of damaging provisions which could be omitted, with considerable saving of expenses.

Naturally, in putting forward such proposals for applying his principles of Good Government to the question of the Italian South as well, Einaudi was well aware that suggested action should normally be based on appropriate direct experience, and that care should be taken to avoid doctrinaire proposals. He himself had not forgotten the criticisms he had voiced against the doctrinaires who sought to lay down the law in agriculture despite their total lack of concrete knowledge in the field. Furthermore, he did not feel there were any short cuts for development of the South.

In 1951, in two letters to Pannunzio of August 12 and 26, Einaudi contributed to the debate on unification of the “Liberal party”, arguing against the position held by Leone Cattani. In Einaudi’s view, terms like “politically central”, “third force motions” and “contrast between a liberal conservative party and a liberal democratic party” or between “right and left” and other similar expressions generated confusion because they were too vague. There was little sense, Einaudi contended, in discussing “where liberals should position themselves” – whether at the center or to the right or to the left. Rather, what needed to be established is what they tangibly wanted. He added that although it was true, as Cattani maintained, that simplistic definitions cannot give a genuine picture of liberalism and that it was not enough merely to “declare allegiance to the patriotic tradition of liberalism, respect freedom of conscience, affirm the principle of equality of rights, defend private initiative and competition, and seek to restore morality in public life”, it was equally true that the key concepts indicated by Cattani were likewise inadequate as they lacked concrete proposals. Cattani spoke of the need to interpret responsibly the trend towards the right and to resist any tendency to distrust democracy, and in this context he warned against succumbing to institutional forces that might risk reviving dangerous passions. What Cattani advocated was a more elevated sense of the state, greater government efficiency, a stronger national sentiment, more attention to defense problems, and better awareness of the social problems of the country. But Einaudi¹⁰ felt that much time was wasted on pointless discus-

¹⁰ On 12 August, in a shorter letter.

sions as to “what kind of stance the liberals should adopt”, whether they should take up a position at the center or oriented towards the left or the right. What was needed was to establish what goals they were pursuing concretely.

However, in a letter dated August 26, Einaudi slightly revised his assessment, acknowledging that the debate on the liberal party set in motion by two articles whose authors were Croce and Cocco Ortu was “getting off to a good start”. He now conceded that once it was established who the liberals were and what goals they were pursuing, it would be possible to establish “who can set off along the same path together” because “politics is made up of compromises and not of giving in and groveling, as was the case during the celebrated Giolittian times”. Einaudi had been critical of Giolitti’s methods of achieving consensus, but in the letter he admits that “fertile results” had come not only from Cavour’s alliances and Depretis’ compromises but from Giolitti’s approach as well. The letter concludes with the recognition that “the liberals, catholics and democratic socialists all have something to say [...] but as long as they suffer from the inferiority complex of not doing enough of whatever the others say they “will go to ruin”. In Einaudi’s Good Government there is no place for doctrinaires who expound obscure political formulae. There must be clear programs. But this does not imply contempt for the need to reach an agreement by reciprocal concessions.

6. Among his contributions to *Il Mondo*, Einaudi published two long articles, *La società liberale* [The Society of the liberals]¹¹ and *L’idolo rinnegato* [The Disowned Idol],¹² which have the nature of essays on the basic principles of a free society. They originally came out as pamphlets, immediately after the second world war. We will begin here with the earlier of the two papers (although it was effectively published in *Il Mondo* after the other article), because of its nature as a Manifesto on the society of the liberals. Its *incipit* states: “What we liberals seek to create is a society where the number of employees and public pensioners does not exceed a critical point beyond which

¹¹ The paper on “La società liberale” of May 1955 was edited as a pamphlet in April 1945. Obviously the term “Liberal party” was used in the European sense of “Party of freedom” and the society of liberals coincides with the free society.

¹² L. EINAUDI, “Risparmio e investimenti. L’idolo rinnegato”, *Il Mondo* (15 September 1953), pp. 3-4. This article is the second part of an essay originally appearing in English in 1953 in a volume written in honor of Ludwig Erhard, published by the University of Zurich under the title “Wirtschaft ohne Wunder”. The first part appeared in *Il Mondo* on 9 September with the title: *Risparmio e investimenti. I pasticcini di lepore* [Saving and Investment. Failed Hare Pies]. The essay was later published as an introduction to a collection of Erhard’s writings, *La Germania ritorna sul mercato mondiale* (Milano, Garzanti, 1954).

its destiny would be that of subjugation to a tyrant". As Einaudi then clarifies, a tyrant is any form of dominating power that has to be served, whatever name is given to the myth adopted to justify it. The term 'myth' is a fruitful legacy of Pareto (with reference to "derivations") that Einaudi had already employed in criticizing the dominating principles of taxation, such as the minimum or equal sacrifice to justify progressive taxation and the concept of perfectionism whereby "every tax payer pays up to the last penny due". The tyrant in this case is the burden of unproductive public expenditure that generates an excess of fiscal weight together with the vote of the majority oppressing the minority. What Einaudi wished to achieve was

a society not flawed by excessive disparity of fortunes and in which extreme peaks of high income are eliminated, and where no one (apart from the morally, psychologically and physically deficient, who must otherwise be provided for) is denied the chance to achieve a life worthy of modern civil society through the fruits of a working occupation that creates the opportunity for rising to a higher social status. A society providing such stimuli for public and private initiative will favor a continuous increase in the average income level; and this increase also implies a moral and spiritual elevation for the greatest possible number of persons living in society.

Einaudi also clarifies that in the model society he seeks to usher in the middle class "is continuously enriched by energetic men who rise from below to enter within the ranks of the middle class while the latter is, at the same time, continuously depleted by the loss of those who become its leaders, its initiators and promoters". Thus his ideal of good government is that of a variegated society with a large number of small enterprises and independent workers; it is a society that does not display enormous social disparities, yet it guarantees a minimum for those who are unable to provide for themselves, while giving all individuals the opportunity to achieve a better life through their own efforts. This architecture of society provides the stimulus for the continuous increase in average income (in contemporary terminology, an increase in average GDP per head), which comes about through an increase in the income of all members of society or at least of the greatest possible number. Einaudi then indicates his fundamental principles of this society as follows:

- a. Independence of the judiciary;
- b. Autonomy of universities;
- c. Freedom of the press;
- d. Abolition of the Prefecture and autonomy of the provinces, municipalities and regions;
- e. Abolition of dirigisme and of any form of command economy;

- f. Repression of any attempt by workers' and entrepreneurs' associations to create monopolies on the labor market;
- g. Repression of monopolies, cartels and trusts in the market economy;
- h. Stabilization of the Italian currency prior to establishment of a stable single European currency;
- i. Abolition of taxes that hinder wealth creation and adoption of a system of a consumption tax, income tax and inheritance tax, using non inquisitorial methods that can act as tools for reducing the distances among social classes;
- j. Creation of public enterprises only when socialization is the best means for achieving the common good, and not when the state or local government becomes an accomplice in theft at expense of the public;
- k. Urban planning not consisting of lines drawn on paper but composed of roads, side-walks, public lighting, drainage systems, churches, council houses, gardens and parks available to everyone and provided by the public expenditure.

The above list ends with the ideal of Good Government: "the day when mortals will no longer live in those horrendous prisons that are houses and apartments with the flights of steps leading down to common and closed courtyards, with the linen hanging damply in the shadows; the day when all people will be able, if they so wish, to live in their own home with a garden, bathed by sunlight". But all this must not be a free gift because "a man who is a citizen will always be proud to say to his children: 'This house I built myself, with the fruit of my work'".

Luigi Einaudi's manifesto for a liberal society thus ends with the home that each man has built for himself: The home can be seen as the alpha and omega of the ideal of good government.

7. A different topic is addressed in the second essay *L'idolo rinnegato* [The Disowned Idol], dating from 1953. It deals with the fundamental role of private savings in Good Government. Einaudi believed, unlike Keynes, that without private savings no investments could be made. But in our era, savings are always in short supply, a realization that prompted Einaudi's rhetorical question:

In an era where it is really necessary for investments to grow rapidly and to be distributed throughout the world; in an era where the amount of capital necessary for providing operative units with work is becoming higher and higher; in an era where there is a serious need to elevate the working capacity of the average man and consequently the overall standard of living, and in an era where this necessity is felt by hundreds of millions of men living on the border of starvation, is it really

sufficient simply to invest at the usual rhythm and thereby generate savings in the quantity we are seeing today? If we reply negatively to this question, is it not, therefore, urgent to rid ourselves of the obstacles that today limit the creation of private savings: tax levies on the share of expenses devoted to the reconstruction of capital, difficulty in disinvestment of capital invested abroad, and scant respect for the invariance of the gold standard?

Traditional economics, which formed the background context in which Einaudi developed his observations, applied the rules of private microeconomics to public macroeconomics. Keynes endeavored to demonstrate that in macroeconomics, and therefore in fiscal policy, private virtue often becomes a vice because saving and investment are two different notions: and the act of saving does not necessarily translate into investments. While the latter can create *ex post* savings, *ex ante* savings may not result in investment. However, Einaudi noted that the wartime and post-war experience in developed societies and the situation of developing countries showed that it is precisely the virtues of private saving that generate economic growth by feeding investments under substantial monetary stability.

These issues on which Einaudi reflected are still extremely relevant today, in the light of the great crisis of 2008 caused by over-expanded credit in advanced industrialized economies like those of the USA, Great Britain and Spain. Mortgages, home loans and credit cards had been made freely available to families who were devoid of savings and had inadequate incomes to repay their debts, but this vast expansion of credit gave the illusion of a cost-free social policy. It was assumed that the debts arising from loans to insolvent families could be covered *ex post* through growth in the value of real estate and through the increase in incomes resulting from the overall growth in GDP, the latter being generated by the high global demand which, in turn, was triggered precisely by this "deficit lending". And the financial intermediaries who brokered the loans or insured the stocks and bonds representative of these debts, which were subsequently resold on the market, were operating without parameters capable of determining whether the underlying assets were proportional to such commitments. There was a general reliance on the assumption that such checks were unnecessary because the debts would be repaid thanks to the growth of the economy, except in a few isolated cases. But growth without savings – a "hare pie without the hare", to use an Einaudian expression – is not possible in the long run. The spiral is inverted, thus generating a crisis and unemployment.

History repeats itself and appears to validate Einaudi's proposition according to which: "In the competition among various countries of the world,

the prize appears to belong to those living where there is the maximum respect for the traditional rules of economic conduct".¹³ Einaudi's Good Government applies the rules of the private home to the public home. And in the family there is no growth of prosperity without savings.

8. Einaudi was an assiduous reader of *Il Mondo*.¹⁴ However, after 1956 the Liberal Party underwent a scission, in which the center-right retained the original name while a rump characterized by a more left-wing political orientation gave rise to the so-called Radical Party. *Il Mondo* became the headquarters of acrimonious political skirmishes that can be defined as battles of Jacobin liberalism. Einaudi, who up to that time had remained a faithful reader and contributor of *Il Mondo*, silently withdrew. And the correspondence between Einaudi and Pannunzio ended with a Christmas greetings telegram dated 24 December 1955 from Pannunzio to Senator Einaudi.¹⁵ Now having completed his term of office as President of the Republic, Einaudi was able to devote a greater amount of leisure time to writing letters and articles. But he did not send them to *Il Mondo*.¹⁶ I believe that his dissociation from *Il Mondo* can be attributed to two factors. On the one hand Einaudi was not in agreement with the newspaper's new line, which he regarded as excessively secularist, whereas his liberal credo subscribed to the common ethical values of Christianity – in Benedetto Croce's sense of common western values: indeed, in a perhaps even more inclusive sense. And above all, Einaudi opposed the

¹³ L. EINAUDI, "Introduzione" to L. ERHARD, *La Germania ritorna sul mercato mondiale* (Milano, Garzanti, 1964), p. XXI.

¹⁴ As he explains in a letter to Pannunzio on 13 February 1950, where he also writes that the photographs are "very good" and the authors and articles generally appear praiseworthy. The only disagreement concerns the literary part, which deserves to be quoted in order to show that Einaudi was a "complete man", with interests ranging from science, politics, agriculture and architecture to arts and literature. With regard to a short story by S. CAMBOSU, *Il Carnevale di Silvestro* [Silvester's Carnival] Einaudi comments, "It is a senseless typical modern story of people who have achieved their goal. Why was it written? It is no more than an external description of people and events. [...] One may surmise that young people are keen on stories like this, but it is certainly written in a poor style".

¹⁵ Addressed to his office in the building of the 'Bank of Italy' in Via Tuscolana in Rome.

¹⁶ I am skeptical about the suggestion that this *caesura* may be attributed to the fact that the editorial board of *Il Mondo* included many liberal socialists. For not only had the young Einaudi made a number of contributions to *Critica Sociale*, the leading socialist reformist magazine, but in the late 1950^s he wrote a long chapter of his *Prediche inutili* ["Useless Preachings"] on the differences and convergences between liberalism and socialism. The chapter offered him the opportunity for an in-depth analysis in which he theorized that despite the evident diversities between the gradualist, humanitarian and individualistic versions of socialism and liberalism, the different approaches also shared many similarities and a constant dialogue. And he expressed sympathy for the gradualist conceptions of Ezio Vanoni and his ten-year plan for the development of employment and income. And *Il Mondo*, in its radical version, certainly was not sympathetic to Marxism, and neither did it sympathize with collectivism or communism.

illuminist and Jacobin positions of the liberal-radicals. His liberalism was shaped around a theory of limited rationality which he had been elaborating since his early work on economics; over the years he had gradually moved away from the analytical pragmatism of Giovanni Vailati and shifted towards the Marshallian idea that "*Natura non facit saltus*", while carefully maintaining an empirical attitude.

9. An interesting example of this analytical-empirical attitude can be found by perusing his *Pagine Doglianesi* [Dogliani Pages], his *Memoriale per stabilire le regole generali per l'amministrazione di una azienda agricola a vigneto nelle Langhe* [Memorandum for Establishing the General Rules for the Administration of a Winery in the Langhe] written in the years 1942-1943,¹⁷ the same period as his letters to Ernesto Rossi on the principles of Good Government. At first sight, these pages may seem little more than an arid presentation of the balance sheets of the Dogliani estate, analyzing the costs for improvements and maintenance of the estate, agency fees, and the agent's annuities and partnerships. But throughout the statement of accounts one senses Einaudi's manifest love for his property, whose Good Government calls for careful savings to finance appropriate investments.

In his calculation of the agent's payment Einaudi dwells on the change in the purchasing power of money and on the manner of calculating it. He discards the cost of living index because it is based on the expenses of the city workers, adopting in its place the change in the market price of grapes, with the argument, spurious though it may be, that this is the main product of his farms. This, however, leads to a shift from analysis of the purchasing power of currency, which would imply the wage escalator of the managers supervising the farm, to the concept of the revenue obtained from the farm, at market prices, under the assumption of invariance of the quantity produced. Such a method would also give wage flexibility in relation to the revenue of the estate seen as dependent upon exogenous market factors. Within the logic of a competitive market where the salary is not a subsistence minimum or an independent variable determined by trade union power in a collective labour contract, but a variable dependent upon the average return of the production factors in the market considered, Einaudi recognizes that the price of grapes may oscillate from one year to the next due to exogenous factors. He there-

¹⁷ L. EINAUDI, "Memoriale per stabilire le regole generali per l'amministrazione di una azienda agricola a vigneto nelle Langhe" [1942-43], in *Id.*, *Pagine doglianesi (1893-1943)* (Dogliani, Comune di Dogliani - Biblioteca civica Luigi Einaudi, 1988), pp. 41-85.

fore adds a clause that the agent's fee cannot go below six thousand lire annually. It is a minimum guarantee, not an escalator clause because it does not take inflation into account, a problem which was by no means secondary in those years. The agent also received a productivity premium in the form of profit participation, parameterized upon the value of the goods produced at constant prices, as measured by reference to the price of gold. The share of the profits for the agent was initially 10%; later increased to 20%, then to 30% and 40% and even 50% in case of special increases production. Thus there emerged an ingenious model of a labor contract based on incentives, with some risk sharing. Furthermore, the criteria adopted to calculate depreciation, which varied according to the goods considered, constitute a model of Good Government of the private sector which could be of use for the public sector. Here the various components of the architecture of the farming estate are laid out before of us. For ordinary improvement of the vineyards and orchards and their out-buildings Einaudi suggested the simplest method of detracting, every year, the effective expenses incurred for such works

like deep plowing in the fields, special compost for the vineyard, transformation of the fields and planting alfalfa. In this case one may presume that every year something is done and therefore the new expenditure offsets the depreciation. Moreover, it is not worth setting up an ad hoc account for depreciation, when the duration of the improvement works is only a few years.

But with regard to farm buildings and roads,

we are faced with an investment destined to last a very long time. [...] Instead of calculating depreciation on the basis of uncertain suppositions, the best method [...] is to take into account [...] the entire range of maintenance expenses, whatever they are, be they small or large.

For the vineyard and orchard installations, on the other hand (like those mentioned earlier which were the object of a very ambitious innovative Einaudian project), "one needs to calculate the realistic annual depreciation. We cannot include the expenditures due to the installations as costs in the profit and loss account, because the figures are too large and unequal from year to year". Nevertheless the annual depreciation charges could vary as compared to those initially estimated. The depreciation schedule could be shortened or lengthened on the basis of experience.

10. Let us conclude this review with a small scene from life in the home. We will enter into the house of Francesco Fracchia, Luigi Einaudi's uncle on

his mother's side. After the death of Luigi Einaudi's father, Francesco Fracchia welcomed his widowed sister and her children into his own home. This home became Luigi's home, of which he gives the following description in the Introduction to the *Pagine Doglianesi*:

It was a home where everything suggested the cult of age-old and austere meditations. I remember my grandmother, who was very hard-working, and she was always active and busy, right up to the day when she suddenly died. I have vivid memories of my grandfather, who religiously preserved objects and memories, and I can still picture the store room under the high eaves where our old folks would bring the clothes to dry in the sun and air, and the family furniture going back generations, the ceilings with wooden beams. [...] Dinner was a frugal meal, we were only allowed a short playtime in the garden, and it wasn't often that we went for walks. I can never forget the solemn occasions of our trips to the country when it was threshing time and during the grape harvest. Everyone went to the local schools and learnt the disciplines of rhetoric and the humanities, as Dogliani had well-stocked libraries thanks to a Napoleonic endowment. [...] And then the children thronged to follow the family traditions, learning off by heart the names of grandfathers, great-grandfathers and ancestors, doctors, men in the armed forces, lawyers and judges, all honored with decorations and awards, which once were more rarely bestowed than today.

The scene depicted by Einaudi then broadens out from the home environment to the élite who governed Piedmont and who would later be among the makers of Italian national unity. Thus Einaudi notes:

All these aspects that I would observe in the ancestral home were the national habits of Piedmont's middle class for most of the 19th century. And in an era when social mobility from place to place was not frequent, one can readily understand how such habits shaped a ruling class that left profound traces of honesty, thrift, devotion to duty in the political and administrative life of that Piedmont which created Italy.

Einaudi also adds:

The formation of a robust army – traditionally devoted to the King and to its country – cannot be explained unless one bears in mind that relations between the soldiers and officers were the continuation of the interactions which, in their native villages, formed a link between the social classes to which they belonged [...]: relations of respect and familiarity.

And Einaudi infers:

It seemed natural that professionals, clerical workers and civil servants would come from certain families. Salaries, extremely moderate even for those times, were received without complaint and without contempt, for they saw their roles in their

official capacity as an honor and a duty. [...] Their needs were few and it appeared honorable for an officer, at the end of his military career, to be rewarded with a pension of two hundred lire a month and the honorific symbol of a cross of the saints Maurizio and Lazzaro.

This was indeed also the case of Francesco Fracchia, who lived in a “provincial background with close-knit family ties forged by hard work and by the affection of the devoted women members of the family, and who was destined to be esteemed by his own countrymen”. The cycle of life, with its discipline and sense of duty, which was rooted in the house with its ample, solid and functional architecture, and in the steadfast work that creates bonds between generations, radiated forth to the wider community and to public office and public affairs in general. Thus in Einaudi’s vision the ideal and the institutions of Good Government of the public economy are conceived as an emanation of the spirit of Good Government of the home and the working environment, both aspects being the fruit of an order that has developed over time and has endured over the centuries, generating solid affluence. The ideal of Good Government of public affairs is fulfilled when it is managed in the interest of the country, according to the principles learnt in the family home, by the middle class which, as we have seen, in a free society – a “liberal” society – is not a caste but a rank continuously renewed. This is because “life is work and only those who have spent their life on earth complying with the laws of duty have the right to eternal peace”.

FRANCO REVIGLIO

GOVERNMENT AND MARKET FAILURES
IN LUIGI EINAUDI AND TO-DAY

THE GOVERNMENT-MARKET PARADIGM FOR GOOD GOVERNMENT TO-DAY

1. All through his working life, Luigi Einaudi was concerned with good government, both in his writings and social activity. His moral teachings are still particularly relevant because the values for which he fought are too frequently violated.¹

Einaudi wrote on those aspects of the Government-Market paradigm relevant to good government and made a significant contribution to the definition and correction of Market inefficiencies caused by Government. In many ways, these contributions are still valid to-day.²

In his attempt to show that the solutions adopted for good government must work for the overall good, Einaudi has taught us that the Government-Market paradigm for good government changes over time and space and that consequently each generation must resolve its own problems that are not the same as those of the past or the future.

Subsequent literature studied the Government-Market paradigm further following two lines of thought: the first outlines the distributive inefficiencies

¹ The ideal of Good Government is behind Luigi Einaudi's prolific writing, from articles in journals on social and economic policy and in the *Corriere della Sera*, to the 'notes' published as President of the Republic of Italy. A summary of his opinions can be found in L. EINAUDI, *Il Buongoverno. Saggi di economia e politica (1897-1954)*, E. ROSSI (ed.) (Bari, Laterza, 1954, second edition in 2004).

² Einaudi's ideas on the relations between the Market and Good Government were further analysed by Francesco Fotte, first by comparing his philosophy with that of contemporary famed economists and then through an illustration in a number of essays on his liberal economy. See F. FORTE, *Luigi Einaudi: il mercato e il buon governo* (Torino, G. Einaudi, 1982) and Id., *L'economia liberale di Luigi Einaudi. Saggi* (Firenze, Olschki, 2009). For a significant multi-discipline argument, see P. SILVESTRI, *Il liberalismo di Luigi Einaudi o del Buongoverno* (Soveria Mannelli, Rubbettino, 2008), pp. 252 ff.

and insufficiencies of the Market and their correction by Government intervention; the second states that in many cases this intervention was also inefficient and insufficient.

Einaudi's methods for eliminating the Government's inefficiencies and insufficiencies generated wide debate that is still unresolved, because no general agreement has been reached on the possible solutions. They depend on the political systems that determine collective decisions in the various government organisations. But political systems differ and are always imperfect. Therefore, they can be evaluated only pragmatically on the basis of the results.³

2. The Market is inefficient under certain circumstances such as natural monopolies, the external nature of production and consumption, incomplete or skewed information and imprudence, uncertainty and the risk of unforeseen events.⁴ Furthermore, as experience has shown, the Market is incapable of giving an automatic guarantee of a stable balance of full employment.

Market inefficiencies do not apply to national markets only, but also global ones, as demonstrated by climate change and the creation of bubbles leading to financial crises. The Market is not able to correct its excesses by itself.

Market inefficiencies are coupled by insufficiencies in income distribution, nationally and internationally. Distribution differences, especially acute in developed and developing countries, are strictly related to energy and the environment. They have opened a global question that remains unanswered.

3. Market inefficiencies and insufficiency with respect to the income distribution have justified State intervention in the past and up to today through public expenses, taxes, budgets, public debt and public companies.

Each government action has been justified by the need to correct one or more market inefficiencies and at the same time achieve redistribution. In some cases the pursuit of these aims has been sufficient only to justify public intervention, for example in the provision of direct public health services as an objective example of 'health rights' seen as part of citizens' rights.

The corrective actions taken so far using various instruments have proved to be inadequate to meet the huge questions of globalisation, distribution and

³ On the merits and problems of political reforms aimed at reducing the inefficiencies of Government, see F. REVIGLIO, *La spesa pubblica. Conoscerla e riformarla* (Venezia, Marsilio, 2007), pp. 225 ff.

⁴ For an analysis of the inefficiencies and insufficiencies of the Government-Market paradigm, see F. REVIGLIO cit., pp. 17-36.

climate change. Answers to these problems can only come from a new world order based on a non-national authority. But this new order has yet to materialise.

4. Government action can also prove ineffective and insufficient, as shown by developments in public spending, taxation, public enterprise and public debt. Much has been written on the causes and effects of, and possible remedies to, the inefficiencies of State action. An important contribution has been made by the innovative school of Public Choice.

More recently, the economic crisis has highlighted governments' incapacity to regulate and control financial markets efficiently. To avoid a collapse caused by the moral ineptitude of the market, the so-called 'too big to fail', governments have intervened by making financial companies and institutions public and injecting large sums of public money.

In fact, this injection of money has rewarded those who behaved wrongly, without managing to stop another wave of bonuses for the managers of financial institutions and a new development of derivatives that could lead to the creation of new bubbles that would explode in the future and provoke new financial crises with an effect on the real economy.

Removing government inefficiencies and insufficiencies is complicated because the possible solutions depend mainly on two very difficult and controversial reforms: changing the national political and electoral systems and adopting a world government able to regulate and control super-national economic and financial activities.

GOVERNMENT-MARKET FOR GOOD GOVERNMENT IN THE PHILOSOPHY OF LUIGI EINAUDI

1. To Einaudi's mind, the Market represented by competition is the ideal model of society, an essential component of Good Government and the foundation of a liberal economic, political and social community.

Einaudi recognises that the Market may be inefficient, therefore corrective action by government can be justified in certain cases. First of all, he believes that it is government's job to establish appropriate obligations for disclosures, regulations and controls through supervisory authorities, not just indicate and order operational modes: a particularly topical idea after the current serious, and as yet unfinished, financial crisis.

Einaudi also points out that the Market is insufficient because it is *neutral* from the point of view of distribution. In other words, it creates an optimum of resources for each distribution of profits.

Redistribution by the Government can therefore be justified by *a priori* political motivation, but for Einaudi the Government must pursue only the redistribution of income to achieve equality of the starting points, without having a negative influence on savings and investments, therefore without reaching a universal levelling of mass society, which he believed was the “most frightening phenomenon of contemporary society”.

2. The Market does not possess the mechanisms to finance free public services through prices. It therefore has to use taxes. The tax finances the indivisible cost of the functions that the public body has assumed.⁵

It is not possible to finance indivisible public services by prices for two basic reasons: because they satisfy several demands at the same time and because they cannot be divided from the offer, excluding who does not pay the price. Einaudi's analytical explanation of the reasons why recourse cannot be made to prices is persuasive, even if different from later literature with the instruments of *free riding* and the *prisoner's dilemma*.

According to Einaudian theory, tax must be “economic”, that is such as to have a positive influence on production and productivity. It must finance only productive expenses that increase the product and saving.⁶ In order to increase production, savings and capital gains must be relieved of tax and banking secrecy should be adopted.

For Einaudi progressive taxation should be based on these limits. Its foundation should not include all profits because income put aside for savings and capital gains must be exempt from taxation. Furthermore, Einaudi favoured death duties, which he believed necessary to reduce the excessive concentration of wealth.

3. Among Market inefficiencies Einaudi emphasised monopolies and external economies enhancing economic development, justifying Government corrective measures in both cases, in the case of monopolies through regulation rather than privatisation; in the case of external economies enhancing economic development, through benefits to businesses that can generate advantages to other businesses.

⁵ Einaudi defines tax after having examined private, quasi-private, public and political expenditure and payments. See L. EINAUDI, *Principi di scienza delle finanze*, 4th ed. (Torino, G. Einaudi, 1948).

⁶ Further analysis of the Einaudian theory of taxes from the point of view of liberal economy can be found in F. FORTE, *L'economia liberale di Luigi Einaudi* cit., pp. 143 ff.

Einaudi did not deal with other Market inefficiencies considered in later literature. He did not examine the whole taxonomy of the external effects of production and consumption that justify further public corrective measures, especially for toxic consumption and environmental protection.

Protection of the environment is however at the centre of Einaudi's thinking over forest management where he indicates quasi-private prices as the mechanism for the abolition of forest protection. Einaudi justifies the non-use of private prices with the external economies produced by forestry conservation.

Einaudi does not deal with the asymmetric information between patient, doctor and pharmaceutical companies that justifies regulatory action by the State. Usually, the patient accepts the diagnosis, prognosis and cure suggested by the doctor and cannot evaluate the use, usefulness or danger of the drug. This asymmetry does not in itself require the funding of a public health system, but the prohibition to practise the medical profession and to sell medicines without proper and legal certification.

Einaudi did not even examine the inefficiencies in private health insurance that lead to a inadequate coverage of risk. The health risks of a large population with known characteristics, illnesses and accidents can be statistically predicted and therefore can be covered by private insurance, offering individuals proper protection on payment of a sustainable premium commensurate to the medical risk.

But the solution offered by private insurance may be inefficient because the asymmetric information between the insurers and the insured create an adverse selection: the former try not to cover 'bad risks', the latter tend not to insure against 'good risks'.

Consequently, premiums decided on the basis on average risk may result in being too high because they reflect bad risk too much, excluding a part of the population from health insurance, with a vicious circle than increases overall inefficiency and therefore finally justifies public provision of health services.

Einaudi approved public health services not to resolve the inefficiencies of private insurance, but to correct an insufficient distribution in favour of those with lower incomes.

4. Government inefficiencies worried Einaudi as much as, if not more, Market ones. Einaudi studied them and proposed some solutions. He concentrated on the inefficiency of public monopoly created by law, suggesting that it be removed by suitable public regulation. In the case of transport services (urban, railways, electricity, gas and water) where public bodies might act in a

damaging or inadequate way, he believed that privatisation could be the answer.⁷ Einaudi argued against the Keynesian theory of global demand and government deficits and increasing public debt to overcome cyclical slumps. He believed in a budget balance that tended to be neutral, even though he admitted that a temporary recession could be allowed when the needs for the recovery required it, but always in the context of market liberalisation aimed at flexibility.⁸

Einaudi suggested facing Government inefficiencies through federalism and decentralisation only if it was possible to avoid imposition and excessive public spending. In this way he anticipated the school of *Public Choice* that highlighted the possible inefficiencies that may arise for the decentralised assignment of responsibilities.⁹

Einaudi also argued against protectionist barriers that should be removed with the European federation. He hoped for wider globalisation because he believed that economic logic would lead to the end of sovereign States and the start of a free society, but he did not go so far as to suggest a world government.¹⁰

5. The correction of State inefficiencies that Einaudi hoped for, have occurred at least in part. Starting from the 1990's, there has been a new regulation of public utility companies to remove privileges and inefficiencies and there has been an extraordinary number of privatisations, not always efficient ones.

Privatisation has taken place in many countries and been extended to various sectors of public utility services. In the period 1990-2006 income from privatisation was considerable, amounting to over a trillion dollars.

Since 2008 the situation has changed. Because of the financial crisis, governments resorted to nationalisation to the sum of over 1.5 trillion dollars, higher than that from privatisations in the preceding 15 years.

Government intervention in banks has raised delicate questions on the governance of these institutions. To solve these, in many cases privileged shares

⁷ As restated by F. FORTE, *L'economia liberale di Luigi Einaudi* cit., pp. 306 ff.

⁸ For the cooperative State in Einaudi and his theory of generally balanced budget, see *ibid.*, pp. 107 ff. and p. 228.

⁹ On this subject, see E. GIARDINA, "Local finance and intergovernmental relations in the philosophy of Luigi Einaudi", *Il pensiero economico italiano* (2004), pp. 77-105, reproduced in *Selected essays 1960-2007* (Milano, Franco Angeli, 2008), pp. 430-468.

¹⁰ F. Forte notes that there is a contradiction between this idea and Einaudi's theory of a confederation limited to western Europe.

without voting rights have been issued and management restraints have been imposed to force the banks to pay back the capital received from the State.

6. Over the years policies on public deficit have also changed. European limits were then set adopting a stability pact that resisted until the recent financial crisis which has forced the State to intervene through an increase of the public deficit of unprecedented size, particularly in Great Britain and the USA. The increase was inevitable, but opens delicate questions for future sustainability.

The creation of the European Union has eliminated the barriers, as Einaudi had hoped, but global barriers still partially exist because the ongoing economic crisis has given them new life.

Globalisation has increased wealth also in the less developed areas of the world, proving at least in part Einaudi's theory that globalisation would generate economic development, but a 'World Federation' is still a long way off.

In Italy federalism has yet to be introduced and the centralist Government continues to play a determining role in a situation of financial irresponsibility on the part of the Regions, as is shown by the case of federalist health services.

7. In *Lezioni di politica sociale* (Lessons on Social Policy),¹¹ Luigi Einaudi claims that the State must take social actions coherent with the market economy and with the values of liberty and individuality. Government intervention must come after that of citizen and voluntary associations. All the same Einaudi agreed with the idea of redistribution to ensure that the poor had a minimum pension and a health service.

Einaudi's reduced theory of the Social State can be attributed to his antagonism to Beveridge on the Welfare State that gives everything to everyone with no responsibility or freedom of choice.

The later development of welfare was the opposite of the original idea, with the crisis of the Welfare State Einaudi's ideas are today valid. His Government-Market model is applicable today and opposes the ideology of the 1970^s that considered it obsolete.¹²

Einaudi believed that it was the government's responsibility also to provide free education, albeit within certain limits, because State intervention

¹¹ (Torino, G. Einaudi, 1949), republished in B. CROCE - L. EINAUDI, *Liberismo e liberalismo* (Milano - Napoli, Ricciardi, 1988). On the social policies of Einaudi, see F. FORTE, *L'economia liberale di Luigi Einaudi* cit., pp. 119 ff. and 235 ff. and P. SILVESTRI cit., pp. 252 ff.

¹² F. Forte compares and contrasts the theory that Einaudi's model of Government well-being would be outdated. See *L'economia liberale di Luigi Einaudi* cit., p. xvii.

should be accompanied by a variety of schools competing between themselves and the freedom of choice of private citizens. In order to reduce inequality from the beginning, Einaudi believed mainly in a system of private and public schools.

8. Einaudi's reform consisted in the *gradual* removal of the inefficiencies of Government, as can be clearly seen in the debate with Ernesto Rossi on the limits to agrarian reform and schooling.¹³

Einaudi argues against Ernesto Rossi's theory that it is the State's responsibility to broaden the scope of economic privilege from small owners and to redistribute territory in a more equal manner. On the contrary, he affirms that the redistribution of land should be gradual, guided by the market with the entry of new autonomous owners.

With regard to school reform Einaudi believed that a limited number of admitted students would constitute an obstacle to the necessary competition.

The world according to Einaudi is made up of small businesses working for larger industries that, through free competition, ensure efficiency and growth. In this context, the Market is for him the best mechanism to guarantee sustained growth, widespread prosperity and freedom.

9. If the distribution of wealth is politically not acceptable because it is not equitable, Einaudi believes it is right for government to try and correct it.

The debate has been over two questions: are there objective criteria to define re-distribution and is income an adequate and sufficient point of reference. With regard to the former question there is doubt about the type of distribution that can be considered 'unequal'.

Here we are faced with two polar opposites: in brief, egalitarian extremists and extremists of the 'invisible hand'. The various political parties have tried to find an acceptable answer to these two extreme positions.

The egalitarians based their theory on the decline of marginal utility of successive wealth so that the best collective well-being can only be brought about by an egalitarian redistribution. But this solution lacks objectivity because the theory of utility is not able to deal with measuring and comparing inter-personal utilities.

Conversely, the extremists of the 'invisible hand' defended the actual market distribution as the natural expression of individual rights.

¹³ The limits of reformation in the papers with Ernesto Rossi are cited by P. SILVESTRI cit., pp. 244 ff.

10. A compromise between these two extremes could be a redistribution that permits all people, particularly poor ones, to have at least 'a minimum' income or consumption, in accordance with prevailing collective standards.

The best attempt to put this proposal on a scientific basis is that of John Rawls.¹⁴ Starting from the supposition that the well-being of a society depends only on the well-being of the individual in the worst conditions (the person with the lowest level of utility), Rawls concluded that collective well-being can only improve if the worse-off, that is those with a lower level of utility, better their standing.

To free himself from the impossibility of measuring or comparing utilities, the American lawyer-philosopher employed a logical structure based on a review of the theory of the social contract founded on the analysis of a person's reaction to risk.

11. Using the logical artifice of the 'veil of ignorance', Rawls thought that if people made their choice without personal considerations (that is without knowing their place in society, in other words whether they were to be born rich or poor, sick or healthy), they would want the society that looked for the best for the poorer, or the worse off. This would insure against being born poor or taking a turn for the worse.

Against Rawls' commonly accepted theory of guaranteeing the minimum, it has been noted that it leads to the maximisation of the minimum and not the guarantee of the minimum and is also not linked to responsibility as it is based on the idea that the least lucky are born the least lucky.¹⁵

On a more general level, Rawls' thinking has also been accused of being simplistic by assuming only one reaction to risk, when in real life individual responses are very different. It has also been argued that the base income which people would agree to be covered by the veil of ignorance cannot be determined.

All the same, if literature has judged the theoretical basis of Rawls' ideas to be in some way simplistic and undefined, the idea of redistribution has widely influenced public policies in the last fifty years.

12. Alongside the search for the best criteria for the redistribution of wealth, there have been many arguments on a second question: if income is a significant variable, is it an adequate and sufficient reference for redistributive policies?

¹⁴ J. RAWLS, *A theory of Justice* (Oxford, Oxford University Press, 1971).

¹⁵ Critical observation by F. Forte.

Einaudi agreed with criticism of the exclusive nature of income and argued that together with income there were other variables, like family and social standing and living standards that, first and foremost, depend on living in a *beautiful* and well-organised town/city, or the Einaudian agricultural society.

Amartya Sen has made an important contribution to this subject. According to Sen, equality must be sought not just through the traditional indicators of the availability of material goods (wealth, income and consumption), but more importantly by analysing the possibility of experiences and situations to which the person gives a positive value.¹⁶

Sen believes that, the traditional monetary indicators of wealth (indices of poverty and inequality based on income or expenses) are incomplete or partial measures of the quality of life of a person. To measure people's freedom and standard of living, one must use more suitable standards such as *capacities, attributes and functionality*. *Capacities and attributes* are choices, or the functions that a person may make freely. Capacities, or capabilities, include not only the possibility to be fed or have an adequate dwelling place, but also to earn the respect of his/her neighbours and take part in the life of the community.

This set of alternative "baskets" of available goods also includes rights and opportunities, the "attributes", the size of which depends on economic development.

13. Sen's theory seems convincing, but closer study and the empirical measure of the *functions* and *capabilities* needed to define the *attributes* are still unresolved. This has given rise to much research that has fed the debate on the themes he deals with.

The work of Ian Carter and Marc Fluerbaey is particularly significant to this argument. Carter concentrates on the connection between liberty and equality through an analysis of the logical structure of the idea of liberty and the right to freedom and property rights.¹⁷

¹⁶ A. SEN, *On economic inequality* (Oxford, Clarendon Press, 1973); ID., *Inequality reexamined* (Oxford, Oxford University Press, 1992); ID., "La libertà individuale come impegno sociale", in *La dimensione etica nelle società contemporanee/scritti di I. Berlin, A. Sen...* [et al.] (Torino, Fondazione Giovanni Agnelli, 1990); ID., *Scelta, benessere, equità* (Bologna, Il Mulino, 2006) and A. SEN - P. FASSINO - S. MAFFETTONE, *Giustizia globale* (Bari, Il Saggiatore, 2006).

¹⁷ I. CARTER, *A Measure of Freedom* (Oxford, Oxford University Press, 1999).

Fleurbaey has seen social justice as equal opportunity and has considered the fair distribution of resources and goods as when people are free to judge the opportunities that arise and are also responsible for the results.¹⁸

The debate begun by Sen on liberty, equality and opportunity is in no way finished and still has to be pursued. Certainly it would have been of great interest to the brilliant Piedmontese economist.

LUIGI EINAUDI AND FEDERICO CAFFÈ

OUTLINES OF A SCHEM WORKING FOR GOOD GOVERNANCE

1. INTRODUCTION AND CONCLUSIONS

There are two errors to be avoided when reading works from the past. The first is to fall into the trap of old stereotypes, such as the one, in our case, that Einaudi was a critic of public intervention and an advocate of a total free-market policy, with a rather simple classification in 'left wing', and that Caffè was a convinced interventionist, critic of the market and therefore 'left-wing'. The second mistake is to be deceived by linguistic style and its immediate rhetorical purpose by making facile distinctions on one point or another (as for example Einaudi's insistence on questions about peasant culture), without grasping the deeper meaning and present day relevance of his ideas. This criticism was made by Caffè in his *Introductory note to Einaudi's Lessons in Justice* (1998), but it can also apply to Caffè's own works which were at times dated.

We believe that once the super-structural differences have been eliminated, their thought is not only relevant today, but there is also a great affinity between them! This is what the paper will try to show. First, we will trace Caffè's thought in relation to the Italian liberal tradition (section 2) and then explain why Einaudi's thought cannot be reduced to a naive in favour of an unregulated market (section 3). In conclusion, we will illustrate his position, a few

¹⁷ An early version of this paper with M. Boncinli (ed.) Luigi Einaudi: justice, equity, and more (Roma, Carocci, 2010).

¹⁸ Correspondence between the two authors, written between 1987 and 1991. It is available in the archive of the author's archive, Archivio Luigi Einaudi e Federico Caffè 1948-1991, Roma. The most detailed correspondence precedes the publication of the journal *Journal of Economic Surveys* at Palgrave Macmillan. There are also some very interesting correspondence to other authors, in particular to that one with the reference list at the end of the paper, as well as the book of 1998, which is also available in the archive.

¹⁸ M. FLUERBAEY, *Fairness, Responsibility, and Welfare* (Oxford, Oxford University Press, 2008).

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1. A. Sen, *The Idea of Justice* (New York: Farrar, Straus and Giroux, 2009), p. 1.

2. M. Rawls, *A Theory of Justice* (New York: Oxford University Press, 1971), p. 2.

3. J. Rawls, *Justice as Fairness: Part 2* (Oxford: Oxford University Press, 1993), p. 225.

4. J. Rawls, *Justice as Fairness: Part 1* (Oxford: Oxford University Press, 1993), p. 11.

GIUSEPPE GAROFALO

LUIGI EINAUDI AND FEDERICO CAFFÈ:
OUTLINES OF A SOCIAL POLICY FOR GOOD GOVERNANCE*

1. INTRODUCTIONS AND CONCLUSIONS

There are two errors to be avoided when reading works from the past. The first is to fall into the trap of old stereotypes, such as the one, in our case, that Einaudi was a critic of public intervention and an advocate of a rigid deflationary policy, with a rather simple classification as 'right-wing', and that Caffè was a convinced interventionist, critic of the market and therefore 'left-wing'. The second mistake is to be deceived by linguistic style and its immediate rhetorical purpose by making facile criticisms on one point or another (as, for example, Einaudi's insistence on questions about peasant culture), which miss the deeper meaning and present day relevance of an idea. This comment was made by Caffè in his *Introductory note* to Einaudi's *Lezioni di politica sociale*, but it can also apply to Caffè's own works which were at times dated.

We believe that once the super-structural differences have been eliminated, their thought is not only relevant today, but there is also a great affinity between them.¹ This is what the paper will try to show. First, we will trace Caffè's thought in relation to the Italian liberal tradition (section 2) and then explain why Einaudi's thought cannot be reduced to a thesis in favour of an unbridled market (section 3). To conclude, we will illustrate in section 4 how

* An early version of this paper is in N. ACOCELLA (ed.), *Luigi Einaudi: studioso, statista, governatore* (Roma, Carocci, 2010).

¹ Correspondence between the two authors, written between 1945 and 1961, is available in the archives of the LUIGI EINAUDI FOUNDATION, *Carteggio Luigi Einaudi vs Federico Caffè* (1945-1951), Turin. The most detailed correspondence concerns the publication of the volumes of the Complete Works of Francesco Ferrara. There are also some very interesting comments on excess savings in relation to their use and the subsequent lack of real demand, as well as the role of public saving in a cycle; these are typically Keynesian topics.

See also G. PARRAVICINI – E. POLACEK with collaboration of F. CAFFÈ et al. (1954), *Scritti nei quali si fa riferimento al pensiero economico di Luigi Einaudi e recensioni di sue opere* (Roma, Banca d'Italia).

the outline of a social, liberal-democratic, reformist policy aimed at good governance emerges from a synthesis of their work. The adjective 'social' is used by both authors in their works of 1964 and 1970, respectively, instead of the more classical adjective 'economic' to define a policy that is sensitive to the social consequences of the market, a perspective that is as relevant today as ever.

Both Einaudi and Caffè believed the market and the State are not in a trade-off. But they were also convinced both forms of economic-social organisation were responsible for 'failures'. Before we venture upon the question of good governance in the last section of the paper, we will first have to define a common ground of analysis, an area which actually reflects the imprinting of the Italian tradition in economics, dating back to its beginnings in the reformism of the 18th century, with Verri, Beccaria, Genovesi, Galiani and Filangieri, a movement that was well integrated into European political and cultural events. This imprint is given by the continuity between theoretical and applied investigations, based on the specific historical and institutional nature of the economic system being studied.² In order to contrast a 'partisan' interpretation of their thought, we will emphasise the elements in Caffè that are closest to liberal thought (in the next paragraph) and those aspects in Einaudi closest to reformist thought (see the following paragraph).³ This is, however, really only a rhetorical strategy, because there are clear differences (in our view, of degree rather than general approach) between the two. For a reasons of space we have to be brief on all points.

2. CAFFÈ AND LIBERAL THOUGHT

Nerio Nesi, who has a long, involved political past with the Left, asked the following question in an article on June 26, 2007⁴ *Was Federico Caffè a liberal?* His answer was:

If we think of liberal thought as conceived by its two greatest exponents, Benedetto Croce and Luigi Einaudi, we would be tempted to answer this question in the affirmative.

² M. FINOIA (ed.) (1980), *Il pensiero economico italiano: 1850-1950* (Bologna, Cappelli); G. GAROFALO and A. GRAZIANI (eds.) (2004), *La formazione degli economisti in Italia (1950-1975)* [volume sponsored by the Italian society of economists] (Bologna, Il Mulino); G. GAROFALO (2005), "Gli economisti in Italia negli anni 1950-1975", *Economia politica. Journal of analytical and institutional economics*, n. 3.

³ Ernesto Rossi, a member of the Partito d'azione, was quite influential in shaping Einaudi's thought: see G. BUSINO and S. MARTINOTTI DORIGO (eds.) (1986), *Carteggio Luigi Einaudi - Ernesto Rossi (1925-1961)* (Torino, Fondazione Luigi Einaudi).

⁴ <http://www.aprileonline.info/notizia.php?id=3773>.

In the case of Croce we can cite his definition of utopians:

Utopians were those people who said they believed that the social question or 'the question of History' would be solved once and for all with the raising of economic liberal expedients to absolute principles, to the law of human society, thus promising the settling of all conflicts, the solution of all difficulties, human happiness; and this could not be considered, ultimately, without placing the law of history beyond history itself.⁵

A reference to *laissez faire* is appropriate in the case of Einaudi, if we consider his definition of the market:

the mechanism of the market is an insensitive economic instrument, which ignores justice, morality, charity and all human values.⁶

And again:

In the market needs are not satisfied, demand is.⁷

Clearly Caffè was a progressive liberal à la Roosevelt, who wrote as follows in a cover note to two bills (*Public Utilities Company Act* and *Tennessee Valley Authority Act*) to Congress in the United States in 1933:

Regulation has little chance of success against the concentration of wealth and economic power that holdings have created in the field of public services.

To be more exact, Caffè was a reformist in the sense he gave in an article in *Il Manifesto* on 29 January 1982, titled "La solitudine del riformista":

A reformist is convinced of working in history, that is within a system for which he wants to be neither apologist nor undertaker; but, within the limits of his possibilities, he wants to be a component who eagerly brings about all the improvements that can be realized in the immediate future and are not just desirable *in vacuo*. He prefers a little to everything, the possible to utopia, the gradualism of transformations to a radical transformation of the system which will always be postponed ... for a scientist what the others define as utopia is only a foretaste of results that have to overcome the resistance of the present.

⁵ B. CROCE (1932), *Storia d'Europa nel secolo decimonono* (Bari, Laterza), p. 142.

⁶ L. EINAUDI (1964), *Lezioni di politica sociale*, with an Introductory note of F. Caffè (Torino, G. Einaudi), p. 245.

⁷ *Id.* (1964), p. 23.

Caffè was, above all, a meticulous scholar of liberal economic thought, in particular Italian liberal economic thought, perhaps because it was here that he found particular attention being paid to social questions and less dogmatism than in similar foreign schools. He had a profound knowledge of the writings of Italian liberal scholars, from Francesco Ferrara and Gustavo Del Vecchio to Luigi Einaudi, with whom he shared the belief that:

it is only by considering man as a value in himself that you can hope to bring some clarification to matters in which a show of certainty, rather than theoretical arguments, can be confusing in discussions about economic policy.⁸

And on Einaudi, he wrote:

What deserves to be noted in Einaudi in particular is the perfect continuity that can be found between the man of thought and the man of action; the unflinching loyalty he showed to principles inspired by the market economy in both his works and his political decisions; loyalty that was the expression of beliefs that were constantly being reconsidered and confirmed critically in view of new experiences and a changing historical situation.⁹

In a perspective that also involves Ferrara and other liberal authors, he stated:

The 'dialogue between facts and theory', which is what economic science should be about, and the interactive process between questions raised by theory and the answers provided by empirical investigations have been a constant characteristic of Italian economic thought, from Francesco Ferrara to Luigi Einaudi [...]. The lesson of the intimate connection between theory and reality which emerges from this needs to be salvaged.¹⁰

In *Frammenti per lo studio del pensiero economico italiano* (Milan, Giuffrè, 1975), Caffè encouraged the rediscovery of Italian authors by collecting a series of papers which had been published from 1955 onwards, in particular a critical edition of Ferrara's works and Einaudi's *Cronache economiche e politiche di un trentennio*.

⁸ F. CAFFÈ (1990), *La solitudine del riformista*, N. ACOCELLA et al. (eds.) (Torino, Bollati Boringhieri), p. 254. It is interesting to notice that Caffè paraphrases an expression of F. HAHN (1984), *In Praise of Economic Theory* (Cambridge, Churchill College), p. 20.

⁹ F. Caffè, Introductory note to L. EINAUDI (1964), *Lezioni di politica sociale* (Torino, G. Einaudi), p. xvii. For the evolution of Caffè's judgment on Einaudi see F. CAFFÈ (1967), *Luigi Einaudi* (Torino, UTET) and ID. (1987), "Einaudi Luigi", entry in *The New Palgrave. A Dictionary of Economics*, vol. 2 (London, Macmillan).

¹⁰ F. CAFFÈ (ed.) (1975), *Autocritica dell'economista* (Roma - Bari, Laterza), p. v.

I would like to conclude with an extract from Caffè's *Un liberale sulle cose* (*L'Opinione*, 1981, November 17), which leads directly into the discussion about Einaudi which I will present in the next section:

[In Einaudi] economic harmonies formed an ideal paradigm, but on earth the tendency to monopolize prevailed, against which it was necessary to be vigilant, combative and ready to act. I have the impression – [*these are Caffè's exact words and the ending is particularly interesting*] – that there is a tendency to pay homage to Einaudi which is convenient, but to forget his determination and severity (especially, after a careful reading of his attitude towards banks and bankers).

3. EINAUDI AND REFORMISM

In an anthology of August 2002, *Per la ripresa del riformismo* (Milan, Nuova Iniziativa Editoriale, available at <http://www.syloslabini.info/online/wp-content/uploads/2007/03/riformismo.pdf>), the editors Paolo Sylos-Labini and Alessandro Roncaglia consider Luigi Einaudi a liberal and reformist thinker, similar to Carlo Cattaneo and Piero Gobetti.

The entry *Liberismo* [*Laissez-faire*], edited by Einaudi in the *Piccolo dizionario politico* as part of a course in civics called “Uomo e cittadino” [*Man and Citizen*] (Berne, 1945) and now in *Annali* of the Luigi Einaudi Foundation of Turin, XX, 1986, pp. 151-153, reads as follows:

The famous maxim of *laissez-faire*, *laissez-passer*, does not mean that the state has to overlook what is wrong or tolerate damage for the many to the advantage of a few. It means that in most cases, except in the unlikely case of evidence to the contrary, the industrialist and the agriculturalist should be left to work and take their own risks, and not be protected from foreign competition. Whoever asks for protectionism or subsidies or aid from the state, nine times out of ten, is the real enemy of his compatriots. He wants to achieve a monopoly to extort higher prices, bigger profits and abnormal wages to the detriment of his compatriots. There is, however, that one case out of ten or a hundred that deserves to be considered. But the free marketer still hesitates, because experience has taught him that the smuggling of a thousand adventurers and exploiters in the public sector proceeds triumphantly in the shade of one deserving project of state encouragement. *Laissez-faire* is not an economic doctrine; it is a moral thesis.

An obvious reference is his experience at the *Riforma sociale*, a journal founded by Francesco Saverio Nitti in the last decade of the 19th century, which, together with Maffeo Pantaleoni, Antonio De Viti de Marco and Vilfredo Pareto's *Giornale degli economisti*, left its mark on economic and social

studies in Italy, as Fauci has noted.¹¹ Luigi Einaudi became a contributor to the combative Turin periodical in 1900 and editor in 1908: the *Riforma sociale* in his expert hands fostered a fruitful dialogue with other economic and political periodicals of the time until its closure in 1935. In an article of 1924, significantly called *La bellezza della lotta* [The beauty of struggle],¹² introducing a collection of his writings on labour and the working class that was published at the request of Piero Gobetti, Einaudi criticized all those forces, regardless of whether they had the name of corporatism or supreme national interest or were disguised as monopolies, which took part in a free debate on labour conflict in the name of a misinterpreted principle of social harmony and demanded the coherence of a liberal point of view, drawing cleverly on the abundant literature in English on social conflict and industrial development in Great Britain, the first nation to have experienced forms of worker organizations.

Caffè challenged the idea that “fundamental concepts are revived and reaffirmed in Einaudi’s teachings” by using the very terms of counterrevolution that monetarism was throwing at Keynesianism at the time he was writing (“Luigi Einaudi nel centenario della nascita”, *Il giornale degli economisti e Annali di economia*, lug.-ago. 1974), terms which reflected a new faith in the “adaptation entrusted to spontaneous market forces”. He pointed out how it is

exactly his sense “of referring to history” that clearly distinguishes him from the automatism of neo-monetarists and the simplistic prescriptions they propose.¹³

Caffè believes the best proof of this is to be found in the speech Einaudi gave on becoming Governor of the Bank of Italy in 1945:

No magical means exist that can work the miracle of improving the monetary situation. The only known and effective means, even in the midst of an inevitable clash of ideas, is the mutual tolerance of clear, precise and transparent compromises that allow the realization of a common programme of action. If the state, after having defined the exact area of its direct economic management and its attitude towards control over the private sector, encourages the renewal of trust and hope in enjoying

¹¹ R. FAUCI (1986), *Einaudi* (Torino, UTET). For a reconstruction of Einaudi’s thought in the context of the Turinese School see R. MARCHIONATTI (2007), *Luigi Einaudi*, speech at study-day on “La scuola di economia di Torino 1893-1940: Einaudi, Cabiati, Jannaccone e gli altri”, organized by Centro di studi sulla storia e i metodi dell’economia politica “Claudio Napoleoni”, Turin, 25 ott.

¹² L. EINAUDI (1924), *Le lotte del lavoro* (Torino, G. Einaudi).

¹³ F. CAFFÈ (1975), *Commemorazione di Luigi Einaudi nel centenario della nascita (1874-1974)* (Torino, Fondazione Luigi Einaudi), p. 20.

the fruits of one's work, savings and enterprise, the tax payer, muttering to himself as he is wont to do, will put up with it... and he will continue, nevertheless, to save, deposit his cash in banks and underwrite public loans.¹⁴

The conclusion of Caffè's reasoning is

to confirm that the present day relevance of Luigi Einaudi's thought cannot be sought in the developments of the monetarist counterrevolution. We have to ask to what extent and with which reservations his thought has greater affinity with the developments of the Keynesian revolution.¹⁵

In spite of the famous statement by Einaudi in which

his own plan [to be understood in the broadest sense of the word] was not Keynes's, ... there can be no doubt about the complete agreement between Luigi Einaudi's thought and what Keynes wrote about the function and advantages of individual enterprise and responsibility.¹⁶

The following is a quotation from Keynes's *General Theory* which clears the field of any risk of state holism:

Individualism [...] is also the best safeguard of the variety of life, which emerges precisely from this extended field of personal choice, and the loss of which is the greatest of all the losses of the homogeneous or totalitarian state.¹⁷

4. A PROGRAM FOR GOOD GOVERNANCE

If what has been said above constitutes the common ground between Einaudi's and Caffè's thought (but also with Keynes's),¹⁸ our argument is that their synthesis can define the outline of a social policy, where the adjective

¹⁴ The speech has been republished in P. BARUCCI (ed.) (2008), *Luigi Einaudi, Considerazioni finali della Banca d'Italia* (Napoli, Treves), p. 339. On Einaudi Governor of the Bank of Italy see P. SAVONA (2008), "Sulle 'Considerazioni finali' di Luigi Einaudi", *Economia italiana*, n. 3, pp. 725-727.

¹⁵ F. CAFFÈ (1975), *Commemorazione di Luigi Einaudi* cit., p. 21.

¹⁶ *Ibid.*, p. 21.

¹⁷ J.M. KEYNES (1936), *The General Theory of Employment, Interest and Money*, Italian translation (Torino, UTET), p. 337.

¹⁸ Keynes defined his 1936 work as "moderately conservative in its implications". In his opinion, the idea that free market economies can function without control has to be abandoned if capitalism is to become stable. This is especially true of financial markets which are dominated by short term speculation and are not very attentive to the fundamentals of economies.

used by both authors in works published in 1964 and 1970, respectively,¹⁹ instead of the more classical adjective ‘economic’, describes a policy that is sensitive to the social consequences of the market. This policy, which can be defined as liberal, democratic and reformist, is aimed at good governance. In other words, a ‘good’ policy is based – and here the choice of words is especially important and, I would add, truly significant and relevant today – on *ethical* values, a *long-term* perspective (in contrast with the so-called short-termism that has done so much harm) and the objective of *efficiency* (acting without waste). At the same time, it is grounded on *equity* (equal starting points), *individual* responsibility (everybody is responsible for the choices he makes) and also *collective* responsibility (social harmony cannot exist without guaranteeing resources and opportunities for everyone).²⁰

This policy is based on the idea of an “open society” characterised by the rational attitude of free critical discussion, in which political action appears as a social technology that does not claim to reorganise society totally and in a definitive way, but tackles specific problems one by one in search of the most appropriate solutions. This is the well-known thesis proposed by Karl Popper, the author of *The Open Society and its Enemies* in 1945. The term is very apt here in view of the opinion expressed by Sergio Steve in 1975, when he attributed to Einaudi “faith in an open society”.²¹

As Norberto Bobbio recalls in *Teoria generale della politica* (1999):

Good governance and bad governance [is] an antithesis that runs throughout the history of political thought; it is one of the great themes, if not the greatest, of political reflections of all times.²²

Good governance is “the government for the common good” in contrast with the government for the good of one’s own faction.²³

¹⁹ L. EINAUDI (1964), *Lezioni di politica sociale* (Torino, Einaudi); F. CAFFÈ (1970), *Teorie e problemi di politica sociale* (Bari, Laterza).

On Einaudi’s political belief see A. BAFFIGI (2009), “Luigi Einaudi: teoria economica e legislazione sociale nel testo delle ‘Lezioni’”, *Quaderni di storia economica* (Roma, Banca d’Italia); BANCA POPOLARE DI SONDRIO (Swisse) (2007), *Luigi Einaudi. Valori umani per l’economia e la politica*, http://www.bps-suisse.ch/var/plain_site/storage/original/application/6cddc99cb6948a98be3bf0ff614638fc.pdf; A. GIGLIOBIANCO (ed.) (2010), *Luigi Einaudi: libertà economica e coesione sociale* (Roma - Bari, Laterza). On Caffè’s political belief see among others G. AMARI and N. ROCCHI (eds.) (2009), *Federico Caffè. Un economista per il nostro tempo* (Roma, Ediesse).

²⁰ In modern terminology we would talk today about the governance of processes as an alternative approach to the free market and the planned economy.

²¹ S. STEVE (1975), *La lezione di Einaudi*, introduction to Convegno internazionale nel centenario della nascita di Luigi Einaudi, Roma, 6-8 febb., in Id., *Scritti vari* (Milano, F. Angeli), p. 711.

²² N. BOBBIO (1999), *Teoria generale della politica* (Torino, G. Einaudi), p. 149.

²³ Regarding to the mission of a good politician ID. (1999), *Teoria generale* cit., pp. 148-149

Ambrogio Lorenzetti's famous affresco of the 14th century Sienese school depicts the fundamental nature of three factors in the management of public affairs and as a precondition for the normal evolution of civil and economic life: justice, knowledge and harmony. In other words, good governance means administering public affairs justly and wisely, thus promoting social harmony.

Bobbio goes on to say that:

No one uses the terms good governance and bad governance any more, and anybody who still does, seems to be looking back at a distant past which only a composer of useless sermons still has the courage to resurrect.²⁴

Einaudi, "a composer of useless sermons", revived the myth of good governance in light of the overwhelming influence of the economy in the society he was working in and its effects on law, politics and ethics.²⁵ He viewed good governance as an ethical, juridical and institutional framework in which public affairs are administered with the same wisdom and caution that is used in private matters in order to achieve the common good.²⁶ He therefore attempted to re-found the liberal institutions that had been compromised by the First World War and undermined by fascism. Luigi Einaudi's liberalism or good governance is the reconstruction of a "a vision of the world" centred on the defence of that "supreme good that is the freedom of man", but it promotes first and foremost the cause of "concrete freedom" so that everyone can:

continually tear down the frontier of the known, of what has already been experimented, and move towards the unknown that is still open to the material and moral progress of mankind.²⁷

compares Einaudi's assertion "*It is impossible to achieve a good governance without an ideal*" (L. EINAUDI (1941), "Liberismo e comunismo", *Argomenti* (December); this essay is been written during the famous dispute with Croce on economic freedom vs political liberalism) and Max Weber's assertion "*Three are the critical qualities for a politician: passion, sense of responsibility, long view*" (M. WEBER (1918), *Wissenschaft als Beruf - Politik als Beruf*, Italian translation *Il lavoro intellettuale come professione* (Torino, Einaudi, 1977)).

²⁴ N. BOBBIO (1999), *Teoria generale* cit., p. 158.

²⁵ The dominant role of the economy over other areas (ethics, politics, law) has become even stronger since Einaudi's and Caffè's times, making their teachings that recommend mediation and conciliation without sacrificing too much civil and political liberties very edifying.

²⁶ In Einaudi's approach, if we compare the ideal model of society to an 'ellipse', good governance has two 'foci', cf. P. SILVESTRI (2008), *Il liberalismo di Luigi Einaudi o del Buongoverno* (Soveria Mannelli, Rubbettino): competition (the market) and discussion (public sphere); in the first 'focus', there are economic freedoms (private property, enterprise and contract) and in the second, civil and political liberties (freedom of speech and expression and free parliamentary activity). See also F. FORTE (1982), *Luigi Einaudi: il mercato e il buongoverno* (Torino, G. Einaudi).

²⁷ L. EINAUDI (1956), *Prediche inutili* (Torino, G. Einaudi), p. 194.

The moral premise lies in the fact that the individual has his own irrepressible dignity which matures with perseverance and sacrifice in the voluntary effort to improve himself, better still if in competition with others. At the centre of the scene is the individual who is free to choose. In one of his most significant passages, Einaudi asks:

Why should it be an ideal to think and act in the same way? ... Why just one religion and not many; why one political or social or spiritual opinion and not infinite opinions? Uniformity is not beauty and perfection, variety and contrast are.²⁸

And he continued:

An idea, a way of life that everyone accepts is no longer worth anything. Ideas are born from contrasts. If no one says you are wrong, you will not know if you are right.²⁹

However, we are not at the point of extreme individualism because:

The rule of law [is] the necessary condition for the anarchy of spirits.³⁰

The law has to fix the rules of the game, avoid monopolistic behaviour and guarantee the impartiality of the public administration. Good governance cannot remain a simple ideal, but has to be translated into concrete acts. As far as competition is concerned, it should be noted that Einaudi was not a defender of the automatism of competition (which he believed had to be strictly regulated, especially to prevent monopolies and therefore the dominance of the strong over the weak), but he was a convinced supporter of the need to guarantee what today we could call the "contestability" of markets, that is potential competition guaranteed for example by the absence of entry and exit costs in the market.

The final point of this comparative analysis of the thought of two great Italian economists is that there is not necessarily a trade-off between efficiency and equity. It is not possible to rely only on the market or only on the state because both can 'fail', leading to sub-optimal results. As subsequent debate has shown, while it is true that public intervention and, specifically the Welfare State, contributes positively to economic growth up to a threshold level,

²⁸ L. EINAUDI (1954), *Il buongoverno. Saggi di economia e politica (1897-1954)*, E. ROSSI (ed.) (Bari, Laterza), pp. 32-33.

²⁹ *Ibid.*, p. 33.

³⁰ *Ibid.*, p. 35.

above which negative effects prevail, it is also true that an increase in inequality can prove to be counterproductive for growth and slow it down.³¹ It is the task of the policy maker, but, more generally, of the institutions of a civilised society³² to define the optimal mix, which can vary locally and temporally as the result of a country's history, and to try not to sacrifice either of the two objectives too much.

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

There has been no authentic liberal thinker in the world of the problems raised by the relation between freedom and law. It is a problem that can be raised, in a nutshell, at the same moment when 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, oppresses or paralytically stifles freedom, or the extreme of absolute freedom that devolves to total anarchy of possibility. However, it is important to avoid the temptation of pursuing the two extremes in different, opposite and well known, as if the two problems were Freedom versus Law. This would involve a certain risk on the one hand, that of configuring the law exclusively and exclusively as a coercive act, which thus inevitably becomes free-fair, 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 recognised 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

* This article is a revised, modified and expanded version of "Legge e libertà. L'idea di libertà e il processo di Luigi Einaudi", *Religione e Libertà*, Anno 11, 1997 (May-June 2000), pp. 1-34. English version by Rachel Dagnoli Ghisla. It has also been used and discussed in the form of an "Open Manual" public lecture: "The Ethos of Good Government: Luigi Einaudi and the Good Society for European States" (Luigi Einaudi University, University of Turin).

³¹ On these aspects, see M. FRANZINI - L.M. MILONE (1999), "I dilemmi del welfare state nell'epoca della globalizzazione", in N. ACOCELLA (ed.), *Globalizzazione e stato sociale* (Bologna, Il Mulino).

³² The active role of society is essential in order to reconcile the public with the private domains, as the Italian tradition of the Enlightenment has shown with Antonio Genovesi.

...the student has shown a good understanding of the principles of the subject and has been able to apply them to the solution of the problems set. The student has also shown a good understanding of the principles of the subject and has been able to apply them to the solution of the problems set.

Why should it be so? It is because the student has a good understanding of the principles of the subject and has been able to apply them to the solution of the problems set.

And he continues:

As a rule, a man of his high standing accepts it as his duty to do what is right, and not to be guided by the interests of his own party.

However, we are not at the point of extreme individualism because:

The student has shown a good understanding of the principles of the subject and has been able to apply them to the solution of the problems set.

The student has shown a good understanding of the principles of the subject and has been able to apply them to the solution of the problems set. The student has also shown a good understanding of the principles of the subject and has been able to apply them to the solution of the problems set.

The final point of the cooperative nature of the discipline of the subject is that it is not necessary to have a high level of technical skill in order to be able to do it. It is possible to do it in any one of the many ways which are possible because both can be done. The student has shown a good understanding of the principles of the subject and has been able to apply them to the solution of the problems set.

...the student has shown a good understanding of the principles of the subject and has been able to apply them to the solution of the problems set.

...the student has shown a good understanding of the principles of the subject and has been able to apply them to the solution of the problems set.

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

* 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.¹

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”.² It is likewise no coincidence that he never defines freedom, either analytically or conceptually.³ Fully aware that the problem of freedom is the eternal quandary

¹ 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.

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

³ 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?.⁴

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 categorical 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*”.⁵ 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

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.

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

⁵ *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?⁶

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 unconcluded search for good government.⁷ Despite the innumerable interpretations

⁶ 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.

⁷ Here I take up again and develop several themes and conclusions I put forward in the book *Il*

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,⁸ – 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*.⁹ 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).¹⁰ 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,¹¹ which he

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).

⁸ 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).

⁹ 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).

¹⁰ 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).

¹¹ 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.¹² 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 Rensi. 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.¹³

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.

¹² 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.

¹³ 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”.¹⁴ 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.¹⁵ Although Einaudi refers only occasionally to this background,¹⁶ 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,¹⁷ Mill, Dicey, Bryce.

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.

¹⁴ 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.

¹⁵ 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).

¹⁶ 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”.

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

After levelling harsh charges against *The silence of the industrialists*¹⁸ 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".¹⁹ 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".²⁰

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

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.

¹⁸ L. EINAUDI, "Il silenzio degli industriali" (1924), *Cronache* cit., vol. VII, 1965, pp. 767-768.

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

²⁰ 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.²¹

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 19th 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.²²

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

²² 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.²³

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*²⁴ – 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 16th and 17th 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”.²⁵

²³ 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.

²⁴ 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.

²⁵ 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’]”²⁶ 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.²⁷

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”.²⁸ 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

²⁶ 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.

²⁷ *Ibid.*, p. 200 (my italics).

²⁸ 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?²⁹ 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-

²⁹ 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.³⁰ 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.³¹

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

³⁰ L. EINAUDI, "Rivoluzionari ed organizzatori" (1920), in *Cronache* cit., vol. V, 1963, pp. 750-751.

³¹ 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.³²

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,³³ 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-*

³² R. FAUCCI, *Einaudi* cit., p. 222.

³³ 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.³⁴

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".³⁵ 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

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

³⁵ *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”.³⁶ 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.³⁷ 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-

³⁶ 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.

³⁷ 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 19th-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".³⁸ 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.³⁹

However, it is perfectly legitimate to conjecture that Einaudi was trying to reformulate the problem of the "*invisible*" foundations⁴⁰ (as he would later

³⁸ As noted by Fauci (*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).

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

⁴⁰ 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.⁴¹ 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*),⁴² 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*].⁴³

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-

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

⁴¹ 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).

⁴² Rossi confessed this aspect in a letter written to his wife on 25th 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).

⁴³ 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*",⁴⁴ 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 *im-personal*, 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'.⁴⁵

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-

⁴⁴ 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 re-visitation 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. PRETEROSSO, *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).

⁴⁵ 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.⁴⁶

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).⁴⁷ 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.⁴⁸ This authority

⁴⁶ 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.

⁴⁷ 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.

⁴⁸ 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 buongoverno* 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.⁴⁹

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.⁵⁰ 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*".⁵¹ 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

⁴⁹ Id., "Il peccato originale e la teoria della classe eletta in Federico Le Play" cit., p. 316.

⁵⁰ 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).

⁵¹ 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.⁵² 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.⁵³ 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*.

⁵² 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.

⁵³ 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".⁵⁴

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,⁵⁵ 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.⁵⁶

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

⁵⁴ 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).

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

⁵⁶ 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*”.⁵⁷ 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*.⁵⁸

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*):⁵⁹ 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”*]⁶⁰ is used by the Piedmontese liberal statesman in three different ways, in different contexts.

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

⁵⁸ *Ibid.*, p. 297.

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

⁶⁰ 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.⁶¹ 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,⁶² 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

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.

⁶¹ L. EINAUDI, *Verso la città divina* cit., pp. 32-36.

⁶² 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".⁶³ 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".⁶⁴ 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.⁶⁵

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,⁶⁶ 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".⁶⁷ 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:

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

⁶⁴ ID., "Liberismo e comunismo" (1941), in *Il buongoverno* cit., pp. 273-274.

⁶⁵ ID., *Memorandum* cit., p. 30.

⁶⁶ N. BOBBIO, "Il pensiero politico di Luigi Einaudi" (1974), in L. EINAUDI, *Memorandum* cit., p. 94.

⁶⁷ 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 areas⁶⁸

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?⁶⁹

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.⁷⁰

⁶⁸ ID., *Liberismo e comunismo* cit., p. 274 (my italics).

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

⁷⁰ 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".⁷¹ 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.⁷²

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

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

⁷¹ L. EINAUDI, *Liberismo e comunismo* cit., p. 275.

⁷² *Ibid.*, pp. 277-278.

expounded his ideas in the substantial essay «*Major et sanior pars*» ossia della tolleranza e dell'adesione politica (January 1945),⁷³ 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.

⁷³ 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 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,⁷⁴ 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

⁷⁴ 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".⁷⁵

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*.

⁷⁵ 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,⁷⁶ 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".⁷⁷ 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".⁷⁸ 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".⁷⁹

⁷⁶ 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*.

⁷⁷ ID., "Tipi di giornali" (1946), in *Riflessioni di un liberale sulla democrazia. 1943-1947* cit., p. 246.

⁷⁸ *Ibid.*, pp. 259-260.

⁷⁹ 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.⁸⁰ 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".⁸¹ 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

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".

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

⁸¹ 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.⁸²

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 1956.⁸³ 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*”.⁸⁴ 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

⁸² *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).

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

⁸⁴ *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,⁸⁵ and on the other, it should be subjected to limits,

⁸⁵ 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*”,⁸⁶ 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.*⁸⁷

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.⁸⁸

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

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.

⁸⁶ 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. ALLIO (ed.) (Torino, Centro Studi di Storia dell’Università di Torino, 2004), pp. 61-84: 84).

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

⁸⁸ 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.⁸⁹ 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.⁹⁰ 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,⁹¹ 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".⁹² 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)

⁸⁹ 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.

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

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

⁹² 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".⁹³

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.⁹⁴

⁹³ 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'.

⁹⁴ E. DI ROBILANT, "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*".⁹⁵ Now, it is precisely this gap between the virtual and the actual that gives rise to normativity.⁹⁶

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",⁹⁷ 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".⁹⁸ In sum, good government itself, through a process of continuous translation-rewriting – from the good government the Pythia had promised Lycurgus to

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

⁹⁶ 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.

⁹⁷ In the solemn message read to the two houses of Parliament on 12th 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".

⁹⁸ 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, metaphoric 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 re-proposes 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.

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PATTERNS OF IDENTITY IN THE PERSPECTIVE OF EUROPEAN GOVERNANCE

PART TWO

GOOD GOVERNMENT AND PUBLIC GOVERNANCE

Traditional conceptions developed to study individual identity have formed a platform for analysing the possibilities of collective identities. These approaches towards collective identity may lead to some new models able to deal with the foundation of post-national processes of social and political integration such as the European one. At the individual level, the first approach to be taken into account is essentialism. Passing to the collective level we may find social structuralism. A second approach to individual identity is constructionism, whose basic logic at the collective level is social constructionism (within this approach we have different views, too). According to a pragmatic notion, collective identity is the product of the relationship between social actors deeply rooted in concrete experiences. Another view is a model of narrative identity that considers the biographical structure as a condition for the durability of collective identity. This paper will show to what extent the legal and political translation of these approaches towards collective identity leads to several useful models that could affect the political and legal structure of European governance.

2. STARTING FROM A PHILOSOPHICAL QUESTION

Analysing the concept of identity requires rethinking and then reconstructing conceptual models or codes in order to reach its potential meanings. Moreover, we have to deal with a central and traditional philosophical question – namely, the relationship between the one and the many. Such a relationship could be articulated on different levels, including metaphysical or political and based on different references, including individual or collective.

GOOD GOVERNMENT AND PUBLIC GOVERNANCE

PART TWO

ALESSIO LO GIUDICE

PATTERNS OF IDENTITY IN THE PERSPECTIVE
OF EUROPEAN GOVERNANCE

1. INTRODUCTION

Traditional conceptions developed to study individual identity have formed a platform for analysing the possibilities of collective identities. These approaches towards collective identity may lead to some new models able to deal with the foundation of post-national processes of social and political integration (such as the European one). At the individual level, the first approach to be taken into account is essentialism. Passing to the collective level we may find social structuralism. A second approach to individual identity is constructivism, whose homologue at the collective level is social constructivism (within this approach we have different views, too). According to a pragmatic notion, collective identity is the product of the relationship between social actors deeply rooted in concrete experiences. Another view is a model of narrative identity that considers the biographical structure as a condition for thinkability of collective identity. This paper will show to what extent the legal and political translation of these approaches towards collective identity leads to several useful models that could affect the political and legal *mise en scène* of European governance.

2. STARTING FROM A PHILOSOPHICAL QUESTION

Analyzing the concept of identity requires rebuilding and then restructuring conceptual models in order to be able to read its potential meanings. Moreover, we have to deal with a central and traditional philosophical question – namely, the relationship between the one and the many. Such a relationship could be articulated on different levels, including metaphysical or political, and based on different references, including individual or collective.

Fortunately, my interest is delimited by my desire to study the conceptual structure of collective identity as the theoretical horizon from which to establish post-national institutional perspectives.

Notwithstanding the boundaries of my research interest, an awareness of the huge philosophical question implied by the concept of identity could support a better understanding of collective identity. In particular, the first outcome of this awareness is the idea that, while studying the collective dimension of identity, we have to take into account the traditional concepts developed in order to study individual identity. In other words, the anthropologically verifiable need to reference collective identity arises from the interconnection between a philosophical question and a political and social one. Both questions presuppose the development of individual identities as features of philosophical and political exchange. In addition, both questions could be previously read at an individual level. Indeed, to determine one's own identity means to synthesize the variety of appearances of an individual throughout life through a unit of agency. That is, by means of a self that is a permanent reference notwithstanding all individuals change over time. This is why the philosophical question concerns the conditions for possibilities to rationally lead multiplicity to unity. Actually, existential pluralism, as an ontological feature in living together, stimulates the search for a unitary and identifying element of recognition – a search that is part of the individual self-understanding. Ultimately, the practice of social relationships generates a vague idea of collective identity – at least as conceived as human collective identity – that works to support individual processes of identitarian specification. Clearly, considering the cultural and geographical conditioning of every human existence, moving from the idea of human identity to the idea of group identity is quite immediate since no relationship takes place out of a specific context. The political and social question is strictly related to the philosophical one. As long as a multitude of individuals decide to organize their cohabitation institutionally, a search for unitary and common elements arises. This search is meant to uncover shared principles, values, experiences, and customs that allow a group to recognize and identify itself, resulting in support for an institutional process of collective specification. At this stage, the reference is no longer the individual subject, but the collective one – the group, tribe, community, or nation. Therefore, just as individual identity results from the self-interpretation of the meaning that everyone gives to himself/herself, the collective identity results from the shared perception of a group as a “we” – as a collective unit based on the interpretation of real or imaginary common experiences. Linked to this perception of “we” is a corresponding

action component given by the collective action, or the idea of agency.¹ These two features express the concept of collective identity.

Based on this premise, we could outline the general scheme of this paper. In the first part I will present and schematize some of the general lines of thought traditionally elaborated upon in the concept of individual identity. In the second part, I will show a possible translation of these traditions at the collective level. Finally, in the third part I will sketch the relevance of this passage – from the individual to collective level – in order to support and understand the construction of a European identity in view of defined European governance.

3. THE ESSENTIALIST APPROACH IN THE CONCEPTION OF INDIVIDUAL IDENTITY

Western philosophical tradition has elaborated on the concept of identity using three main ideas: unity, substance, and inner life. Obviously, the elaboration of these ideas has not been simultaneous and cannot be linked to just one line of thought, yet they are useful tools for reconstructing the most important conceptual models of identity. In particular, the different understanding of these ideas and the different intersections of them have produced the matrixes of specific identitarian models. As long as these three ideas are conceived as “natural” constitutive elements of individual identity, then we are dealing with an essentialist model. The identity is what remains identical notwithstanding all changes. It is the quality of the undifferentiated being, the possibility itself to operate a *reductio ad unum*, able to determine what is uniform and identical in all things and what their essence is. According to this concept, individual identity is a sort of pre-existent island, to a certain extent immutable and unconditioned by inter-subjective relationships or by social and cultural features. Parmenides’ Eleatic philosophy provides the ancient reference for this concept. His idea of human and non-human identity is represented through the concept of essence. Unity and substance acquire an ontological qualification while identity is above all a logic-theoretical term useful for reading every identifying experience. The search for truth must follow a single path that ascertains “[t]hat it is and that it is not possible for it not

¹ On the concept of agency, with particular reference to the legal realm, see P. HERITIER, “Fictio iuris, *persona*, agency”, in M. LEONE (ed.), “Actants, Actors, Agents. The Meaning of Action and the Action of Meaning. From Theories to Territories”, *Lexia. Rivista di semiotica*, nn. 3-4 (2009), pp. 101-116.

to be”.² In other words, we have to exclude the possibility of a cohabitation of contradictory terms, of any discordance. Identity eliminates contradiction, according to the logic behind Parmenides’ principle of being. The logical theoretical dimension of this principle explains its totalizing aspect – it is like a paradigm for a certain way of conceiving identity. This paradigmatic function derives from the fact that, for Parmenides, being is identical per se. Therefore, identity is an essential unit, immobile, without past and future, and eternally present. A clear ontological foundation exists for identity, given that Parmenides’ understanding is a theory of the concept of the identical: the being, “[s]ince it remains the same and in the same, it lies by itself”.³ Following Parmenides results in pointing out two decisive features for understanding a general model of identity: 1) Identity is conceived in essentialist terms; and 2) Identity is conceived as an ontological unity, as an immobile substance. Parmenides’ line has been developed with several further elaborations, starting from the Platonic idea of a pre-identitarian self. This general ontological view of the identitarian unity and substance is a kind of legacy that medieval culture receives and consolidates. Indeed, within the essentialist approach is the further development of this ontological line as well, linking the third typical idea – the idea of an inner life – to the notion of identity. Of course, this refers to the modern tradition that has founded the very idea of the individual subject as a rational self. One of the fathers of this line is undoubtedly René Descartes, who asserted that identity must be conceived as a thinking substance, or the identity of a rational self. In this sense, identity coincides with an immaterial dimension that allows distancing the self from the world. Here, the presupposition exists of an ideal and, to a certain extent, metaphysical identity that is antecedent to its social and cultural expression: “I thence concluded that I was a substance whose whole essence or nature consists only in thinking, and which, that it may exist, has need of no place, nor is dependent on any material thing”.⁴ Continuity with Parmenides’ line results from the equivalence between identity and thought, which is actually the meaning of the mental experiment proposed by Descartes’ imagining the absence of the body. The difference is that no strict presupposition exists of a pre-identitarian ontological substance expressed by a bio-material identity; instead it is the correspondence of the identity to the self-perception of being something

² PARMENIDES, *On Nature*, fr. II, in R.D. MCKIRAHAN, *Philosophy Before Socrates* (Indianapolis, Hackett Publishing Company, 1994).

³ *Ibid.*, fr. VIII.

⁴ R. DESCARTES, *Discourse On Method*, Part IV (New York, The Harvard Classics, 1909-1914).

that thinks something. Indeed, with Descartes, the foundations of modern idealism are established as is the possibility of conceiving the individual as a being with an inner life that constitutes his real identity. Ultimately, the overall essentialist line could be summarized by underlining this idea of identity as an ontological essence that, to a certain extent, comes before every contact between the individual and the physical, social, and cultural world: "So that 'I', that is to say, the mind by which I am what I am, is wholly distinct from the body, and is even more easily known than the latter, and is such, that although the latter were not, it would still continue to be all that it is".⁵

4. THE CONSTRUCTIVIST APPROACH IN THE CONCEPTION OF INDIVIDUAL IDENTITY

A general alternative model for understanding individual identity has traditionally been provided by the constructivist approach, which asserts that identity is a human creation produced by self-representation. In particular, it is simultaneously both the process through which a subject recognizes himself and the outcome of the process itself. This view denies the dialectic between body and soul; therefore, identity is rooted in concrete existence. The presupposition of this conception is a philosophy of impermanence. In this case, the ancient reference is Heraclites, who to a certain extent opposed Parmenides' Eleatism. For Heraclites the unity and synthesis of the multiplicity – namely, the identity of a being – is given by the coordination of discordances. Identity is not the elimination of contradictions, but the harmony resulting from bringing them together: "Things taken together are whole and not whole, something being brought together and brought apart, in tune and out of tune; out of all things there comes a unity, and out of a unity all things".⁶ The ontological qualification of differences and multiplicity implies a particular understanding of the concept of identity. Accordingly, identity is never totally defined, but is always in progress within a constructive process. It is impossible to determine a fixed state for the individual identity; we always change, and what we are now is different from what we were before: "It is not possible to step twice into the same river".⁷ Indeed, it is not possible for two convergent reasons; water flows, as does everything in the world, and

⁵ *Ibid.*

⁶ HERACLITES, *Fragments*, fr. X, in R.D. MCKIRAHAN cit.

⁷ *Ibid.*, fr. XCI.

thus will never be the same water, yet the individual who decides to step into the river cannot be the same the second time either. Ultimately we are the synthesis of discordances, a superior harmony based on hard conciliations, but above all based on the ontological flow of reality.⁸ As in Parmenides' case, Heraclites' theory is paradigmatic considering that he proposed a totalizing epistemological model. This philosophy of impermanence evolved thanks to various contributions – too numerous to mention here – but jumping (with caution) to the modern age, we could benefit from John Locke's analysis of individual identity. His elaborations clearly show the inner potentiality of Heraclites' model.⁹ According to Locke, identity is the consciousness of multiple perceptions or, more precisely, the consciousness of self over time. The key concepts are consciousness and memory; applying them to the concept of identity, we immediately perceive the constructivist approach since identity is "created" by means of human faculties. From a certain point of view, some similarities with Descartes' approach exist, as Locke also perceives that the consciousness to be a rational self is decisive:

To find wherein personal identity consists, we must consider what person stands for; which, I think, is a thinking intelligent being, that has reason and reflection, and can consider itself as itself, the same thinking thing in different times and places; which it does only by that consciousness which is inseparable from thinking, and, as it seems to me, essential to it: it being impossible for any one to perceive, without perceiving that he does perceive.¹⁰

The main difference is that here Locke is speaking about the person and not identity. Such a difference is inconceivable according to Descartes, since identity corresponds with the thinking substance that constitutes a person. Indeed, for Locke, individual identity is a question of consciousness over time; the question is not whether it is possible to discover the same identical substance over time, because no such substance exists. The question is whether it is possible to discover the same person over time, "what makes the same person",¹¹ what makes it possible to refer different thoughts and actions to

⁸ "They do not understand how, being at variance with itself, it agrees with itself. It is a backwards-turning attunement like that of the bow and lyre" (*ibid.*, fr. LL).

⁹ Just consider Locke's definition of individual identity and its similarity to Heraclites' ideas. The identity of the same man exists "[i]n nothing but a participation of the same continued life, by constantly fleeting particles of matter, in succession vitally united to the same organized body" (J. LOCKE, "An Essay Concerning Human Understanding", vol. 1, Part. 1, Chapt. XXVII, § 6, in *Id.*, *The Works of John Locke in Nine Volumes* (London, Rivington, 1824)).

¹⁰ *Ibid.*, § 9.

¹¹ *Ibid.*, § 10.

a unique self. The answer is memory – in particular, memory of past consciousnesses:

As far as this consciousness can be extended backwards to any past action or thought, so far reaches the identity of that person; it is the same self now it was then; and it is by the same self with this present one that now reflects on it, that that action was done.¹²

Clearly, no fixed identity exists here; it depends on human faculties, developed differently in every man. In the end, identity depends on personal ability to reconstruct one's past, referring one's thoughts and actions to one-self. It is an identity permanently built and rebuilt. We have here the core of a constructivist approach. Identity is the product of a self-representation of life as a continued unity – a construction made possible by means of a consciousness excluding the relevance of any ontological substance: "This may show us wherein personal identity consists; not in the identity of substance, but, as I have said, in the identity of consciousness".¹³ The constructivist approach has been further developed through the virtues of various contributions from truly different perspectives. For example, significant developments occurred within modern psychoanalysis; Freud¹⁴ and Lacan¹⁵ deconstruct the idea of an essential identity. Identity is built through the mediation of the "other", both the "other" as other human being and the "other" as the language. Wittgenstein's¹⁶ linguistic turn also supports such deconstruction insofar as the self is conceived as an effect of the language; just think of the necessary public nature of the language. In this sense, identity does not come from the deep interior, but rather from a point of view of the self enunciated by the first-person singular perspective. In this respect, the contribution of phenomenology is decisive as well. The self originates from the relationship with others, from the meeting of consciousnesses as a theatre of mutual recognition. However, identity for us does not necessarily correspond with the identity for the other, and the identitarian "games" are played based on this gap. Therefore, identity is never given, but always has to be built and rebuilt. Beginning this philosophical reconstruction, I pointed out that the different concepts of the ideas of

¹² *Ibid.*, § 9.

¹³ *Ibid.*, § 19.

¹⁴ Cf. S. FREUD, *Group Psychology and the Analysis of the Ego* (New York, W.W. Norton & Co. Ltd., 1975).

¹⁵ Cf. J. LACAN, *Écrits* (New York, W.W. Norton & Co. Ltd., 2005).

¹⁶ Cf. L. WITTGENSTEIN, *Philosophical Investigations* (Oxford, Basil Blackwell, 1974).

unity, substance, and inner life play a decisive role in framing conceptual models for interpreting identity. Clearly, within the constructivist approach these features are not naturalistically conceived. They are not ontological data, but are instead products of human representations, as in the case of unity and inner life, or unthinkable and unknowable elements, as in the case of substance.

At this stage we need to explore the translations of the two general models just sketched at the collective identity level.

5. THE ESSENTIALIST APPROACH IN THE CONCEPTION OF COLLECTIVE IDENTITY

Translating essentialism and constructivism at the collective level provides a more complex schema. Within the essentialist concept, we have two different approaches: a sort of metaphysical essentialism and a sort of sociological essentialism. The first internal approach can also be defined as social primordialism. Identity results in natural features building an alleged identitarian essence conceived as the ontological consciousness of a collective subject. This approach presupposes some ascriptive attributions (race, gender, language) and leads to a romantic and normative idea of a common destiny. One interesting example of this approach is given by Johann Gottfried Herder. His view provides a significant concept because his primordialism is sensitive to differences; therefore, it could be taken as an attempt to link the idea of an identitarian essence with the fact of pluralism. The complexity of Herder's thought is markedly notable; however, this is not the place to consider the general view of his thought.¹⁷ Here, the intention is only to show his conceptual elaboration of the element of Volk as a nation – a view strictly related to a non-political dimension: “A State can perish, but the Volk remains intact provided it retains the consciousness of its distinctive cultural traditions”.¹⁸ Consistent with his general approach, Herder clearly shows his aversion to political organizations like the state:

I find it hard to believe that man should have been made for the State and that his happiness springs from its institution. For how many peoples of the world are

¹⁷ In order to deal with these aspects, see (among others): F.M. BARNARD, *J.G. Herder on Social and Political Culture* (Cambridge, Cambridge University Press, 1969); I. BERLIN, “Herder and the Enlightenment”, in E.R. WASSERMAN, *Aspects of the Eighteenth Century* (Baltimore, Johns Hopkins Press, 1965), pp. 47-104; R. ERGANG, *Herder and the Foundations of German Nationalism* (New York, Columbia Univ. Press, 1931).

¹⁸ F.M. BARNARD cit., p. 30.

entirely ignorant of this institution and yet are happier than a good many devoted servants of the State?¹⁹

This provides the basis for an organicist concept of people. To consider people as an organism, even without any biological reminiscence as in Herder's case, implies a typical holistic vision that could accentuate the element of a primordial collective homogeneity.

In this sense, it is possible to explain the link between organicist and spiritual understanding of people through the spiritual constitution of the organic forces (*Kräfte*) of social and political cohesion. The Volk is a community kept together by a sense of collective identity derived by an inner awareness of having a common culture, language, way of living, traditions, and understandings of feelings. However, the internal coherence of Herder's approach, based on the importance of the self-expression of the Volk, has specific political consequences as well – consequences of what I would call Herder's primordialism:

It is nature which educated families: the most natural state is, therefore, one nation, an extended family with one national character [...] Nothing, therefore, is more manifestly contrary to the purpose of political government than the unnatural enlargement of states, the wild mixing of various races and nationalities under one sceptre.²⁰

This passage clarifies how Herder is aware of the inescapable consequences of his pre-political spiritual and organicist view of the Volk. A multinational state would be structurally weak; political integration between different peoples is not only a hard goal to attain, but above all it is a distorted goal because it undermines the possibility for individuals and the people to express themselves freely in an authentic way. According to this line, for Herder European culture "is a mere abstraction, an empty concept [...]. The culture of man is not the culture of the European; it manifests itself according to place and time in every people".²¹ The second approach, internal to essentialism, could be defined as social structuralism. Collective identity stems from social attributions that govern a category implying a structural commonality (social class, ethnicity). This approach presupposes a set of relational webs building structural connections between individuals. We have different views within

¹⁹ J.G. HERDER, *Ideas for a Philosophy of History of Mankind*, book VIII, § V, in F.M. BARNARD cit., p. 310.

²⁰ *Ibid.*, p. 324.

²¹ J.G. HERDER, *Letters for the Advancement of Humanity*, XVIII, in F.M. BARNARD cit., p. 24.

this wide approach. For example, according to the Marxist tradition, collective identity is the real product of social and economic structures. Individual identity would therefore be the internalization of structural elements given by the dominant social order. Within this idea collective identity is the immediate product of the structural features of a specific social order. Therefore, in a sociological sense it is a given identity – or at least given from the individual point of view. As Pierre Bourdieu said, this conception explains the process of socialization in terms of domination and alienation by a dominant social order.²² Such collective identity uses the power of a “symbolic violence” as an exterior tool of identification. In this vein, the individual identity of position – dependent on the social role played by the individual and socially modified and functionalised – reflects the social essence of a specific order. The essentialism of this approach consists of the idea of collective identity as the deterministic outcome of structural combinations at the social level. Another concept that could explain one of the potentialities within this kind of sociological essentialism is the sociological naturalism proposed by Émile Durkheim, who on the one hand deconstructs the idea of a biological substance able to determine the pure identity of an individual and, on the other hand, points out the external aspect of social facts with respect to individuals. Individual identity cannot be discovered within a supposed interior nature; it must be understood as the product of the anchorage to a given society that expresses its way of thinking, feeling, and acting. This concept implies a particular status for the collective conscience, the collective being which Durkheim attributes a sort of moral personality that imposes its character on individuals. According to Durkheim, this collective dimension is to a certain extent independent from its substrate – that is, from the associated individuals. It is the core of social life that goes beyond individual aggregation. It is something more, a *sui generis* synthesis of social relationships and structures:

The totality of beliefs and sentiments common to average citizens of the same society forms a determinate system which has its own life; one may call it the collective or common conscience [...] It has specific characteristics which make it a distinct reality. It is, in effect, independent of the particular conditions in which individuals are placed; they pass on and it remains. Moreover, it does not change with each generation, but, on the contrary, it connects successive generations with one another.²³

²² Cf. P. BOURDIEU, “L’identité et la représentation. Éléments pour une réflexion sur l’idée de région”, *Actes de la recherche en sciences sociales*, n. 35 (1980), pp. 63-72; ID., “L’illusion biographique”, *Actes de la recherche en sciences sociales*, n. 62/63 (1986), pp. 69-72.

²³ E. DURKHEIM, *The Division of Labour in Society* (New York, Macmillan, 1933), pp. 79-80.

This distinct reality has a sort of fixed form that passes over time. It is a structural feature that frames a specific social order. The collective synthesis is the expression of the social aggregate in its totality, and this aggregate thinks, feels, and wants as a collective being. We have a strong concept of collective identity here; undoubtedly it does not determine the origin of collective identity in some primordial or metaphysical substance, yet it is clearly built against the tradition of individualist sociology. The result is a dominant identity that imposes its characteristics on individuals while being conceptually independent from them. In the end, its essence is purely social, based on the level of autonomous social facts. We could legitimately speak of essence, even if not in a metaphysical but an ontological sense, considering the transcendence of this identity in comparison with the individual elements that compose it. The Durkheimian concept of collective representations confirms this understanding since Durkheim conceives them as ideas that do not originate with individuals:

They are collective representations, made up of all the mental states of a people or a social group which thinks together. In these collectivities, of course, there are individuals who do have some role to play; but this very role is only possible as a result of the action of collectivity. In the life of the human race, it is collectivity which maintains ideas and representations, and all collective representations are by virtue of their origin invested with a prestige which means that they have the power to impose themselves. They have a greater psychological energy than representations emanating from the individual.²⁴

Excluding both materialist and idealist metaphysics, Durkheim asserts that social phenomena could be explained only by virtue of social or collective features. The complex has to be explained according to the complex, which means starting from a given social order – even with a historical awareness of its long construction processes. It also starts from social phenomena conceived as specific facts within a distinct reality.²⁵ Such a sociological approach implies that belonging to a specific social category determines the moral aspect of individual identity. This occurs based on a stronger collective identity with a coactive nature that leads to identifying the individual with the social system and its institutional expression. Ultimately, within this concept, collec-

²⁴ E. DURKHEIM, *Pragmatism and Sociology* (Cambridge, Cambridge University Press, 1983), XVII lecture.

²⁵ This is the nucleic meaning of what Durkheim calls sociological naturalism, cf. ID., *Sociology and Philosophy* (New York, Free Press, 1974), pp. 1-34.

tive identity is a sort of social identity that works as an essential substrate of individual relationships. According to both Durkheim and Bourdieu, we could underline a sort of sociological realism that, as long as it points out the dominant power of a collective order with its identity, to a certain extent it translates, at the collective level, the philosophical realism that is the general background of the essentialist approach to individual identity.

6. THE CONSTRUCTIVIST APPROACH IN THE CONCEPTION OF COLLECTIVE IDENTITY

A general conception of constructivism is evident within social constructivism that in turn can be analysed along various views. According to this concept, no determinable attributions are able to unequivocally identify a collective subject. Therefore, identities are built, created, and rebuilt rather than biologically, culturally, or structurally preordained. A preliminary view could be considered as a sort of pragmatic notion of collective identity following the work of Charles Peirce, John Dewey, and William James. Identity is the relationship with the world; it is the product of relationships among social actors deeply rooted in concrete experiences. Collective identity is thus understood as a shared symbol that allows us to know and order social reality. In this sense, identity cannot be separated from actions in everyday life. Therefore, identity is neither the expression of an abstract collective subject nor a mere vector of social structures; rather, it is the expression of collective actors aware of their own commitments and bonds.²⁶ A second view is a further development of the pragmatic and interactionist conception, particularly based on collective actors' trend to build a unifying identitarian space. It is a model built around the tension between the plurality of identifying contingencies over time and the need to have a unitarian frame keeping all these moments together. It entails the reconstruction of the past in order to guarantee the continuity of identity. At the same time it implies an ongoing negotiation of actors with themselves and with others with the aim of achieving a consistent general explanation of collective life. Therefore, it is a model of narrative identity that conceives the biographical structure as being a condition for the thinkability of collective identity. Within this framework the unity of identity

²⁶ Among the three, Dewey's analysis is the most representative of this approach, considering his particular focus on the idea of community, cf. J. DEWEY, "The Public and Its Problems", in *Id.*, *The Later Works, 1925-1953*, vol. 2 (Carbondale, Southern Illinois University Press, 1986).

is not an expression of ontological substance, but rather an expression of reflexive aptitude of the actors forced to build their own internal orders since the latter are not guaranteed by natural links. In this sense, reflexivity is the expression of the reactive and interpretative capacity of the collective actors. A deeper analysis takes into account Paul Ricoeur's thought as a significant description of the narrative model. The specific analysis of this approach explores his immediate link with a general idea of identity as a constructive process. According to the narrative model, in order to have a collective identity, we need to perceive a narrative understanding of the collective life as an element of political unity. The theoretical reference to Ricoeur should be useful in clarifying the relevance of the notion of narrative understanding at a collective level. Ricoeur's study is mainly devoted to enquiry into individual identity, but he seems quite aware of the possibility of analysing his theory at the collective level.²⁷ Basically, having a narrative understanding of life means: "In order to have a sense of who we are, we have to have a notion of how we have become, and of where we are going".²⁸ Thus, to consider our life as a narrative implies a retrospective operation of connection of single events. This operation could be taken into account as a condition of identity as well – a condition that, notwithstanding the diversity of character and personality through time, allows the individual to refer to and ascribe a series of actions, thoughts, and feelings, to oneself and only oneself (at this level, the analogies with Locke's general understanding of individual identity are quite evident). This explains why Ricoeur evaluates narrative identity as a medium between sameness and ipseity, or selfhood. Jumping to the collective level, we could interpret this view considering the collective self as a character whose identity is understandable, applying to it the narrative operation of construction of an plotment. According to this view, the plot constitutes the identity of the

²⁷ In an article published in *Le Monde*, Ricoeur clearly takes into serious consideration the hypothesis of applying his crucial analysis to the field of collective identity: "Deuxième précaution: ne pas rester prisonnier de la notion d'identité collective qui se renforce actuellement sous l'effet de l'intimidation de l'insécurité. Et je voudrais opposer à cette idée d'une identité immuable l'idée d'identité narrative: les collectivités vivantes ont une histoire qui peut être racontée et je ferai du récit l'un des chemins de ce que je viens d'appeler le rayonnement croisé des cultures. Ce qui caractérise une identité narrative, c'est qu'elle n'est pas définie par le même mais par l'ipse, non pas par l'identique, mais par le mouvant. Et je voudrais mettre en face de cette idée d'identité narrative, qui fait le récit de la vie des nations, l'idée de promesse: si l'identité narrative est tournée vers le passé par son caractère mémoriel, l'idée de promesse est tournée vers le futur, et le problème n'est pas seulement de faire des promesses, mais encore de les tenir" (P. RICOEUR, "Cultures, du deuil à la traduction", *Le Monde*, 25 May 2004).

²⁸ C. TAYLOR, *Sources of the Self* (Cambridge, Cambridge University Press, 1989), p. 47. A significant contribution to the elaboration of the narrative model has been provided by Charles Taylor within his major work on the modern individual subject.

character and therefore of the collective self. Actually, as Ricoeur points out, the dialectics between the contingent-descriptive nature of identity (*idem*) and its reflexive aspect (*ipse*), expressed by the selfhood, are a sort of inescapable internal dialectics within either individual or collective identity. Reaching mediation between these two sides means conciliating what Ricoeur defines as both concordance and discordance in order to obtain the concept of discordant concordance intended as the “synthesis of the heterogeneous”²⁹ (see the theoretical value of Heraclites’ model in order to understand the internal workings of the narrative conception). This synthesis basically leads all events to occur in the character within the temporal unity of the narration.³⁰ Thus, the narration transmutes chance into fate. In particular, it faces a general condition – namely, the necessity that identity continues and is permanent through time. The interconnection of events, guaranteed by the plot, specifies the complementary nature of *idem* and *ipse*; in particular, it “allows us to integrate with permanence in time what seems to be its contrary in the domain of sameness-identity, namely diversity, variability, discontinuity, and instability”.³¹ The identity question presented in terms of the answer to Who am I? is mediated with the answer to What am I? The first question – the question of who – is one of selfhood, reflexively allowing the subject to refer to contingent and differentiated actions, decisions, and thoughts, like a character in a story. The conditional nature of the narrative understanding is strictly linked with the presence of contingency – we could say it is linked with the structural contingency of identity at a collective level as well. This presence recalls the unity feature combined with the narrative interpretation; in particular, a retrospective reading of the collective life as a narration gives it a unitary shape. It finds necessity where arbitrariness could exist; it provides consistent series of passages where only inconsistency and fragmentation could exist. In other words, this reading generates unity within a structurally heterogeneous environment: “What is in question is, generally and characteristically, the shape of my life as a whole”.³² Thus, by analysing the collective level, narrative understanding

²⁹ P. RICOEUR, *Oneself as Another* (Chicago, University of Chicago Press, 1992), p. 141.

³⁰ “The dialectics consists in the fact that, following the line of concordance and discordance, the character draws his or her singularity from the unity of a life considered a temporal totality which is itself singular and distinguished from all others. Following the line of discordance, this temporal totality is threatened by the disruptive effect of the unforeseeable events that punctuate it (encounters, accidents, etc.). Because of the concordant-discordant synthesis, the contingency of the event contributes to the necessity, retroactive so to speak, of the history of a life, to which is equated the identity of the character. Thus chance is transmuted into fate” (*ibid.*, p. 147).

³¹ *Ibid.*, p. 140.

³² C. TAYLOR cit., p. 50.

could be considered as an element of political unity. George H. Mead's social psychology provides an interesting link between the first pragmatic view and the second narrative view, in that it could be understood within a more general interactionist approach. According to Mead, identity is developed through double movement in the sense that we have interaction among data, subjects, social gifts, etc., on the one hand, and singularization and interpretation of all these features within a unifying framework on the other. Therefore, identity is never definitively established or achieved because nothing guarantees the spontaneous harmonization of different agents within a common framework (an interesting confirmation of this structural indeterminacy comes from psychoanalytic theories, such as Erik Erikson's theory).³³ Actually, the unifying trend is carried out by means of a judgment on reality – perceptions and representation that can not be taken for granted. This kind of collective judgement produces shared meanings as the constitutive features of a collective identity:

Meaning is thus not to be conceived, fundamentally, as a state of consciousness, or as a set of organized relations existing or subsisting mentally outside the field of experience into which they enter; on the contrary, it should be conceived objectively, as having its existence entirely within this field itself. The response of one organism to the gestures of another in any given social act is the meaning of that gesture.³⁴

In particular, these meanings arise by virtue of a process of internalization that is basically a social process:

The internalization in our experience of the external conversations of gestures which we carry on with other individuals in the social process is the essence of thinking; and the gestures thus internalized are significant symbols because they have the same meaning for all individual members of the given society or social group.³⁵

7. THE ROLE OF COLLECTIVE IDENTITY WITHIN THE CONSTRUCTION OF A EUROPEAN POLITICAL SUBJECT

The reconstruction proposed herein points to several conceptual models regarding the concept of collective identity. Particularly relevant is the strict link, which should now be clearer, among the models elaborated upon to

³³ Cf. E. ERIKSON, *Adolescence et crise. La quête de l'identité* (Paris, Flammarion, 1972).

³⁴ G.H. MEAD, *Mind, Self and Society* (Chicago, University of Chicago Press, 1934), p. 78.

³⁵ *Ibid.*, p. 47.

work at an individual level and patterns for understanding the collective dimension of identity. The general division between essentialism and constructivism seems to work at the collective level too, as confirmed by the fact that in our analysis of the collective dimension the most theoretical features are analogous to the central elements within models of individual identity. The idea of a given unity and substance, which has to be taken as the starting point of an identitarian process, is shared by what we could call the Parmenides-Descartes line and by both social primordialism and social structuralism. On the other hand, the idea of identitarian unity as the product of a process of self-reflection is shared by what we could call the Heraclites-Locke line and by either social pragmatism, the narrative model, or social interactionism. These analogies are above all useful at the cognitive level in that the awareness of these resemblances should be taken as a guide to understanding the internal processes of constructing a collective identity. Categorizing the concrete dynamics within the different models – and, above all, with the support of the huge scientific analysis developed within the individual dimension – means developing a better understanding of the directions of these processes, thus setting the conditions for regulating the construction of identities in view of specific political goals. Such a theoretical apparatus could be quite useful for dealing with an ongoing political process that needs to be governed, such as that of the European Union. In particular, my idea is that several features of the models sketched thus far are significant for understanding at least the role of and need for a European identity within this institutional process of governance. Therefore, in these last pages, I will point out some political and institutional reasons supporting this role and urgency, understandable by virtue of the previous theoretical reconstructions. Why, on the basis of the model discussed, do we need a European shared identity? I will schematize the argument based on three reasons that could be also interpreted as three main governance conditions for the European institutional future. First, the support of such an identity constitutes the discursive expression of a specific social and political order. Collective identity – above all, following a constructivist approach – could be understood as the contingent vocabulary that allows meaning to be assigned to a specific political-institutional structure. It is the lexical frame that guarantees the narratability of an *in fieri* collective institutional context. I am not saying that we have to deal with a performative question – namely, the question of the rhetoric-persuasive power of a collective discourse on identity; rather, we have to understand that the discursive representation of a polity is in se an institutional feature. This representation is influenced by the support of an identity, which is quite evident within institutional contexts where works are in progress, as in the case of EU governance.

The self-representation of EU as a space of freedom, security and justice is a clear expression of collective discourse with institutional effects. Freedom, security and justice are in fact ideal aims from an identitarian point of view – namely, objectives that never can be truly achieved – thereby underscoring how the construction or re-construction of a collective identity aims at discursively legitimising a specific institutional and normative order. Indeed, from a legal point of view, within the space of freedom, security and justice, the possibilities of a European criminal law policy, a unitary immigration policy, or the integration of different legal orders are all aims at stake. Second, collective identity potentially guarantees a democratic integration as the product of a civic solidarity, which can be clarified by referring back to the model sketched using Durkheim's approach. Sharing ideal principles of social and political action, and the sense of belonging to an organized collectivity that arises as a result, establishes the conditions for an effective solidarity. This role has been historically played by national identity. Collective identity justifies and legitimises the practice of solidarity at an institutional level as well, since it presupposes a horizontal conception of the social relationships established between subjects that share ideals, customs, and traditions. As long as they participate in the same collective enterprise, these equal subjects, from an identitarian point of view, could be institutionally induced to act following solidarity principles. Such dynamics influence the democratization processes as well. Indeed, the formation process of a collective identity is a process of political participation. Individual experiences contribute to the creation of the common horizon for institutional actors. The formation of a collective identity is a process of self-organization; therefore, it is a substantial democratic process that can be followed by a procedural democratic scheme. In this regard, the EU democratic deficit has to be understood as an effect of the incomplete, discontinuous, and inconsistent constructive process of a European identity. Indeed, the democratic deficit cannot be explained merely through the insufficient representative structure of EU governance procedures or on the basis of deficient legitimisation of its institutional organs. In fact, it is a profoundly identitarian deficit. The individual consciousness of belonging to the European polity is widely lacking. Indeed, democratic procedures gain political meaning as long as they are perceived as tools for the self-government of a self-interpreted polity. Moreover, such procedures can offer effective possibilities for political participation only if they are available for people who share common meanings. Finally, collective identity expresses an indispensable political planning phase. At this level, the constructivist approach, above all according to the narrative model, seems to effectively support an understanding of the planning potential of a collective identity. The collective project is clearly a

means of self-understanding and self-recognition – therefore, self-identification. The formation process of a collective identity corresponds to the participating elaboration of a common project. In particular, it corresponds to the elaboration of a plan based on a set of fundamental principles that both draws up an institutional scenario and represents the motivation for doing things together – which is the description of a constituent process ever upon the stage of identitarian self-recognition. In this regard, the EU experience is significant. On the one hand, it demonstrates that, even within an institutional organization, passage to a real political level needs the sanction of a constituent process as the elaboration phase of a common project. On the other hand, this experience demonstrates that modern political lexicon cannot be used a-critically; otherwise, the adopted categories are ineffective. In the case of the recent EU constitution, the constituent process was not supported by an adequate practice of identitarian political formation, which may have been one of the reasons for the contingent failure of that process. These three reasons as main governance conditions, touched upon only briefly herein, at any rate express the general cohesive role that European identity could play within the political and institutional construction of the EU. It is important to highlight that the question of identity is not a cultural question – or at least not only a cultural question. Within the EU experience, collective identity could have a political and institutional function establishing the conditions for making the EU an effective political subject. With this awareness in mind, we need to use the knowledge of possible conceptual models of collective identity to follow the concrete identitarian dynamics within the new post-national contexts. We have already seen that the different models give reasons for emphasising the role of a specific kind of collective identity in our scenarios. The next step should be to understand which model more adequately applies to the contemporary social conditions of the European space and to the political goals of the various member states acting together – quite reasonably a prospective topic for further analysis.³⁶

³⁶ An example of this further analysis could be seen in A. LO GIUDICE, *Istituire il postnazionale. Identità europea e legittimazione* (Torino, Giappichelli, 2011).

JÁNOS FRIVALDSZKY

GOOD GOVERNANCE AND RIGHT PUBLIC POLICY

1. THE 18-19th-CENTURY MODELS OF PARLIAMENT, GOVERNMENT AND GOVERNANCE

With the emergence of the concept of 'good governance', the modernist conception of statist governance, based on the ideas of *public law* and *public power*, has now become obsolete.¹ According to the modernist conception, legitimacy of the legislative power is based on authorisation by the electorate. Having received authorisation, the legislature makes an autonomous legislative policy, which is then implemented by the government through executive norms and policies, and the government is responsible to Parliament. This 19th-century conception promotes the *separation of powers*, it *sets competences* in a strict manner, and the production of law is characterised by the *hierarchy of the sources of law*. Public administration, together with the judiciary, mostly belongs to the domain of the executive, which makes them mere organs of *law application* in a literal meaning. At the same time, these features also provide guarantees of '*Rechtsstaat*', or more precisely, guarantees of *rule of law*. *Legitimacy* of government, and its responsibility to Parliament, stems from authorisation by the electorate through *elections*, and the government programme is a summation of manifestoes of political parties. As a rule of thumb, voters can exert influence on the government programme through elections only. In Anglo-Saxon countries using single-member districts with plurality formulae, two relevant parties compete for votes, and they make clear election pledges on the basis of their own manifestoes. The winner of the election usually forms a one-party cabinet, and it ought to enact its manifesto pledges as its government programme, since constituency voters will call the party to account for it at the next election. Under this type of electoral system, the trus-

¹ Cf. G. FIASCHI (ed.), *Governance: oltre lo Stato?* (Soveria Mannelli, Rubbettino, 2008).

teeship character of the government as well as its accountability become particularly visible. For this reason, appropriateness or government efficiency will be assessed at the next election on the basis of comparing the parties' election pledges with their government performance. In contrast to this, voters under a proportional or list system of election cannot and do not know exactly what policy the government will implement since the formation and programme of the government are results of deals and compromises made during coalition bargains.² However it cannot happen that a government makes a policy that is in sharp contrast with its election pledges, just as it cannot make a major decision it ruled out in the campaign. This is explained by the fact that in a trusteeship the agent is not allowed to deceive the principal 'in his or her own interest'.

2. CONTEMPORARY MODELS OF GOOD GOVERNANCE

In the contemporary view, good governance is not 'good' only by virtue of the government being legal and legitimate in the above sense, i.e. having received a mandate from the electorate. It is also 'good' because it is legitimate due to the substantive rightness of the governance, in which the members of the political community actively participate. 'The political' and 'public policy' do not coincide with the limits of public law as distinguished from private law or the private sphere any more. In the post-modern model of good governance, or in the case of multi-level or subsidiary governance, the citizens are not mere addressees of the legislative and governing activity, or the subjects thereof, but participants of governmental actions. (In England, they are regarded as highly satisfied customers, while in Germany they demand to be considered as active political agents). Without deciding yet which one of these models really exemplifies good governance, we may state that in terms of substance, it certainly means that 'civil' agents of public policy define the common good and accomplish it through periods of public policy together with governmental actors and according to particular fields of policy. Between elections, participatory governance achieves the maintaining and deepening of democratic legitimacy in a substantive sense, thereby improving its efficiency as well. This latter is one of the main criteria of right public policy

² K. STROM – W.C. MÜLLER – T. BERGMAN (eds.), *Delegation and Accountability in Parliamentary Democracies* (Oxford, Oxford University Press, 2003); G.B. POWELL, *Elections as Instruments of Democracy: Majoritarian and Proportional Visions* (New Haven, CT, Yale University Press, 2000).

nowadays. Yet the field of governmental activity cannot be rigidly defined in this case, nor can it be evaluated separately by limiting public policy to the sphere of public power, as governance is not something that affects the citizens from the outside only and therefore it cannot be strictly and clearly separated from the active participants of governance broadly understood. One of the corollaries of participatory and multi-level governance, which seem to be the main components of good governance, is that governmental activities are shared by agents who do not have any democratic authorisation by, and are not responsible to, the electorate. Those participating in governance, the citizens and the members of their communities are, however, electors themselves, who evaluate governmental performance and the representation of their respective values by the government through their votes at elections. At the same time, due to the increasing horizontal participation in governmental decision-making, the idea of public-law legitimacy of government, which is manifested in the responsibility of the government to the parliament, fades away, just like its basic role with respect to this branch of power, i.e. the execution of the laws enacted. Thus, it is not so much the parliament that governs. Political experience has taught us that a government with a strict party discipline leaves very narrow space for the initiatives of individual MPs, so one may say that it is not the parliament that 'has got a government' any more, but the majority, or rather the governing elite. 'The PM has got a parliament' to implement his governmental programme, to accomplish his legislative programme. Consequently, the configuration of branches of power has substantially changed since the early period of modernity. It is not the parliament but its majority that governs, with the government making rules to an increasing extent, and the public policy of the latter is not limited to the mere execution of laws any more. Moreover, the political legitimacy of good governance is less limited to the moment of elections, but as an ideal type, its substance is strengthened through the processes of participatory and multi-level governance. Thus, the content and quality of public policy do not depend on the authorisation by the electorate only, but also on the contents accomplished through the processes of participatory governance. But who are those who need to be involved in governance? The question is not who are represented by the state (the parliament), as everyone has an equal right to be represented, which becomes manifest by the single act of election, through the principle of 'one citizen - one vote'. The question is, rather, whose interests are represented by the government in its public policy, what is at stake at the elections, or who are those actually governing, i.e. actually participating in public decision-making.

3. 'GOOD GOVERNANCE' OR 'GOOD GOVERNMENT' - OR A THIRD MODEL?

In this section we seek to answer the question of which model of governance most exemplifies the participatory and decentralised governance, which is a criterion of right – substantively legitimate and effective – public policy. Let us first compare the model of 'good governance', so fashionable in the EU nowadays,³ with that of 'good government', recently developed and propagated by one of the leading Hungarian think-tanks,⁴ these two being the main competitors in contemporary political and scholarly discourses in our country. Exponents of the 'neo-Weberian' model of 'good government' sometimes blame the current of *New Public Management*, or 'good governance', because it is, after all, only certain well-defined (and privileged) *market* actors who can actually participate in this kind of governance. As a consequence, *market* criteria of *cost-efficiency* prevail over the common good of the society as a whole. This latter is not equivalent to the good of the market, but it is the good of everyone: not in a functional, nor even in a social political sense, but rather in a moral philosophical sense. It includes, in particular, the good of those whose interests cannot be expressed and are therefore imponderable in terms of economic efficiency. The neo-Weberian model of *good government*, as opposed to *good governance (New Public Management)*, conceives of a state which is active, strong, and *responsible* to the electorate, and is therefore capable of bearing the responsibility of *governing* – in the classical sense of the word – for the sake of the common good. The neo-Weberian conception of the state is a 'new' one as it draws on the model of *good governance* insofar as it seeks – it seems to us – to provide the *customer-citizens* with public services of the best quality at the best price, by way of involving them in the decisions about these services and their parameters. Consequently, administrative decisions are not merely *executing* legal rules any more, but they imply the deliberation of substantive factors in a given situation. The actual determination of these factors calls not only for a 'modelling' of possible outcomes, but also for an active participation of those affected by the decision, in order

³ COMMISSIONE DELLE COMUNITÀ EUROPEE, *Governance europea: Legiferare meglio*, Bruxelles, 5.6.2002. COM(2002) 275 definitivo. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0275:FIN:IT:PDF>; M. GIULIANI, *Attorno alla governance europea. Genesi, diffusione e metodologia di un concetto*, Unità di Ricerca sulla Governance Europea (URGE), Working Paper, 5/2007, http://www.urge.it/files/papers/2_3_wpurge5_2007.pdf

⁴ *Jó kormányzás és az állam 2008*, A Századvég Alapítvány Politikai Barométere az ország állapotáról. Századvég, <http://www.szazadveg.hu/files/kutatas/Jo-kormanyzas-es-az-allam-2008.pdf>. Cf. G. BOUCKAERT, "Public sector reform in central and eastern Europe", *Halduskultuur*, 2009, vol. 10, pp. 94-104. http://www.halduskultuur.eu/2009journal/94-104_Bouckaert.pdf

to reach a really sound governmental/administrative decision. Thus, the output efficiency and social quality of public policy decisions concerning public services are at least as important as their *professional quality* in an administrative or legal sense. An otherwise impeccable administrative act, which does not take the real needs of the citizens or the actual nature of things and relations into account, even though legally possible, is by no means an act of good governance. Yet the interests of the participants of the administration, i.e. the citizens, where they can or have to be represented, do not only have to be *taken into account* in the absence of the stakeholders and according to their presumed content, but they also have to be *made present* in a consultative process of active dialogue, in the sense of real partnership. The model itself can be still 'Weberian', as it accomplishes the criteria of *legality* and *common good*, guaranteed by public law, through state bureaucracy. The state thus becomes strong in order to resist the egoistic efforts of certain privileged groups, rent-seekers, and those trying to make public resources and goods their own private goods through legislation.⁵ It is the constant search for the common good of the whole society that makes the government of a neo-Weberian state, or a government in general, legitimate and good in a substantive sense. The question is, then, which model of governance/government best exemplifies the most adequate ways of this search for the common good. Which system of institutions and which organisatory principles are the most compatible with this conception of good governance? The hazy, entropic system of the *governance* model is based on the bargaining of partnerships and networks, and thus blurs the decisive competences and responsibilities. What makes the neo-Weberian state so attractive is that instead of this, it makes the normatively regulated traditional elements of legitimacy, responsibility and normativity the main factors of execution and governance. The main actors of good governance remain, to be sure, the state, the market, and society, yet the *responsibility* of governing in this kind of governance rests, without any excuse, with the government and the state. Without the *authority* provided by the *state power* necessary for governing, or the *responsibility* to the electorate, there is no modern or post-modern government, nor any kind of good governance. In the last eight years, the governments performed a *virtual* kind of post-modernist 'communicative' governance in Hungary, which focused not on governmental performance, but rather on how it was *communicated*,

⁵ According to the experience of the successful Asian developing states, the bureaucracy contributing to the development is professionally competent, and separate, i.e. can resist social pressure, but not isolated.

i.e. *presented* and indeed *sold* to the electorate as *media customers*. In this virtual space, governmental achievements (performance) became unmeasurable, and therefore relative or even subjective, with the politics of governance becoming consumerised. Every government has, contrary to these, to achieve a complicate system of real common goods relying on political wisdom, and the electorate has to be able to evaluate the transparent governmental *performance* using objective criteria. If post-modernist *good governance* diminishes the *public power* character of governance, or the executive role of the government, this can be accepted only on the condition that it is not accompanied by unlawfulness. According to the ideal and hypothetical functioning of this model at least, the *loss in legitimacy in the legal sense* – i.e. that it is not the parliament legitimated through elections that governs by general and abstract laws through the government responsible to it – may be balanced by an *increase in legitimacy in a substantive sense* through good governance. As we mentioned, the increase in legitimacy of real good governance is not only due to governmental efficiency, but also (and in close relation to it) to *participatory governance*.⁶ In such a case, the legal and constitutional legitimacy of government by a *democratic majority* in parliament (i.e. governance based on *indirect representation*), is complemented by the participative democracy of multi-level governance (i.e. the citizens, their communities and self-governments are involved in governance *more directly*). Thus, neo-corporatism and *good governance* are ‘good’ only if the decrease in parliamentary control of everyday governance is accompanied by an increasing substantive democratic efficiency on the part of the government, achieving the criteria of legality, professionalism and the representation of social needs at the same time. Even in this case, it is questionable whether the greater legitimacy of public powers inherent in the neo-Weberian model, or the model of *governance* involving less transparent relations of participation is more preferable from the perspective of real good governance.⁷ In a certain sense, any method of ‘good’, i.e. ‘new’ governance is *less transparent* than the modernist, classical parliamentary model of governance: *networking*, the informal forums of consultation conceal the actual participants of decision-making, thus blurring responsibility for the decision itself. One may also state that public and private relations, public and private goods, or *legislation* and *execution* are less clearly

⁶ The broadening of the participation in governmental processes is the main, if not the only, slogan of the *governance* model. A. ANDRONICO, “Governance”, in B. MONTANARI (ed.), *Luoghi della Filosofia del Diritto* (Torino, G. Giappichelli Editore, 2009), p. 251.

⁷ Cf. T. BOVAIRD, E. LOFFLER and S. PARRADO-DIEZ, *Developing Local Governance Networks in Europe* (Baden-Baden, Nomos Verlagsgesellschaft, 2002).

separated than before. Higher-level sources of law often demand that they be applied through 'multi-level governance'. In some cases, this precludes the rigid, abstract and strict constitutional determination of *competences*. As a consequence, the legal normativity of legislative and governmental activity, their actual public and representative character may be hidden from the electorate as a body of external judges. As recently formulated in an analysis, the mainstream post-modernist way of governance, the "model of 'governance' concentrates on relations and their networks rather than the separation of competences, on execution rather than decision-making, and on the outcome, the results rather than normative legitimacy".⁸ Given all this, specialised methods and institutions enhancing the *transparency of governmental decisions* and related *systems of responsibility* have to be set up, among which a strong and permanent, real *social control* has to have a major role. If the deficit in legitimacy in terms of *public law* and *democratic majority*, due to the *governance* model, is not *balanced* by the advantages of *participatory* democracy through 'good' governance, then governance is not going to be good or legitimate in any sense: neither according to the model of parliamentary representative (majoritarian) democracy, i.e. parliamentary government, nor in the substantive, participatory sense of multi-level governance, aimed at by the paradigm of 'good governance', which comprises elements of more direct democracy. In such cases, the lack of transparency, the deliberately increased 'opacity' of governmental and administrative decisions may hide the corruption of public affairs. We may not be entirely wrong in interpreting the last years of Hungarian governmental practice – broadly understood – this way. Just as there is 'good governance', there is also a real form of '*bad governance*', which can be objectively discovered through a reflective analysis of politological or political institutions. It seems that in our public affairs the mere slogan of the former was coupled to the practice of the latter during the last years. *Partnership* relations of the *governance* model inevitably lead to the *intransparency* of processes. As the emergence of *networks* presupposes a relation of *trust* between the partners, it may, alongside its advantageous effects on public policy, present a danger to the *legitimacy* based on majoritarian democracy in certain cases, and particularly in young democracies, it may also be a hotbed of *corruption*. Under the local circumstances, it seems that 'good' governance in Hungary – if there was any real and serious effort to introduce it at least partly apart from virtual governing – did not bring any of its desired fruits, while it

⁸ I. PÁLNÉ KOVÁCS, *Helyi kormányzás Magyarországon* (Budapest - Pécs, Dialóg Campus, 2008), p. 102.

eroded most of the traditional legal and political virtues of the classical model of governance. Thus, we think that as a first step, the present way of governance should move towards 'good governance'. It has to strengthen the classical constitutional establishment of legal and political relations, while bringing about the democratic participatory elements of 'good governance'. Yet the accomplishment of this model can be but an intermediary step towards the best model of governance, i.e. the 'subsidiary state'. This latter requires, however, that civil society as well as other sub-national levels of policy-making, become strong enough to live up to their participatory and controlling functions. The real subsidiary state adapts itself to the collective identity-forming and policy-making levels of the communities that constitute the nation and its political society. What follows from the above is that – considering the Hungarian context – first the level of counties, which have strong traditions, but also that of wards (or micro-regions) should gain a greater role in the shaping of the processes of public policy, while the artificially created regional level has to receive *political legitimacy* in a legally regulated way. This latter has to become a transparent scene of policy-making oriented towards consensus and the good of the communities. It may be due to the lack of this that regional reforms in Hungary have been a failure so far, while certain decisions of major importance are already made at this level, and the region has become the foremost level of local governance (i.e. the distribution of money).⁹ A comparison of the above models reveals that while the model of multi-level *governance*¹⁰ prefers *global* and *local* (in the EU, the regional) levels, or – fashionably put – 'glocalisation', thereby weakening the national, *state* level, the subsidiary model assigns a major role to the level of national governments in promoting the common good. This latter form of governance and state organisation and its principle of action is in accordance with the phenomenon of re-nationalisation, which can be observed today in the EU, and is certainly desirable, if we attribute to it a moderate sense, a harmonic attitude towards other actors of public policy. This phenomenon and process of strengthening the nation states cannot become some kind of paternalistic statism or aggressive nationalism, which often means a danger and temptation for the new democracies of

⁹ ID., "Zárógondolatok", in I. PÁLNÉ KOVÁCS (ed.), *A politika új színtere a régió* (Pécs - Budapest, PTE BTK Interdiszciplináris Doktori Iskola, Politikai Tanulmányok Tanszék, Századvég Kiadó, 2009), p. 206. Cf. K. SZCZERSKI, *The EU Multi-Level Governance in Post-Communist Conditions - Institutional Challenges*, Poland, Business High School - National Louis University, Nowy Sacz <http://unpan1.un.org/intradoc/groups/public/documents/nispacee/unpan018546.pdf>

¹⁰ One of the characteristics of *good governance* nowadays is the achievement of a territorially pluralistic model of power, i.e. *multi-level governance*.

Central and Eastern Europe (too). All this has to be borne in mind by the exponents of the neo-Weberian model as well. Consequently, the neo-Weberian model can only work as a *transitional* model of governance, a step along the long and rough road towards the best form of state and governance; a subsidiary one. It has to be acknowledged, however, that this step now seems necessary for achieving legality, order and the improvement of the state. Problems with the *governance* model, however, become obvious outside the Hungarian context as well. It is not only that post-modernism delegitimised any model, and the concept of 'model' as such, in its efforts to 'demetaphysicise' and demythise all asymmetric meta-narratives and their underlying hierarchic oppositions. The real problem is that the *governance* model as a method and process is not a mere way of governing, i.e. not a means to an end, but makes itself an end in its functioning,¹¹ without aiming at any particular good in the *objective* sense, and therefore its rightness cannot be evaluated in the light of such a good. The conception of '*governance*' has thus become a political slogan with hardly any legal suitability or subtlety in terms of political science; it is actually (and paradoxically) a post-modernist ideology and therefore not capable of being measured with scientific and concrete political criteria.

4. THE PRINCIPLES OF COMMON GOOD, PERSONALISM, JUSTICE AND PARTICIPATION CALL FOR A THIRD MODEL: THE EMERGENCE OF THE SUBSIDIARY STATE

As the elements of the *governance* model "are not really self-evident, much less clearly formulated or generalisable, scholars consider this new form of governing in this sense a 'second best choice'".¹² Some even think that this post-modernist concept is incomprehensible, undefinable, like the diffuse concept of '*fitness*', lacking any criteria, which has replaced the modern concept of 'health'.¹³ In the Hungarian context – as we mentioned – the *governance* model has even led to chaotic and sometimes corruption-like situations (also) on a regional level, with certain leading figures of the previous governments and their political parties presumably involved. Thus the desirable direction is that of '*good government*', which means re-emphasising the follow-

¹¹ A. ANDRONICO cit., p. 249.

¹² I. PÁLNÉ KOVÁCS, *Helyi kormányzás Magyarországon* cit., p. 102.

¹³ A. ANDRONICO cit., pp. 248-249. The Italian legal philosopher draws on the insight of the sociologist Zygmunt Bauman in his analysis of the concept of *governance*.

ing elements: (1) execution subject to the laws, (2) normativity, (3) representation by the public powers, (4) legal legitimacy, (5) responsible governmental decisions, (6) transparency, and finally (7) accountability by way of elections. However, a desirable medium-term model of governing would be the form and method of a 'subsidiary state', which is solidary, i.e. social, but based on common-good oriented relations (partnership) and the social capital of participation.

Problems with the paradigm of 'good governance' (which is otherwise rather fashionable in the EU nowadays) that partly follow from the theoretical weaknesses of the model, and the questions related to the danger of statism resulting from 'good governance' in our region, highlight that a third model, a relational state organised according to the principles of subsidiarity and solidarity could be the right medium-term structure of government. We would like to emphasise that the characteristic features of subsidiarity, its method of governance, its conception of state and political organisation do not mean the disetatisation of (civil) society or the market in order to promote the (private) interests of enterprises and global financial agents interested in the present and complete achievement of the so-called 'Washington consensus'.¹⁴ Subsidiarity gives a new meaning to the word 'political' by overcoming the rigid 19th-century dualism of 'state' and 'non-state'. It does not regard the domain determined by public law and characterised by the activity of state agents or those collective agents recognised by the state as identical with the *political* sphere,¹⁵ but focuses on the pluralist, multi-level and social (i.e. sub- and supra-state) sense of the common good, to be integrated and accomplished through politics. The subsidiary model of governance recognises that certain relations, actions, communities and interests, previously considered as belonging to the private sphere, are of public interest, as they represent common social interests and values, thus bearing political contents, in spite of their particularity, individuality or local interest. It seems therefore that it is the model of subsidiarity rather than that of *governance* that represents a really credible, participatory and multi-level way of governing. By way of a thought experiment, we identified 'good governance' with the *governance* model so far, since

¹⁴ The notion 'Washington consensus' was first formulated by John Williamson at a 1990 conference of the *Institute for International Economics*, referring to the universal recipe of diminishing state activism. Cf. J. WILLIAMSON, "From Reform Agenda to Damaged Brand Name. A Short History of the Washington Consensus and Suggestions for What to Do Next", *Finance & Development*, vol. 40, no. 3 (September 2003), pp. 10-13.

¹⁵ G. SCACCIA, *Sussidiarietà istituzionale e poteri statali di unificazione normativa* (Napoli, Edizioni Scientifiche Italiane, 2009), p. 42.

as an ideal type it is organised along the principles of partnership, participation and efficiency in public policy. Yet we have seen that there are a number of problems, particularly in the Hungarian context. This is why we now finally dismiss the *governance* model in our search for the best way of governing, as it is unable to serve the common good to the greatest possible extent – if its substantive elements can be determined and its results measured at all. As for the practice of institutional and political decision-making, we have to add that ‘multi-level governance’, one of the main substantial elements of good governance, is not accomplished in the EU, and its hopes were considerably lowered after the failure to make a constitution (for what was finally passed is hardly anything else than a failure instead of being a constitution aiming at high standards and desires for multi-level governance). It may be due to this fact that the Committee of Regions published its *White Paper on multi-level governance* in 2009.¹⁶ No real multi-level governance was accomplished by the constitution-making body, maybe it was not even intended to. Yet it is also possible that the aim or its formulation was false or unrealistic. Learning from that, we should turn towards the subsidiary model of governance, the principle of which is theoretically also one of the main foundations of the EU. It is another matter that the working committee dealing with subsidiarity approached the problem in a way that has shown that those drafting the constitution misinterpreted the principle. The subsidiary model of governance is, in turn, a *relational* one as well, and therefore it is the *logos*-oriented common good formulated discursively through different processes. It provides legitimacy for the government on every level, and it also includes normatively institutionalised para-governmental forums and procedures of consultation, involving sub-state actors in the common search for the common good.¹⁷ Here it has to be noted that some consider the *governance* model a *meaningless* conception,¹⁸ and we think this is confirmed by its lack of *logos*, self-serving procedural and processual orientation, as well as the chaotic-entropic network of partnerships and power relations. The principle of subsidiarity cannot serve to free the state from its responsibility to promote the common good within its sphere of competence (so the state cannot place a serious budget deficit on the local governments to an excessive extent), but it has to involve those actors in a really multi-level decision-making process in terms of public policy,

¹⁶ <http://www.cor.europa.eu/pages/DetailTemplate.aspx?view=detail&id=31bc9478-1acb-4870-999d-cc867f1925f6>.

¹⁷ G. SCACCIA cit., p. 49.

¹⁸ A. ANDRONICO cit., pp. 237-239.

whose communities have their own particular common good to be integrated and accomplished. Consultation procedures in our preferred model of good governance are not institutionalised to legitimise themselves or governmental institutions and their decisions by their mere procedural character (sometimes by saying: “we tried to negotiate, ‘only’ in the given case the other party ‘involved’ in the procedure did not know about it...”), but they have to give real place to the formation of the content of public policy decisions through interpersonal communication. Participatory processes of good governance allow for the orientation of the expectations of those involved in decision-making towards the criteria of a higher-level common good, to include the opinion of those whose interests could not be formulated. This is a task particularly for the state or the governmental and administrative agents of regional and local governments. If these consultative processes aiming at the common good succeed in making a qualitative consensus rather than a quantitative compromise with a reduced perspective (like a highest common denominator), which is often frustrating for the parties, then the parties may be able to reach a spiritual addition in terms of public policy, which needs existential involvement and which can come about only through existentially engaged governmental policy-making.¹⁹ In the search for the common good, professional rationality of the single branches in public-policy decisions has always to be driven by the practical wisdom of prudence,²⁰ a typically political virtue, which cannot be properly exerted except in the form of an open dialogue. Thus, we have seen that the dialogue aiming at the common good has to be a real dialogue, and the forums and procedures of consultation have to be created not only for the self-legitimacy of public-policy decisions. The concept of common good is a normative one, with legal and social ethical content. An administrative decision may not be necessarily legitimate in the sense of good governance only by virtue of being made according to the procedures of the administrative-political social sub-system. A decision is a good one in terms of public policy if, in addition to legality, it aims at the common good. This requires the inclusion of the perspective of everyone concerned in the proper procedures and with the proper engagement. Similarly, those elements of the good governance related to the legal sub-system are not self-referential in the Luhmannian sense, as they cannot be separated from the classical nor-

¹⁹ See the distinction made by Bruno Romano between ‘essential convention’ (*convenzione essenziale*) and ‘functional convention’ (*convenzione funzionale*). B. ROMANO, *Critica della ragione procedurale, logos e nomos. Teubner, Lubmann, Habermas discussi con Heidegger e Lacan* (Roma, Bulzoni Editore, 1995), pp. 69, 71, 77, 85, 89, 109.

²⁰ C. MILLON-DELSOL, *Il principio di sussidiarietà* (Milano, Giuffrè Editore, 2003), p. 97.

mative concepts of 'law' and 'laws', a constitutive element of which is their orientation towards the common good (*ad bonum commune*).²¹ According to the concept of 'law' related to good governance, it is mainly the state and not the legal sub-system that is intended to make (produce) law. If the rules are to be considered laws in the classical sense of legal philosophy, they have to aim at the common good. For a self-referential system of law, that would be a mere 'informative environment' in the Luhmannian sense, just like the human being herself, together with her fundamental rights. Orientation towards the common good does not just come about by itself in such a high-pressure environment, where competing political powers and economic interests face each other and struggle for the accomplishment of their private interests through shaping the rules by influencing the lawmaking. In such a field of powers, the figure of the governing politician who exerts the public virtues of courage, wisdom and responsibility is inevitable for achieving and practising good governance. The virtuous figure of the politician in a responsible government is thus a condition of good governance, as neither of the self-referentially organised systems, i.e. law, politics or the market (economy) by their professionally rational methods, or participatory democracy in itself can guarantee the orientation towards the common good, or the sincere efforts to achieve it. As we have seen, self-referential systems do not have any external normative criteria of validity, as the respective social sub-system determines by its internal logic what 'law' is, what and how can be made law, thus reproducing itself. Even the unborn human being may fall victim to this kind of logic if (s)he is not considered a human being in the legal sense by the lawmaker, e.g. by the Constitutional Court – the body which actually decides, by measuring the legal rules to the Constitution, which rule is 'legal' and which is not because of being unconstitutional. All these are particularly important to note because in our post-modern age heralding the lack of truth, common good or fundamental human rights do not automatically make substantial criteria of legal or public policy. Policy-makers tend to generalise the technical criteria of efficiency, usefulness/functionality, or procedural rationality as exclusive standards of evaluation, or they simply have the process of governance legitimise itself.²² The aims of public policy-making can thus miss the person and his or her communities or their goals and serve selfish political

²¹ 'Et sic ex quatuor praedictis potest colligi definitio legis, quae nihil est quam quaedam rationis ordinatio ad bonum commune, ab eo qui curam communitatis habet promulgata'. AQUINAS, *Summa Theologiae*, I-II, q. 90, a. 4.

²² Cf. A. ANDRONICO cit., p. 249.

interests and ideologies – as well as their underlying egoistic motives – rather than seemingly formal, technical-professional or system-immanent criteria. Decisions in public policy are never made in a political vacuum and they never follow technical rationality exclusively, even if one has to acknowledge that technocracy has gained real power in the age of governance.²³ Power is ‘dispersed’ (in the Foucaultian sense of the word), i.e. it is not present in a concentrated form,²⁴ and it is – as we mentioned – in the hands of technocracy. Yet directly or indirectly, this serves – as several analysts have shown – the interests of a (neo)liberal economic-financial elite after all. This is why governance, a responsible political – not merely technical or economical – decision-making activity has to be considered as the problem of political rule deliberately accepted. It focuses, in a final analysis, on the right use of power for the sake of the common good, according to a well-defined and properly represented conception of the state.

5. THE PARADIGM OF THE SUBSIDIARY STATE

The subsidiary state considers all levels of communities, which form the nation, as politically relevant and constitutive in terms of public decision-making, and it approaches them accordingly.²⁵ It does not seek to legislate on the details of their relations, but to promote their common good by the means of legislation and governmental planning in a subsidiary way – i.e. by providing opportunities for these communities, through helping and supporting them. The main agents of the everyday fields of public policy-making are thus the local and regional communities, consisting first and foremost of families and their members, who appear in their functional roles and professional communities as related to particular social sub-systems. These all contain a number of elements of the common good for public policy-making, and these elements can be exhibited and represented politically only together with those persons concerned. It is these latter or more accurately their good that bears the common good that is to be served and developed through public policy. Thus it is not the professional rationalities of the social sub-systems themselves that bear the only legitimate and reliable standards, the ‘*logoi*’ of public policy-making, but the complex value and interest systems of the persons and

²³ Cf. A. ANDRONICO cit., pp. 244-245, 249, 258, 262.

²⁴ A. ANDRONICO cit., p. 242.

²⁵ C. MILLON-DELSOL cit., p. 72.

their communities appearing (also) in these sub-systems. These persons, in turn, are at the same time – or mainly – members of families, and they live their everyday life (also) in local and other functional communities beyond this vital environment. The criterion of subsidiarity contributing to good governance is not only the adequate limitation of *competences*, or the demand of *non-interference* with the competences thus determined:²⁶ it also needs a continuous *re-assessment* of the distribution of competences with respect to the *fulfilment of functions*, and in some cases it also needs *positive* governmental *political actions*. Thus, competences cannot always be determined in advance through abstract rules, but they also depend on the multi-level accomplishability of the common good, and partly on the efficiency of the fulfilment of public tasks, and the capability of fulfilling these. The competences are, consequently, flexible and can be changed or redistributed later on the basis of experience.²⁷ According to this principle, the government performing good governance works for a common good, which is not the mechanical sum of the particular interests appearing at certain lower levels; but it contains and elevates these, never against the common goods of lower-level communities, into a higher synthesis and perspective. Yet a mere *accounting* of these lower-level common goods in the decision-making processes of the central government does not suffice. They need to be formulated in a governmental-administrative process based on a living dialogue, through their *representatives*. It has to be noted that this is particularly true for the historical moment of constitution-making, which certainly presupposes a comprehensive discourse from the part of the society as a whole, as the process of constitution-making itself testifies those constitutional values (participation, subsidiarity etc.) that will be contained by the constitution in a normative way and in the form agreed upon. The committee preparing the EU constitutional treaty, which dealt with subsidiarity, did not, as we mentioned it, have this kind of approach.²⁸ It is not by chance that no real European constitution could be drafted and passed, as the constitution-making process brought no additional legitimacy based on a broad participation, and that only a reform treaty (termed ‘Lisbon Treaty’) could be concluded. The creation and maintenance of ‘good governance’ is not really about structurally reforming the founding treaties, i.e. it is not a real *institutional* problem. This is clearly shown by

²⁶ C. MILLON-DELSOL cit., p. 80.

²⁷ G. SCACCIA cit., pp. 44-49.

²⁸ J. FRIVALDSZKY, “Szubszidiaritás és az európai identitás a közösségek Európájáért”, *Ib.* (ed.), *Szubszidiaritás és szolidaritás az Európai Unióban* (Budapest, OCIPE Magyarország-Faludi Ferenc Akadémia, 2006), pp. 35-56.

the *White Paper of the European Committee*²⁹ on good governance, published in 2001, but also by the *White Paper of the Committee of the Regions on multi-level governance*,³⁰ published a year ago (2009. 06. 18), independently of the fate of the reform treaty. Thus, alongside the problems of the structural reform of the EU – not denying the progress made towards multi-level governance – there appears the basic demand for good governance aiming at the good of the persons living in organised political communities (cities, counties, regions and nations), which calls for a ‘bottom-up’ way of *political thinking* and attitude of *actions*. No one sees the ultimate truth about the way of achieving this. Yet it may be reassuring to know that the existential dialogue emerging for the *search* of the common good to be accomplished at different levels creates a certain kind of goods (‘relational goods’) by itself.³¹ For the common good is not the *quantitative* sum of the interests of political communities, nor is it a sociologically recognisable empirical *fact*,³² but a prudential search for it also needs an interpersonal governmental *engagement* which is *communicative* in creating values.³³ The common good is thus shaped in an open discursive environment oriented towards it. Even for a moderate altruistic political anthropology, the common goods of political communities are not grounds for continuous conflicts and hostility, as it was falsely claimed by Carl Schmitt or the Catholic legal and political philosopher Sergio Cotta. Rather, occasionally emerging conflicts show the considerableness of one another’s attitudes and interests, which indicates the need to acknowledge these. If the negotiations are carried out as part of the search for justice and oriented to-

²⁹ European Governance, a white paper commission of the European Communities, Brussels, 25.07.2001 COM (2001).

³⁰ <http://www.cor.europa.eu/pages/DetailTemplate.aspx?view=detail&id=31bc9478-1acb-4870-999d-cc867f1925f6>.

³¹ Piepaolo Donati speaks of a relational (social) state, ‘*Stato (sociale) relazionale*’: P. DONATI, “Una nuova mappa del bene comune: perché e come dobbiamo rifondare lo Stato sociale”, in M. SIMONE (ed.), *Il bene comune oggi, un impegno che viene da lontano* (Bologna, Edizioni Dehoniane, 2008), pp. 224-226, 246.

³² We cannot agree with Sergio Cotta, who thinks, based on a quasi-Schmittian phenomenology of the political relation, that the internal solidarity of the political community involves but a particular and therefore necessarily exclusive kind of common good, due to the integrative-exclusive nature of the political relation. According to such a phenomenology, the common good understood in a descriptive, rather than normative, way is integrating from inside but exclusive to the outside, which almost inevitably implies the possibility of conflict, hostility and struggle: S. COTTA, *Il diritto nell’esistenza* (Milano, Giuffrè Editore, 1991), pp. 110-111, 116-122. Cf. the criticism and much subtler approach of Domenico Fisichella, formulated – among others – against Sergio Cotta: D. FISICHELLA, *Lineamenti di scienza politica. Concetti, problemi, teorie* (Roma, Carocci Editore, 1998), chapters: 2.1-2.2.

³³ M. SIMONE (ed.) cit.

wards the higher common good by the political rule performing good governance, if they work through common efforts and are thus really 'common', then the elements of the common good accomplished in decisions of public policy can, alongside mutual enrichment, achieve a right measure and content. Such an approach to *governance needs* a strong, responsible and efficient *government* in order that dialogical procedures and decisions are correct in the light of 'right reason' (*recta ratio*) in its classical sense (this is 'political correctness' rightly understood), and that the interests of socially weaker persons be represented as well. Ensuring the accomplishment of the different aspects of *solidarity* at different political levels is one of the main tasks for governance and the government, and this principle has to be consistently observed when exerting subsidiarity. Another task for good governance is to encourage and support, alongside *institutional* governmental solidarity, the non-state emergence of political and social solidarity at every level of decision-making. 'Relational goods', such as ordinary and extraordinary forms of solidarity, can thus serve the real good of the persons. These forms range from home nursing care, through actively helping the regions struck by disasters, to the more institutionalised means of an active civil society (e.g. foundations, distance adoption, different forms of the so-called 'community economy' etc.), and reaching up to the global extent. Relational goods formed at these levels and justified interests appearing there represent real common social values that have to be *supported* by public policy, and that cannot be simply removed to the non-state (private) civil sphere by the government, simply by saying that these have no public importance.

6. SOME GUIDELINES OF GOOD GOVERNANCE AND RIGHT POLITICS

6.1. *The problem of public services*

It is partly due to the theory of New Public Management that more attention is paid to the efficiency of public services, and the *service* character of public administration.³⁴ Citizens are not subjects, nor – we may add – are they

³⁴ The main means and methods of administration are the following: the Scandinavian model of *One Stop Shop*, *neighbourhood decentralisation*, the charter movement, which started from England, but also appeared in Belgium and France, then – since the mid-nineties – the *Service First* programme, *the Best Value movement*, and the *Value for Money initiative*. Also the institution of the *Citizen's Jury*, the consensus conference, community forums and consumer panels have to be mentioned here, as well as the self-governmental sociological surveys. Z. JÓZSA, *Önkormányzati szervezet, funkció, modernizáció* (Budapest - Pécs, Dialóg Campus Kiadó, 2006), pp. 143-162.

mere *customers* of public services, but *members* of the body politic. They are citizens, not merely electors, and they want to participate in the managing of public affairs.³⁵ The state is not an inventory of common goods that have to be distributed to private persons and made accessible according to the parameters of market efficiency (*New Public Management*)³⁶ or of distributive justice (welfare state) exclusively. The state is a *political community* as well, but in order to be a proper one, it has to be built on participation and make its citizens participate in the shaping of public law by way of public policy. As we mentioned, it is not only the efficiency and quality of public services but mainly the substantial *participation* of the citizens in the determination of the common good that legitimise the government and/or governance and make it 'good' in a substantive sense. As a consequence there have to be clear and narrow limits for the organisation of certain public affairs by private public-service enterprises, under a strict and well-established communal and legal control, since private enterprises providing public services do not necessarily have any communal or – particularly – political responsibility. Certain justified and considerable interests of the citizens, and particularly those of persons in a disadvantaged social situation, cannot be neglected and ignored only because they cannot be assessed with efficiency parameters or because they are not profitable, nor can they be rejected by claiming that the private or business sphere providing the public services cannot be influenced by public policy. The state is not a business company since it is not only the market actors and owners who are its citizens. Public services – whoever provides them – are public affairs and therefore they need a political *strategic* guidance through public policy as well as political and communal control. We may make the general claim that citizens are all members of the body politic and have equal dignity, so they have to participate actively in the general determination of the common good – in this case the public services (and this also applies to the less wealthy, who have no power and cannot articulate their interests). The limits of the 'political' in the normative sense do not coincide with the limits of public power, and even less so with the limits of private power or political or economic influence, but with the limits of the *common*

³⁵ In Germany, the motto is the 'renewal of politics from below': (*Die Erneuerung der Politik von Unten*). The corresponding means are the following: counselling service (*Advokatenplanung*), district administration (*Bezirksverwaltung*), community work (*Gemeinwesenarbeit*), planning council (*Planungsbeirat*), planning cell (*Planungszelle*), citizens' forum (*Bürgerforum*). Z. JÓZSA cit., pp. 145-148.

³⁶ Cf. K. KÖNIG, "On the Critique of New Public Management", *Speyerer Forschungsberichte*, nr. 155 (1996); C. POLLITT – G. BOUCKAERT, *Public Management Reform: A Comparative Analysis*, 2nd expanded edn. (Oxford, Oxford University Press, 2004).

good or the *public affairs (res publica)*, which have to be observed as a guide for public policy-making. In the public sphere, market and private-law elements have to be organised, above all according to *reciprocal justice*, for otherwise they mean a mere rent-seeking to the detriment of the state. These elements cannot work against the *common good* represented – in a final analysis – by the will-formation of the state, or otherwise they would harm third persons, i.e. the political community. In the public sphere, a mere consensus between private and public actors cannot justify the existence and content of any contract per se, since these contracts have to observe both reciprocal justice and the common good; so the lack of these must result in invalidity, at least in grave cases. This has to be noted here, because according to the neo-liberal ideology, or at least one of its interpretations underlying the method of *governance*, it is the ‘private’ that prevails over public affairs,³⁷ and a private-law(-like) *contract* is not a means to be justified by the goals of profit or the common good any more, but its content is justified by its mere existence.³⁸ According to one leading theory, entrepreneurial structures of public services operating in private-public partnership accomplish *governance* in themselves.³⁹ The contracts (social and other) underlying these are thus not mere means but ends in themselves.⁴⁰ Yet according to a proper analysis, the logic of these public services needs – for the sake of the common good – that political strategic guidance by the owner self-government on the one hand, and executive decisions by the management on the other (as well as the complex and systematic internal and external controlling functions and the personal spheres) be clearly defined and separated, also that they co-operate so that a political strategic guidance can work while professional considerations and those of profitability (within desirable limits) are not neglected either.⁴¹ In local politics, a completely new culture of social and political control has to be developed in the field of public services in order that the service of the common good (strategic guidance and control) be guaranteed in this complicated domain of public policy. A change of attitude is needed in the entire field of public services, by re-thinking the limits of and relations be-

³⁷ A. ANDRONICO cit., p. 256.

³⁸ Cf. A. ANDRONICO cit., pp. 246-247.

³⁹ Cf. O.E. WILLIAMSON, *The Mechanisms of Governance* (United Kingdom, Oxford University Press, 1996) (Translated into Italian by Margherita Turvani, and reprinted by Franco Angeli).

⁴⁰ A. ANDRONICO cit., pp. 246-247.

⁴¹ Cf. M. MULAZZANI, “Problemi di governance delle imprese dei servizi pubblici locali”, in R. MELE – R. MUSSARI (eds.), *L’innovazione della governance e delle strategie nei settori delle public utilities* (Bologna, il Mulino, 2009), pp. 235-256.

tween public and private more carefully. This has to be done in light of the insight that the functioning of (some elements of) the *governance* model implemented in recent years has the consequence that the boundaries of the public and private spheres become dissolved. If the appearance of this model, or the elements of this way of governance is inevitable because of social and political demand, as some scholars claim, then the blurring of limits that is characteristic of this model should be addressed in the spirit of subsidiary governance. It is only through such a method of governing, it seems to us, that the paradoxes of regional policy-making⁴² can be overcome. Generally speaking, one may state that right public policy-making cannot be achieved merely through the principles of decentralisation and/or participation in government and public administration by applying the above techniques and methods. The substantive principle of subsidiarity has to be implemented effectively, together with the other principles of the *personalist* social philosophy. We now discuss some of the consequences in terms of local administration, regional development and local governance.

6.2. *Problems of regional governance*

Regional *governance* beyond regional administration can be described, from a realistic perspective, with the slogan 'Europe with the regions' as opposed to 'Europe of the regions'.⁴³ Considered this way, although the regions are organised partly across the borders, they become definitive actors of regional *governance* – not instead of, but together with or under the control of the nation state. We are living the period of macro-regions and euro-regions in Europe, which transforms the state borders into 'seams', by creating 'hinge zones'.⁴⁴ One has to resist the temptation, however, of considering these forms of co-operation exclusively as part of the *state competence* of international relation-building, which would thus need a central state control in all

⁴² First, the paradox of 1) *multiple levels*, which means that the institutions of regional politics start to move and gain a considerable amount of functions from the institutions of representative democracy. Second, the paradox of 2) *vertical democracy*, which makes the roles change: 'it is the technocrats who make strategic, definitive value decisions, while the role of local politicians becomes marginal, limited to project management'. Third, the paradox of 3) *economic democracy*, as this model of financing 'supports the elite having considerable resources (and deprives the public of any possibility of control)'. Last, the paradox of 4) *horizontal democracy*, according to which an elite will be chosen from the too high number of contributing actors, thus diminishing transparency. I. PÁLNÉ KOVÁCS, *Helyi kormányzás Magyarországon* cit., p. 103.

⁴³ F. FERLAINO – P. MOLINARI, *Neofederalismo, neoregionalismo e intercomunalità: geografia amministrativa dell'Italia e dell'Europa* (Bologna, il Mulino, 2009), pp. 152, 165.

⁴⁴ F. FERLAINO – P. MOLINARI cit., pp. 168-172.

respects.⁴⁵ The state has to provide the necessary competences and financial means in order that cross-border co-operation can develop at local and regional levels in a *bottom-up* way. Finally, we would like to emphasise that the problems of the model of multi-level good *governance* should not be addressed primarily by organisational and structural reforms. Real good governance calls for the emergence of a *new generation of politicians*,⁴⁶ and the formation of a civil society is also inevitable, which would participate in public-policy processes of decision and control, bearing community values and interests. Subsidiary governance, which we consider as good and right governance, thus needs new people.

7. TOWARDS A NORMATIVE CONCEPT AND THE INSTITUTIONAL REALITY OF A GLOBAL POLITICAL COMMUNITY

The political lessons of the recent financial crisis have shown that the global financial system has to be regulated, but also – to a certain extent and in certain respects – governed.⁴⁷ This is important if humanity is not only to suffer global interdependence in terms of the negative effects of the financial system, but also to do something actively, while observing the ethical imperative of fraternity, to achieve a more just establishment, which would serve the common good better.⁴⁸ Regulation is also called for by the factual global interdependence, as the effects of the financial crisis cannot be stopped at the national borders in an age where the amounts and – speculative – financial products transferred and sold every day between the actors of the global financial system exceed the volume of real economy and international real transfers by far. Justice and solidarity too demand that the profit gained with speculative operations cannot be exempt from imposed contributions and re-

⁴⁵ F. FERLAINO – P. MOLINARI cit., p. 172.

⁴⁶ J. OLSSON, *Democracy paradoxes in multi-level governance*, RSA International Conference, 2001 (unpublished paper), Gdansk, Pálné Kovács Ilona refers to some ideas formulated at this conference: I. PÁLNE KOVÁCS, *Helyi kormányzás Magyarországon* cit., p. 104.

⁴⁷ The social doctrine of the Catholic Church has been urging the establishment of a global governance since long, with the aim of 'providing more justice, transparency and responsibility on the financial markets of the world'. A. LUCIANI, *Etica, economia, finanza globale* (Città del Vaticano, Libreria Editrice Vaticana, 2008), p. 105. It may be interesting to examine the current reformist ideas of a European Financial Supervision through the work of the de Larosière group. This group is chaired by Jacques de Larosière, who was Governor of the Banque de France, President of the EBRD, and Managing Director of the IMF before. Thus, the suggestions of this group may rightly be considered as coming from 'inside of the system'.

⁴⁸ Cf. A. LUCIANI cit., pp. 94-97.

distribution, particularly where and when the overtaxation of work incomes jeopardizes the living standard of families. One should not forget that the *person* and his/her good is the eternal measure for the evaluation of international financial and economic processes.⁴⁹ This is why we think that speculative – negative and short-term – futures contracts that fundamentally and heavily jeopardize the crucial actors and interests of national economies should be prohibited or at least strictly limited by law. One has to bear in mind that if the ‘political’ does not coincide with the ‘state’ any more, as it permeates the sub-state sphere as well, if it concerns the public good to a great extent, then governance cannot be limited to state government either. It has to comprise the whole dimension of the ‘political’ up to the global level, since it is there that those financial and economic processes that determine the common good to the greatest extent (and can therefore be considered as public affairs) take place. Thus, empirical and normative concepts of ‘global governance’ cannot be circumvented, neither in theory nor in practice. According to John Rawls, the concept of fraternity has, if it is to gain a normative content, to be transformed into a criterion of justice.⁵⁰ While we do not think that this would be the ultimate and only meaning of fraternity (and it cannot be decided either whether the classical concept of ‘political friendship’ or the modernist concept of ‘fraternity’ fits the concept of good governance better) it seems certain that these concepts demand, in a contemporary procedural sense, at least the involvement of the citizens and their communities as partners in the determination and the accomplishment of the common good, from local relations up to the global level of governance. At any rate, participation and subsidiarity are the principles representing the essential – one might say fraternal – equality of the citizens in the functionally hierarchical governmental relations, in the active formulation and determination of the common good. Particular political communities, if based on political friendship, can

⁴⁹ A. LUCIANI cit., p. 106.

⁵⁰ In the most influential work of Rawls, fraternity does not only mean civic friendship and social solidarity, but in order that it can set a definite standard, also the corresponding principle of justice has to be formulated. The ‘difference principle’ expresses one of the natural meanings of the concept of fraternity, Rawls argues, i.e. the idea that we want our advantages to increase only if it is to the benefit of the least advantaged. J. RAWLS, *A Theory of Justice*, original edition (Cambridge, Ma - London, The Belknap Press of Harvard University Press, 1971), p. 105. This means the expansion of a behaviour accepted in the family to the level of social organisation, as the principle of ‘maximal gain’ is not acceptable for a family, and one wants to gain something only if it is to the benefit of the other members as well. *Ibid.* Fraternity, if it includes the requirements following from the ‘difference principle’, i.e. the possibility of preserving some kind of equality between different persons, may gain a political content, as Rawls puts it. J. RAWLS cit., p. 106. Fraternity, however, has other contents and references, too. *Ibid.*, pp. 105-106.

co-operate horizontally with other particular communities in the spirit of solidarity and fraternity. On such a basis, also a *global political community* can emerge, as a universal community of political communities, in which all these political communities have their respective common goods, while they are also committed to a more general common good.⁵¹ The great task of *global governance* is to harmonise these common goods, while observing the good of the whole of humankind and of the developing countries in particular.

GOOD ADMINISTRATION OF AFFAIRS OF GOVERNANCE

The idea of *global governance* is rooted in a long tradition of political and economic thought. One of the "returners" of political thought was the collective manner than in the social development of the state. This idea has been through some basic developments in the past decades, which led to the modern paradigm behind it seems to have changed. It is essential to understand how one can contend that the XIX century state was the climax of the political-political representation of a King or a Lord before which not only the citizens governing the country and the people. The legal system, politics of justice were later theorized by Max Weber, however provided in the XIX century. In the next decades this law-centered model has been replaced by a new approach emphasizing the state's focus on social institutions and expanding the perceived need to consider all relevant social aspects, giving a role to the governance system. In this paper, there is a few remarks of the post-illuministic State approach to governance, we will first focus on the legal system governance model and then analyze the historical changes in governance law they have changed our understanding of "good administration".

1) FROM THE STATE MODEL TO THE MODEL OF LAW

Even Roman Emperors characterized themselves as *Paterfamilias*, the Father of the Fatherland. The emperor himself in the Roman Empire a legislative purpose which was strengthened by the Christian doctrine of God and God and Loving Father. As such, the mythology of the *Paterfamilias* was related to the struggle led by Charles I. Some aspects of the historical system

⁵¹ Cf. L. STURZO, "Opere scelte di Luigi Sturzo", IV, *La sociologia fra persona e storia*, A. ARDIGÒ - L. FRUDA (eds.) (Roma - Bari, Editori Laterza, 1992), XLIX, pp. 73-74; C. MILLON-DELSOL cit., pp. 97-99.

ROBERTO CARANTA

GOOD ADMINISTRATION IN THE AGE OF GOVERNANCE

The idea of *buongoverno* is central in Luigi Einaudi's political and economical thought even if he "referred to good government more in an allusive manner than in theoretical-conceptual terms".¹ This idea has gone through remarkable developments in the past decades; so much so that the leading paradigm behind it seems to have changed. In a somewhat schematic way one can contend that the XIX century slowly saw the demise of the anthropological representation of a King as a good father wisely and prudently administering the country and the people. The legal rational pattern of government later theorised by Max Weber became prevalent in the Western world. In the past decades this law-centered model has come under attack by a new approach criticizing the narrow focus on formal institutions and expounding the perceived need to consider all relevant social actors playing a role in the governance system. In this paper, after a few remarks on the pre-administrative State approach to *buongoverno*, we will first focus on the legal rational government model and then analyse the emergent patterns to investigate how they have changed our understanding of 'good administration'.

1. FROM THE *PATER PATRIAE* TO THE RULE OF LAW

Even Roman Emperors characterised themselves as *Pater Patriae*, the Fathers of the Fatherland. The pretence implied in the formula served a legitimacy purpose which was strengthened by the Christian depiction of God as a Good and Loving Father. As such, the mythology of the *Pater Patriae* was invoked in the struggle led by Charles I Stuart against parliamentary forces

¹ P. SILVESTRI, "The ideal of good government in Luigi Einaudi's thought and life: between law and freedom", above p. 91.

poised to limit the king's powers. In this context, the king was portrayed as 'good' and showing fatherly care over and affection to his subjects.²

The *Pater Patriae* was not just a political metaphor. It could play a role – and possibly an unexpected one – in legal analysis. In England the Chancellor representing the king as *parens Patriae* could interfere in a father's right over his children in cases of mistreatment. In *Eyre v Shaftesbury* the Lord Chancellor laid down the principle according to which "the care of all infants is lodged in the King as *Pater Patriae*, and this care is delegated to this Court of Chancery".³ The 'Good King' and the *Pater Patriae* mythology were no more enough once the people started to claim the sovereignty of the nation States in the XIX century or at least to share it with the ruling monarch. At this juncture the nation State developed one very coherent approach to the issues of legitimacy and, albeit with lesser emphasis, accountability. Following the democratic revolutions, the *primus motor* is the people. In principle the people rule through the officials they have elected. The people legitimise the Parliament, responsible for making the laws, and the Executive, responsible for their application through statutory instruments and individual decisions. Recurrent elections make the officials accountable to the people. Legitimacy and accountability are the prospective and retrospective components of the representative democratic cycle. This pattern, with minor variations, has become the paradigm of the western legal tradition in the past two centuries. France has possibly given the world the most coherent picture of the modern nation State. One people – or rather, a more mystical entity: la Nation – through the electoral process gives legitimacy to a legislative body whose task is to speak the general will (la *volonté générale*) through the statutes it enacts. The same Nation gives legitimacy to all other public institutions, first and foremost to the executive power. Under the influence of Hegel and through living in a fairly authoritarian context still characterised by the prominence of kingly – *keiserlich* – power, German scholars preferred insisting on the State rather than on the people. The pattern, however, was quite the same:

The aims of the state were made to coincide with the 'public interest'. Such aims, however, all had to be defined by statute, inasmuch as the state was no longer a body free to act 'arbitrarily' – so the argument went – the *Polizeistaat* of absolutism. It was now a *Rechtsstaat*.⁴

² For discussion and references see C. CUTTICA, "'Adam and the King': The Fatherly Image of the State. Patriarchalism as Political Language in Early Seventeenth-Century England", available at www.ssrn.com.

³ 24 Eng. Rep. 659 (1722), H.I. CLARKE, *Social Legislation* (New York, Appleton, 1957), pp. 218 ff.

⁴ G. AJANI, "The Rise and Fall of the Law-Based State in the Experience of Russian Legal

The French revolution was intent on abolishing the old 'caste' system. All citizens were to be equal. The people – *la Nation* – and by consequence the State are one, undivided, and indivisible. Statutes – *la loi* – became the instruments of the *volonté générale*, inflexibly applied to all and everyone in the same way (and so full circle back to equality). *La loi* is the instrument of choice to regulate society and as such is present in many provisions of the 1789 *Déclaration*. Its characters are expressed in Article 6: “*La loi est l'expression de la volonté générale [...]. Elle doit être la même pour tous, soit qu'elle protège, soit qu'elle punisse. Tous les citoyens, étant égaux à ces yeux*”. Worship of the law spread widely in Europe. Einaudi himself was deeply steeped in this tradition, even if he became afraid of the possible tyranny of the majority.⁵ The governing role of law was widely accepted even if *État de droit*, *Rechtsstaat*, *Stato di diritto* and Rule of law do not mean the same. Indeed, under the English idea of Rule of law, parliamentary enacted law is not very much binding on all administrative authorities. These are bound by the (judge-made) common law and their decisions are therefore reviewed by the same ordinary courts acting as law givers.⁶ Max Weber gave a compelling theoretical model for this mechanism through the idea of the rule-based legal-rational bureaucratic State which was to have so much influence in continental Europe.⁷ Accordingly, it has been claimed that “Weber's conception has become the dominant account of modern government”.⁸

In essence, Weber identified administrative or bureaucratic government as a rational-legal regime in which groups of full-time, salaried officials, chosen on the basis of their credentials and placed within hierarchical organisations, conduct official business according to established rules, within a defined jurisdiction, and for defined instrumental purposes.⁹

Scholarship”, in D.D. BARRY (ed.), *Towards the “Rule of Law” in Russia?: Political and Legal Reform in the Transition Period* (New York, Armonk, 1992).

⁵ For a discussion see P. SILVESTRI, pp. 63 ff.

⁶ G. AJANI, p. 5.

⁷ See J. PONCE SOLÉ, “The History of Legitimate Administration in Europe”, in M. RUFFERT (ed.), *Legitimacy in European Administrative Law: Reform and Reconstruction* (Groningen, Europa Law Publishing, 2011), pp. 155 ff.; as to the diffusion of the model e.g. F. VELASCO CABALLERO, “The Legitimacy of the Administration in Spain”, in M. RUFFERT (ed.), *Legitimacy in European Administrative Law* cit., p. 89 f.

⁸ E. RUBIN, “It's Time to Make the Administrative Procedure Act Administrative”, *Cornell Law Rev.*, 89, 2003, p. 99.

⁹ *Ibid.*, p. 98 f.

Even at a time when, as we will see, this model is well past its heyday, its attraction is still strong enough to prod pleading for its adoption in the US.¹⁰

The mythology of the legal rational government failed to acknowledge that often enough the statutes are far from stringent in designing the conditions for the exercise of authoritative powers. More or less wide margins of discretion are left for the benefit of official decision makers.¹¹ Quite often, policy choices do not take place in democratically legitimised law-making. They happen when individual decisions are taken, in an output phase of policy delivery far removed from legitimacy-giving elections. Courts all over Europe came to share the French position according to which

discretion should not be eliminated as it is irreplaceable in allowing the administration to take decisions which cannot be foreseen *ex ante* by general regulations and similarly should not be fettered *ex post* by judicial review which could be too tight or too strict.¹²

In the end it is the *autorité administrative* that is the one saying what the actual content of any legal provision is.¹³ And it is the *autorité administrative* the one deciding which conflicting general or private interest will prevail in any given instance.¹⁴

2. GOOD GOVERNMENT AND LEGITIMATE GOVERNMENT

The legal rational Weberian government model does not seem to be too concerned with 'good government': emphasis is on legitimacy, and legitimacy is given by the compliance with the legal requirement for taking the decision. It is also worth remarking that this model is inherently formalistic in that it tends to focus on the legal measure adopted rather than on its actual – and factual – implementation.

¹⁰ *Ibid.*, p. 95.

¹¹ See the papers collected by S. PRECHAL and B. VAN ROERMUND (eds.), *The Coherence of EU Law. The Search for Unity in Divergent Concepts*, Oxford, Oxford University Press, 2008, and O. ESSENS, A. GERBRANDY and S. LAVRIJSEN (eds.), *National Courts and the Standard of Review in Competition Law and Economic Regulation* (Groningen, Europa Law Publishing, 2009).

¹² E. PICARD, "The Public-Private Divide in French Law Through the History and Destiny of French Administrative Law", in M. RUFFERT (ed.), *The Public-Private Divide: Potential for Transformation?* (London, BIICL, 2009), p. 43.

¹³ See G. DELLA CANANEA, "Beyond the State: The Europeanisation and Globalisation of Procedural Administrative Law", *Eur. Public Law*, 9 (2003), p. 566.

¹⁴ R. CARANTA, "On Discretion", in S. PRECHAL and B. VAN ROERMUND (eds.) *cit.*, pp. 185 ff.

The emphasis laid upon the principle of legality completely overshadows all other aspects that can be listed to describe efficiency in policy implementation. Especially when coupled with the margins of discretion allowed to decision makers, the Rule of law means a focus on procedures rather than results, input, rather than output. The rule of law is therefore a quite weak base for accountability. In the *Eingriffsverwaltung* the citizens might very well be happy enough to have any mistake in the decision making process found out, with the final decision taken against their interests being in the end quashed. In the *Leistungsverwaltung*, however, the concern is about receiving the best quality services possible, and procedural niceties are of little interest. What is relevant is the result, the output. In many ways, *ex ante* legitimacy is much more a concern than *ex post* accountability in the traditional government model. It is very much focused on the input oriented legitimacy mechanism culminating in the passing of legislation. The legal rational bureaucratic Weberian model adds a sociological reconstruction to the model, but the model itself is strictly legalistic and lawyers (from bureaucrats to judges) are its guardians.¹⁵ Effectiveness in policy delivery has been very low in priority. It is a bit like the institutional architecture of the nation State spending all its efforts on giving *ex ante*, input legitimacy to policy design mechanisms (mainly Parliament and other policy setting institutions, the Government nowadays included). The system betrays a naïve assumption that democratic representative institutions cannot but deliver efficiently according to the people's will. Public choice theory has shed light on the role of lobbies and special interests, which is unduly ignored by much of constitutional law thinking.¹⁶ Be as it may, in the legal rational Weberian model, the policy delivery machinery was not given sufficient attention, resulting in weak output legitimacy or rather *ex post* accountability.¹⁷ It is worth remarking that the insufficient attention to output is to some extent shared by the US system which is not based on the legal rational Weberian model. The Administrative Procedure Act and case law mainly focus on the procedures to be followed in making decisions. Due process is the main preoccupation. As has been remarked, this

¹⁵ A. VOßKUHL, "The Reform Approach in the German Science of Administrative Law: The *Neue Verwaltungsrechtswissenschaft*", in M. RUFFERT (ed.), *Legitimacy in European Administrative Law* cit., p. 93 ff.

¹⁶ See G.P. MILLER, "Public Choice at the Dawn of the Special Interest State: The Story of Butter and Margarine", *California Law Rev.*, 77 (1989), p. 83.

¹⁷ For instance, in Italy S. CASSESE, "Le basi costituzionali", in Id. (ed.), *Trattato di diritto amministrativo. Parte generale*, I, 2nd (Milano, Giuffrè, 2003), pp. 173 ff., has lamented the marginal position left to the public administration in the Constitution, which focuses much attention on the Parliament, the Government, and the Judiciary.

attitude ends up smuggling “incremental, law-discovering, adversarial approaches into a comprehensive law-creating context which encumber the process without providing any real control on its outcome”.¹⁸

3. FROM GOVERNMENT TO GOVERNANCE

Unsurprisingly, given its *nonchalant* attitude towards output, the legal rational Weberian government model fared quite poorly in the end. Results were even more meagre when the model was applied to the management of the economy, as was the case in planned or quasi-planned systems. This has led to much criticism, at times quite harsh. A distinction has been introduced between input and output legitimacy. Input legitimacy is established when citizens are sufficiently involved in policy choices (‘government by the people’). Output legitimacy depends on serving the citizens’ interests, otherwise said, in public policies being effective (‘government for the people’).¹⁹ The legal rational description of government has been characterised as substantially devoid of any link with reality, thus stigmatising “the distance which has grown up between law, as conceived in traditional legal theory, and governance (administrative practices), and the consequent detachment of jurisprudence from reality; and the rendering of jurisprudence as a ‘form of elite ignorance’, or non-knowledge of the social”.²⁰ An alternative narrative has emerged in the social sciences, focusing on governance rather than on government. It has been argued that

the basic idea [referred to when talking of ‘governance’] is that government, identified with the traditional hierarchical state form, has given way to a world of diffused authority in which the boundaries between public law and private law are blurred. Governance seems to refer to the regulatory capacity of the whole gamut of organisations in the public sphere, including governments at all levels, private firms, and associations.²¹

¹⁸ E. RUBIN, p. 104.

¹⁹ F.W. SCHARF, *Governing in Europe. Effective and Democratic?* (Oxford, OUP, 1999), pp. 6 ff.

²⁰ J. SCOTT – D.M. TRUBECK, “‘Mind the Gap’: Law and New Approaches to Governance in the European Union”; *Eur. L. Journ.*, 8 (2002), p. 8 f., referring to P. GOODRICH, “Law-Induced Anxiety: Legists, Anti-Lawyers and the Boredom of Legality”, *Social and Legal Studies*, 9 (2000), p. 150.

²¹ M. KEATING, “Europe’s Changing Political Landscape: Territorial Restructuring and New Forms of Government”, in P. BEAUMONT, C. LYONS and N. WALKER (eds.), *Convergence and Divergence in European Public Law* (Oxford, Hart, 2002), p. 13.

This can be otherwise stated:

Whereas a traditional concept of law looks for a unitary source of ultimate authority, new governance is predicted upon a dispersal and fragmentation of authority, and rests upon fluid systems of power sharing.²²

'Governance' parlance has gained wide currency and has become a sort of catchword. As such it has been captured by politicians or institutions trying to establish themselves as being poised to innovate the institutional system. The otherwise modest *2001 White Paper on European Governance* published by the (then) EC Commission is part of this league.²³ This has led to a quite generic notion of governance. In a way it covers traditional government as well as all the different institutional changes which have taken place in the past decades with the aim of making the State more efficient and responsive to the needs of the people. In this context a different development needs to be considered. The shortcomings of the legal rational model have been challenged from the point of view of managerial sciences.

4. LAW VS MANAGEMENT: THE NEW PUBLIC MANAGEMENT CHALLENGE TO THE LEGAL RATIONAL PARADIGM

The legal rational Continental European model failed at first to make major inroads into the US. After the American revolution, a sort of 'gentlemanly government' was set up, substantially awarding administrative functions to amateur gentry who happened to be linked with the political party having won the elections.²⁴ With the increase of functions at federal level linked to the westward expansion the need for a more professional approach to government could not be any longer eluded. This led to the 1883 civil service reform. However, to avoid the feeling of any return to a 'gentlemanly government'.

The Civil Service Commission pointedly described the examinations that were required for civil service positions as practical in nature and pitched at a modest intellectual level, not aimed at establishing a college-trained aristocracy. In adopting a civil service system, the United States was participating in an international trend towards a

²² J. SCOTT – D.M. TRUBECK, 'Mind the Gap' cit., p. 8.

²³ COM (2001) 428, at p. 7 f.; see the analysis by J.B. WIENER, "Better Regulation in Europe", above fn, pp. 447 ff.

²⁴ L.S. LUTON, "Administrative State and Society: A Case Study of the United States of America", in B.G. PETERS and J. PIERRE (eds.), *Handbook of Public Administration* (London, Sage, 2003), pp. 170 ff.

merit system; but in the United States such a system was a direct challenge to patronage and rotation. The patronage system had lost favour because of its participation in the general decline in morality found throughout American society. Still, in order to succeed the merit system had to offer more than a return to morality; it had to offer new values that could counter patronage's claims to democracy and responsiveness. *Merit's new values were derived from business* – economy, efficiency and the ability to deal with the increasingly complex affairs of an industrial and urban society. Promotion of the ideal of a 'businesslike' government in the drive for civil service reform may have been the most lasting impact of the Republican era on public administration. [...] it is this establishment of the business ideal that represents the historical origin of 'modern institutional politics in America'.²⁵

While in Continental Europe the legal rational tradition demanded public servants knowledgeable in the laws, in the late '80s and early '90s the US saw the rise of scientific management i.e. 'business-like' approach to administration. This peculiar approach lost part of its allure in the New Deal era, when the tasks given to the administration grew considerably, only to re-emerge again once the fiscal crises of the '1970 brought the efficiency imperatives back to the fore.²⁶ In the past two decades, the advent of New Public Management (NPM) "has reoriented the rendering of public services towards efficiency by means of redefining governmental structures in resemblance to private sector enterprises", particularly through the enhancing of managerial freedom and the reducing of political interference.²⁷ Once again the pendulum has swung back to the business model in administration. "The NPM movement has sought to shift the bureaucratic nature of institutions towards entrepreneurial bodies with genuine corporate culture that embraces a consumer-sensitive approach".²⁸ The managerial approach to governance has seen an evolution from quantity (management by objectives MBO) to quality (total quality management TQM). Customers have also been involved in defining quality (the public choice component of new public management NPM has been developed).²⁹

²⁵ L.S. LUTON, p. 172.

²⁶ See A. ROBERTS, "Harris' Mirage: The Positive Service State", available at www.ssrn.com.

²⁷ J.M. AZPÚRUA ALFONZO "Consumerism, Marketization, New Public Management and the Citizen-State Relationship", in www.ssrn.com.

²⁸ *Ibid.*

²⁹ C.J. HEINRICH, "Measuring Public Sector Performance and Effectiveness", in B.G. PETERS and J. PIERRE (eds.), *Handbook of Public Administration* (London, Sage, 2003), pp. 27 ff.

5. GOOD GOVERNANCE AND EVALUATION

Evaluation is clearly critical for assessing the quality of any governance system. “Accountability – to legislative bodies, taxpayers and program stakeholders – is a primary goal of public sector performance measurement”.³⁰

Governance is often said to be output oriented rather than input oriented. If this is so, the outputs need to be measured. “To dissect how the implementation process operate and to what extent the expected impact has been realised is food for thought for evaluation”.³¹ Evaluation studies have grown in the past decades. Indeed, “The accountability and transparency of the public sector is one of the driving forces behind this”.³² Actually evaluation should start before any measure is taken (so called *ex ante* evaluation) as decision-makers strive to divine which means would be conducive to the ends they have in mind. Somewhat of a bridge between *ex ante* and *ex post* evaluation is organisation evaluation. This should be performed when considering the means available, but also when evaluating the strengths and the weaknesses in the actual delivery of the chosen policy. From an output based perspective, however, the more significant tools are process and impact (effectiveness) evaluations. The former focuses on the question whether policies have been implemented in the way they were intended to, while the latter is used to ascertain whether the goals have been attained.³³ Of course, classification may diverge. According to a different view, one must distinguish between different categories of performance information including: 1) input info (e.g. resources and staff); 2) process information (e.g. workload and job complexity); 3) efficiency info (e.g. productivity and unit costs); 4) output (products and services delivered); 5) outcomes (in relation to intermediate or end goals), including quality assessment; 6) impact.³⁴ It goes without saying that impact evaluation is the more relevant one when assessing whether a system conforms to a good governance pattern. In time, emphasis has shifted from mere output, mainly focusing on costs on the lines dictated by an ideology demanding the rolling back of the borders of the State, to outcomes, which encompass quality. The UK experience on managing local services is quite significant. While the Tories

³⁰ *Ibid.*, p. 25.

³¹ F.L. LEEUW, “Can legal research benefit from evaluation studies?”, *Utrecht L. Rev.*, 7 (2011), p. 53.

³² *Ibid.*, p. 54.

³³ *Ibid.*

³⁴ C.J. HEINRICH, “Measuring Public Sector Performance and Effectiveness”, p. 26.

under Margaret Thatcher pushed compulsory competitive tendering (CCT) mainly as a way to reduce costs, Blair's Labour shifted the emphasis on quality through Best Value. This shift, of course, made evaluation much more complicated, requiring the setting of a large number of standards and the need for ad hoc audit commission.³⁵ With the reforms recently introduced, Italy seems very much going down the same path of measuring and standards.³⁶

6. CONCLUSIONS WITH AN EYE TO THE EU

The past decades have seen a shift of interest from legality and input to performance and output. A well-functioning democratic society probably needs a combination of both, with evaluation becoming a relevant tool for voters' choices. How can the 'goodness' of government be assessed at EU level? Before answering the question, the peculiarity of the EU institutional framework needs to be recalled. A number of seminal judgements by the European Court of justice starting from *Van Gend & Loos* dispelled the initial reconstruction of the (then) EEC as one more instance of intergovernmental cooperation.³⁷ The problem then become: what was indeed the (then) EEC? Saying that it was a *sui generis* organisation failed to mask the absence of a clear view of the new phenomenon:³⁸

³⁵ For a mixed review see PH. JAMES, P. HIGGINS and I. ROPER, "Best Value: Is It Delivering", *Public Money and Management*, 24 (2004), p. 251. The new Tory government is working on a new evaluation system.

³⁶ The main texts are L. 4 marzo 2009, n. 15 – "Delega al Governo finalizzata all'ottimizzazione della produttività del lavoro pubblico e alla efficienza e trasparenza delle pubbliche amministrazioni nonché disposizioni integrative delle funzioni attribuite al Consiglio nazionale dell'economia e del lavoro e alla Corte dei conti", and d.lgs. 27 ottobre 2009, n. 150, in "materia di ottimizzazione della produttività del lavoro pubblico e di efficienza e trasparenza delle pubbliche amministrazioni". See F.G. GRANDIS, "Luci ed ombre nella misurazione, valutazione e trasparenza delle performance", *Giornale di diritto amministrativo* (2010), p. 23, and V. TALAMO, "Pubblico e privato nella legge delega per la riforma del lavoro pubblico", *Giornale di diritto amministrativo* (2009), p. 468.

³⁷ Case 26/62 [1963] ECR 1; see A.J. MENÉNDEZ, "The European Democratic Challenge: The Forging of a Supranational *Volonté Générale*", *Eur. Public Law*, 15 (2009), p. 281; M. DANI, "Constitutionalism and Dissonances: Has Europe Paid Off its Debt to Functionalism?", *Eur. Public Law*, 15 (2009), pp. 329 ff.

³⁸ The now vanished prospect of a 'Constitution' has led to much debate as to the nature of the new EU: among many contributions see M. POJARES MADURO, "The Importance of Being Called a Constitution: Constitutional Authority and the Authority of Constitutionalism", *Int. Journ. Const. Law* (2005), p. 336; A. VON BOGDANDY, "The Prospect of a European Republic: What European Citizens are Voting on", *C.M.L.Rev.*, 42 (2005), p. 913.

We are seeing in Europe the creation of a new form of political order and [...] the tendency to interpret it using existing categories, whether as a state, a federation, a confederation or an international organisation, represents another instance of the statist fixation in social sciences.³⁹

The peculiarity extends to the way the EU is actually 'administering' the law. This is the aspect on which good government/governance mostly focuses. Even if the number of European agencies is on the increase, only rarely are European institutions charged with the administrative execution of EU rules.⁴⁰ This task is normally given to administrations in the Member States or is performed through collaborative procedures involving both European and national or sub-national institutions.⁴¹ There are two consequences to this. On the one hand, European institutions mostly enact rules, quite often primary rules in the sense both that they take precedent over national rules and that national rules might be needed to implement EU rules. When we are talking of EU administrative law, we are encompassing what in its substance is primary or secondary rule-making as well as adjudication.⁴² This is a departure from traditional administrative law, which rather focused on individual decisions (possibly extending to secondary rule making in some jurisdictions). On the other hand, Member States still retain some procedural autonomy in choosing the rules applicable to the procedures – or procedural phases – taking place at national or sub-national level. As has been remarked, EU administrative law is

a system which combines the particularities of the *functional* unity of administrative tasks undertaken by actors separated *organisationally* (or perhaps structurally) but which is engaged in often intense *procedural* cooperation. The intense procedural cooperation in turn often leads to the creation of new organisational forms.⁴³

³⁹ M. KEATING, "Europe's Changing Political Landscape: Territorial Restructuring and New Forms of Government", in P. BEAUMONT, C. LYONS and N. WALKER (eds.), *Convergence and Divergence in European Public Law* (Oxford, Hart, 2002), p. 11.

⁴⁰ E. CHITI, "Towards a Model of Independent Exercise of Community Functions", in R. CARRANTA, M. ANDENAS and D. FAIRGRIEVE (eds.), *Independent Administrative Authorities* (London, BIICL, 2004), pp. 205 ff.

⁴¹ P. CRAIG, *EU Administrative Law* (Oxford, OUP, 2006), p. 57 f.; R. MEHDI, "L'autonomie institutionnelle et procédurale et le droit administratif", in J.-M. AUBY et J. DUTHEIL DE LA ROCHÈRE (dirs.), *Droit Administratif Européen* (Bruxelles, Bruylant, 2007), pp. 685 ff.

⁴² To this some soft law instruments giving indication as to how the Commission intend to use its discretionary powers must be added: see H.C.H. HOFMANN, "Negotiated and Non-Negotiated Administrative Rule-Making: The Example of EC Competition Policy", *Common Market L. Rev.*, 43 (2006), pp. 158 ff.

⁴³ H.C.H. HOFMANN, "Seven Challenges for EU Administrative Law", in K.J. DE GRAAF, J.H.

In some ways, the peculiar task (regulation) normally given to EU institutions is the target for the modernising trend going under the label of better regulation. This trend was given impetus by the 2001 White Paper on European Governance which acknowledged the need for better quality regulation.⁴⁴ In this context, regulatory impact assessment and cutting red tape are relevant avenues for improving governance.⁴⁵ When we come to more traditional administrative activities – such as the adoption of individual measures – the approach is more linked to the traditional legal rational Weberian pattern. Review of these measures is legality review, that is mainly input oriented. This approach is confirmed by other rules. Art. 41 of the Charter of fundamental rights enshrines a ‘Right to good administration’ which include, apart from the right of access and the duty for the decision maker to give reasons, a further duty to act ‘impartially, fairly and within a reasonable time’, and a right to be heard for those potentially affected by an individual measure. We are thus confronted with some sort of double speed approach to good governance. Regulatory measures, besides complying with legality rules, must undergo evaluation tests, while individual measures only comply with the former. In the first pages of a leading book on public administration we read:

With some exaggeration it could be argued that while previously legitimacy was derived from the public and legal nature of the public administration, legitimacy is currently (and to an increasing extent) contingent on bureaucracy’s ability to deliver customer-attuned services swiftly and accurately.⁴⁶

If this is so, the good administration principle as enshrined in Art. 41 of the Charter seems a bit out of sync with more recent developments. It is fair to remember that policy implementation is rather the task of Member States in the EU. However, it would be sensible to update the provisions on good administration into a more comprehensive – and more modern – good governance.

JANS, A. PRECHAL and R.J.G.M. WIDDERSHOVEN (eds.), *European Administrative Law: Top-Down and Bottom-Up* (Groningen, Europa Law Publishing, 2009), p. 42 f.

⁴⁴ COM (2001) 428, p. 7 f.; see the analysis by J.B. WIENER, “Better Regulation in Europe”, *Current Legal Problems*, 59 (2006), pp. 447 ff.; H. XANTAKI, “The Problem of Quality in EU Legislation: What on Earth is Really Wrong?”, in *Common Market L. Rev.* (2001), p. 651.

⁴⁵ See J.B. WIENER cit., p. 506.

⁴⁶ B.G. PETERS – J. PIERRE, “Introduction: The Role of Public Administration in Governing”, in B.G. PETERS and J. PIERRE (eds.), *Handbook of Public Administration* (London, Sage, 2003), p. 3.

ANDRÁS ZS. VARGA

LEGAL CONTROL OF ADMINISTRATION:
PREMISE OF GOOD GOVERNMENT

1. DEMOCRACY, RULE OF LAW AND MECHANISMS OF CONTROL OVER PUBLIC POWER

One of the common European beliefs is that no power can be exercised without control. The two main roots of control are represented by the principles of *democracy* (and political control based on participation) and of *rule of law* (also known as constitutionalism, *rechtstaat*, legality and expressed by legal control). Democracy as a historically bound (or singular) component and rule of law, combined with observance of personal (human) rights and freedoms (as universal substance) are theoretically appropriate instruments of good government. If we have a look at the political and legal situation of present Europe, deficiencies of democracy and legality should be considered. The growing impact of the European Union – often described as functioning without proper democratic control – makes parliamentary legislation – and parliamentary sovereignty – more and more imaginary: Parliaments of European states function rather as secondary rule-makers than primary decision-makers.¹ The Treaty of Lisbon aims at a more palpable democratic control, but it's only just coming into force, and its real effects have not been apparent yet. However, formal ways of control can be as exhaustive as possible, for most of the individuals in Brussels (or Strasbourg) and all of its institutions and instruments are (and will be) too far away. Local questions are to be answered by local institutions. On national (state) and sub-national (territorial and local self-governments in Hungary) level democratic representation and

¹ See opinions of A. Tomkins, C. Harlow and M. Loughlin in N. BAMFORTH – P. LEYLAND (eds.), *Public Law in a Multi-Layered Constitution* (Oxford - Portland, Oregon, Hart Publishing, 2003).

its political instruments of control can be considered to be stable.² Thus I will pay less interest to them. Without under-estimation of importance of democratic control we will focus on alternative instruments of legal control of exercise of public powers, because problematic situations of everyday life have more and more been handled as legal questions; consequently their solutions need easily accessible legal instruments. This consideration is based on the permanently growing number and extent of statutory and non statutory regulations.³ There is no doubt that judicial review plays a crucial role in legal control of executive power either regarding rule making (controlled by constitutional courts or institutions with the same competence) or concerning effective administration (controlled by regular or administrative courts). The role of courts can be underpinned by certain supervision tools (appeal, other forms of internal remedy) within the system of administrative bodies.⁴ Even if jurisdiction of the European Court of Human Rights has an important and substantive effect on judicial procedures and jurisdiction of European states,⁵ judicial review and inner administrative supervision have still been too rigid and formal. Some of their limits are as follows:

a) These ways of remedy are effective if substantial rules or principles of legality are affected or personal rights are breached seriously, but they cannot serve as appropriate instruments for minor (and everyday) faults of administration. If private bodies are involved in performance of public duties (and the target of public bodies is governance instead of effective administrative decision-making) the conventional judicial review is not applicable.

b) Similarly, administrative abuses favorable for individuals can remain in force; hence the affected party is not interested in contesting them.

c) Even if administrative justice is applicable, judicial review may redress erroneous administrative acts, but cannot serve to award damages or to compensate pecuniary or personal losses.

One is not far from the truth when thinking that traditional instruments of legal remedy should be completed for some situations with less formal, for

² See N. CHRONOWSKI – T. DRINÓCZI (eds.), *Európai kormányformák rendszertana* ('System of the European Forms of Government') (Budapest, HVGORAC, 2007).

³ See P. CRAIG, *Administrative Law* (6th edition) (London, Sweet & Maxwell, 2008).

⁴ *Principles of Administrative Law Concerning the Relations Between Administrative Authorities and Private Persons*, Strasbourg, Council of Europe, Directorate of Legal Affairs, 1996.

⁵ See R. SEERDEN – F. STROINK, *Administrative Law of the European Union, Its Member States and the United States. A Comparative Analysis* (Antwerpen - Groningen, Intersentia Uitgevers, 2002) and M. ELIANTONIO, *Europeanisation of Administrative Justice? The Influence of the ECJ's Case Law in Italy, Germany and England* (Groningen, Europa Law Publishing, 2009).

other aims with special institutions and procedures. Ombudspersons,⁶ public prosecutors⁷ and ordinary civil proceedings of courts⁸ could have important roles in effective legal control of administration and could lead to a better government.

2. TWO EXAMPLES POINTING AT SITUATIONS WHEN FORMAL CONTROL IS NOT SUFFICIENT

2.1. *City-parking and formal legal control*

Long lasting and unsolved damage was caused in the Hungarian Capital by the administration of city-parking delegated to private companies.⁹ The regulation supervised by the Constitutional Court,¹⁰ was amended several times,¹¹ and one of the last re-regulations made the role of private companies in maintenance of parking places exclusive.¹² The maintainer companies started an enormous number of civil lawsuits against persons accused of parking without paying, most of them years after the real parking events. The first court-decisions were uncertain regarding the nature of legal relations in the cases. Some courts considered that fee-pretensions can be sequestrated as taxes (*public law execution*), others considered the civil law procedure inevitable (*civil law execution*). Finally the Supreme Court decided in 2005, that civil law execution is the acceptable way since parking is a fact featuring in civil law. However, some questions remained open, like the gap between the accountability of the owner and that of the real driver of the car in the case.¹³ Amalgamation of elements of public law and civil law relations lead

⁶ See A. Zs. VARGA, "The Efficiency of the Ombudspersons' Actions in Hungary", *Jahrbuch für Ostrecht*, 1 (2009), pp. 119-126.

⁷ See ID., *Reflection Document on Prosecutors' Competencies Outside the Criminal Field in the Member States of the Council of Europe*, CPGE (2005), 02, Strasbourg, CoE, 2005, and *Report on the Role of the public prosecution service outside the field of criminal justice*, CCPE-Bu (2008), 4 rev., Strasbourg, CoE, 2008.

⁸ See CRAIG cit., and T. CORNFORD, *Towards a Public Law of Tort* (Hampshire - Burlington, Ashgate, 2008).

⁹ Decree 38/1993. (XII. 27.) of the Capital Council on City-parking.

¹⁰ Decisions 958/H/1993. AB (ABH 1994, 781, 783.), 31/1996. (VII. 3.) AB (ABH 1996, 285), 1256/H/1996. AB (ABH 1996, 789), and 1538/B/1996. AB (ABH 2001, 1198).

¹¹ Decree 19/2005. (IV. 22.) of the Capital Council on City-parking.

¹² Decree 24/2009. (V. 11.) of the Capital Council on City-parking.

¹³ See the Civil Law Resolution for Uniformity of Jurisdiction No. 2/2006. on parking and parking fee.

to the defencelessness of the private person who lowers him/herself by parking in a city and commits some minor faults (exceeding with minutes of the paid time, losing the ticket, etc.). Due to outsourcing of the basically public duty the private persons lose the protection granted by public law but they are not placed in the equal position of a civil law contractor. This anomaly was managed by the Constitutional Court which annulled the decree on city-parking¹⁴ that led to a new – this time statutory – regulation by the Parliament.¹⁵ This new act does not change the previous situation: due to the amalgamation of public and private law relationships, no formal revision by administrative law courts could apply against the administration of city-parking, in essence against a duty of public bodies outsourced to private companies.

2.2. *Political disturbance and police attacks*

It is not questionable that police actions against the ‘regular’ political disturbances since autumn 2006 were an effective exercise of public power. One of the peculiarities of anti-demonstration actions of the police is that these measures are not formal, written and contestable (or appealable) acts of an administrative body. Since these measures are oral and immediately executable there is no efficient form of control which could stop the legal force of an occurring breach of rights. However, there is a kind of legal relation between the individual affected and the police, and within this legal relation any harm caused to the individual must be considered. The Supreme Court was aware of this aspect¹⁶ when it ruled that even if the oral instruction of the police cannot be contested on the site a later decision on a claim (allowed by law) to the chief of police can be supervised by the administrative court. The police-decision on claim focuses only on legality (reasonableness and proportionality certainly within it) and judicial review may be asked only if the police decision is itself illegal. Consequently formal redress on administrative and judicial ‘ways’ is not appropriate to eliminate personal inconvenience. The Parliamentary Commissioner for Civil Rights could complement these instruments with its special point of view. If we take only one event, the police attack on the evening of 11th of April 2008 at Chain Bridge – Adam Clark

¹⁴ Decision 109/2009. (XI. 18.) AB (ABK XVIII. 11.).

¹⁵ Acts XLVI and XLVII of 2010 on amendment of acts regardig parking.

¹⁶ See A. LAPSÁNYSZKY, *A hatósági döntések* (‘Decisions of Administrative Authorities’), in A. PATYI (ed.), *Közigazgatási hatósági eljárásjog* (‘Administrative Procedures’) (Budapest-Pécs, Dialóg-Campus, 2009), p. 287.

Square, the Parliamentary Commissioner discovered some grievances pointing to deeper problems than formal legality/illegality:

The behavior of the Police was deceptive because the former demonstrations [with the same aims, explanation by the Author] were not prohibited or the notification of demonstrations by the organizers were not rejected, no written or verbal objections were formulated regarding them. [...] Police attacked people – who did not commit any violent act – who were not participating in that moment at the demonstration but only were tending to join demonstrators [...] before starting the attack the organizer was not informed that the demonstration had been considered to be illegal [...], calling to stop the demonstration not perceptible for every participant cannot be considered to fulfill [...] legal prescriptions [...] time left before the attack was not enough to allow them to leave the location voluntarily.¹⁷

The final remedy for persons harmed by police attacks was given not by a formal review (of the police decision on claim) but by a civil lawsuit aiming for indemnity or recompense for damages and injuries caused by the exercising of public power. Thus the Metropolitan Court¹⁸ ruled that police shooting with rubber bullets on 23rd October 2006 hurt human dignity and the right to personal integrity of the affected person. The Court considered 3 000 000 Ft (about 10 000 EUROS) and its interests to be adequate to compensate the harm having been caused. In its judgment the Court stated that “harm was caused by officers of a public body whose duty was precisely to protect the personal integrity of the injured individual” (the plaintiff of the litigation).

3. ALTERNATIVE FORMS OF CONTROL I - PROTECTION OF RIGHTS BY OMBUDSMAN-LIKE INSTITUTIONS

Alternative forms of control can be reasoned in a simple way by the role of ombudsmen. Dissolution of boundaries between the fields of public and civil law, public services taking the traditional place of public administration roles back the role of classical instruments of legal redress since these tools do not apply in the corporate and private sphere. On the other hand traditional civil lawsuits are long and expensive, thus it is not a perfect instrument for quick

¹⁷ B. HAJAS (ed.), *Gyülekezési jogi projekt* ('Project of Right to Assembly') (Budapest, OBH, 2009), pp. 75-76.

¹⁸ Decision No. 37.P.21.610/2009/6. of the Metropolitan Court was approved by Decision 2.Pf. 21.608/2009/4. of the Budapest Court of Appeal, see: <http://www.birosag.hu/engine.aspx?page=anonim>

elimination of the faults and maladministrative acts of the executive. Thus legal protection by ombudsman-like institutions is gaining more and more importance, and its focus is moving from the formal administrative decision-making process to the less controlled activity of private companies working in the sphere of public services. Ombudsmen by their *flexible proceedings* may concentrate on the relation between an individual and public or private body being effective in a powerful position, while leaving out of interest the origin of this power. Ombudsmen are helped by the stabilization of the substantial content of rights by international documents. If we complete our starting point with the indeterminate scope of courts whether their duty is to protect individual rights against the power of state or 'only' to rectify particular encroachments of rights,¹⁹ then we have a clear role of ombudsmen. In all those situations when an individual (standing in a public-law-relation directly with a body of the executive branch or indirectly with a private body ensuring public services and receiving its power from the executive) has his/her rights violated, and legal redress could be excluded or accessible only with unreasonable costs or efforts, then the individual has a sole support: the ombudsman. Consequently, although the institution of ombudsmen is not considered to be an avoidable function of the constitutional state (by theoretical thinking),²⁰ it is necessary in the public law relations of the 21st century. European legal literature defines ombudsman-like institutions by their basic peculiarities (irrespective of the special forms of their legal regulations in different countries). The first group of peculiarities consists of *independence* and *mandate from Parliament*. The second group regards the criteria of proceeding: *control* of public bodies and those who can offer public service, *protection of the personal rights* of individuals. Fulfilling its duties the ombudsmen cannot avoid a glance to legality, reasonableness and due process of the controlled activity and they are empowered with a large scale of inquiry-instruments and rights. Finally the following special measures make up the third group of characteristics. Ombudsmen cannot emit legally binding decisions, their 'way of speaking' is criticism and recommendation (in special cases ombudsmen also may initiate criminal, disciplinary, administrative and law-making proceedings of the competent authorities). The Hungarian ombudsman (there were four elected officials for civil rights, for national and ethnic minorities rights, for data protection and ensuring freedom of in-

¹⁹ J. MILES, *Standing in a Multi-Layered Constitution*, in BAMFORTH – LEYLAND cit., pp. 407-412.

²⁰ See *Principles* cit., p. 34.

formation and for rights of the next generations since 1st January 2012 there is only one ombudsman) is elected for six years, may control all the public and public-service bodies. The instruments of investigation – based on a claim or initiated *ex officio* – are extremely wide, any file may be inspected, and any officer may be questioned. His/her proceeding is guided by very few rules – their investigation is not a formal but a ‘personal’ one.

4. ALTERNATIVE FORMS OF CONTROL II - PROSECUTORS OUTSIDE THE CRIMINAL LAW FIELD

4.1. *Position of prosecutors and public administration*

Hungarian prosecutors have certain tasks regarding administrative proceedings. If the legality of a decision of an administrative body *not supervised by administrative courts* is questioned, prosecutors may investigate it and take certain measures. The position of a prosecutor when controlling the legality of an administrative act is external, he or she does not enter into the legal (administrative) relationship between the individual party and the public body (authority). If the prosecutor formulates an objection against an administrative act the public body has a single duty: to answer the objection. In other words, objection is not legally binding. If the public body agrees with the prosecutor’s position and decides to amend or cancel its former administrative act, this is its own decision. If not, the prosecutor has the opportunity to ask the Court to rule on the objection and its refusal. On the other hand if the objection of the prosecutor is initiated by the individual party he or she has only the right to obtain an answer from the prosecutor, but it is not legally binding to enforce a positive act on behalf of the prosecutor.

4.2. *Possible actions of prosecutors*

The most – but as was mentioned, still without a legally binding force – e powerful actions of the prosecutor are the *objection* and the legal action, since these may affect the administrative decision in the case (if the public body agrees with the objection or the Court rules to accept it). There is a less strong ‘version’ of objection, the so called *notice* to public bodies if an act or nonfeasance is illegal but the ‘level’ of illegality is low. Besides the formal measures of control prosecutors may initiate criminal, disciplinary or special administra-

tive proceedings. Another important power of prosecutors is that any warrant of apprehension and irregular perquisitions (during the night or without presence of the (convicted person) in an administrative procedure is executable only with the consent of the competent prosecutor. Coming back to objection as the most important measure; it has two main legal effects, one of indirect substantial and one of direct procedural nature. The direct procedural effect is the compulsory and unconditional suspension of execution of the objected administrative act, if the prosecutor initiates it. The other, indirect but substantial effect is conditional; this effect depends on the timing of the objection. If the objection is formulated within three years from the issue of the administrative act in case, its consequences (amendment or cancellation of the objected administrative act) may be applied irrespective of bona/mala fide of the individual parties and of vested rights. Vested rights cannot be touched if the objection is submitted after three, but within five, years. Within this period consequence of objection may be only a favourable decision to the individual party or a new sanction if it was illegally omitted. After five years objection may have de facto effect only if the objected administrative act was influenced by a crime judged by a court. In any other case objection is virtual ('matter of principle'), without direct effect, aiming only at pronouncement of illegality of the objected administrative act (virtual rectification of the violated order of law). Of course, objection leads to substantial effect only if the administrative body agrees with it and reconsiders its formal decision or the Court orders it to do so.

4.3. *Non-penal tasks of prosecutors in Europe*

Although jurists think that prosecutors have almost only criminal law tasks, administrative and civil law competencies are not unknown in Europe.²¹ The Committee of Ministers of the Council of Europe on 6 October 2000 has adopted Recommendation to Member States – Rec (2000)19 – on the Role of Public Prosecution in the Criminal Justice System. This Recommendation specifies the situation of the public prosecutors and public prosecution services in the criminal justice system and their basic principles of operation as well, but it does not deal with the role of the prosecutors beyond the criminal justice system. In several European countries public prosecution service tasks outside the criminal field are similarly of fundamental impor-

²¹ See VARGA, *Reflection document* cit., and ID., *Report* cit.

tance. If we have a look at tasks outside the criminal field in the Member States, it can be seen that the tasks of the prosecutor could basically be classified into two main groups. *Civil law tasks* – including commercial and labor law competencies as well – belong to the first group, while the second group consists of *administrative law tasks*. The second main group of prosecutorial tasks outside the criminal field includes different measures of the prosecutor which serve a special control on the legality of the administration's operation from a constitutional point of view. Many possible measures could be taken by the prosecutor in connection with this area: in some countries the supervision of decisions of several administrative authorities, appeals, and other forms of legal remedy could be used. Moreover such important powers are provided for prosecutors as the supervision of constitutional requirements of domestic law and of course the power of initiating constitutional court procedure. In other countries there are prosecutorial competencies connected to disciplinary measures against the members of administrative authorities, judges, prosecutors, police officers and other persons working in public service. Reference to the *state interest* is the most obvious among the legal bases (*causa*). This appears when the prosecution of the member state has shown competence in enforcement of (defending) the claim of the state – first of all its claims relating to property. The protection of *public interest* is another characteristic referential base for prosecutors in the cases of competences outside the criminal sector. It has more significance when relating to the regulations for prosecutors. It is a synonym of legality in some cases and, accordingly, the prosecutor should intervene in some procedure of administrative or civil law if the laws of the given country were violated importantly, e.g. if an unlawful administrative decision is made, an invalid contraction is bound by the otherwise private parties or if a court decision violates the law in a way that cannot be left without (legal) remedy. In other cases the protection of public interest is close to the protection of human rights and this serves as a legal base for explication of prosecutorial intervention in the case of certain separated social groups. If we make an overview on prosecutors' activities, their main types, *possible measures*, competencies and tasks outside the criminal field in the different member states of the Council of Europe, then we would be able to give an answer to the question whether it is inevitable and correct that prosecutors – in addition to their outstanding role in criminal jurisdiction – have also tasks in the civil and administrative law area. Comparing the two groups of member states and the requirements on the prosecutors' activities, it can be stated that prosecutors' non-criminal tasks are not inevitable, but if they were to exist they would be useful and reasonable.

If prosecutors are provided with such competencies outside the criminal area, states have to ensure the rule of law and within that framework, the respect of other *basic principles* and human rights governing all democratic societies. Some of these are applications of the principles regarding organizational structure of a modern and constitutional state under the rule of law (separation of branches of power, sovereignty of the legislature, accountability of the executive and independence of the judiciary); others concern legal grounds and the extent of the prosecutors' competencies (exceptionality, subsidiarity, specialty, legality, public interest, interests of state, protection of human rights and consultative co-operation); finally some principles are of procedural nature (equality of arms, non-discrimination and impartiality).²²

5. ALTERNATIVE FORMS OF CONTROL III - COURTS PLAYING ALTERNATIVE ROLE

5.1. *Forms of legal protection*

It was markedly underlined previously that judicial control (supervision) of public (administrative) bodies has crucial importance in a constitutional state. Hence it could be strange when – from another point of view – judicial control is defined as its own alternative. The reason for judicial control being its own alternative can be discovered after a short overview of changes in legislation and jurisdiction over the last decades.

Article 8 of the more than 60 year old Universal Declaration of Human Rights declares the right for everyone to have an *effective remedy* by the competent national tribunals for acts violating the fundamental rights granted them by the constitution or by law. The Universal Declaration is not a legally binding document, but the International Covenant on Civil and Political Rights (New York, 16 December 1966) repeats the formula of Article 8 in its Article 2 para 3a. as follows: “[Each State Party to the present Covenant undertakes:] To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity”. The Covenant is legally binding. Joint interpretation of these two rules of

²² Unfortunately the list of principles is only reflected in the official opinion of the competent consultative body of the Council of Europe, see: *Opinion N° (2008) 3 of the Consultative Council of European Prosecutors on “Role of Public Prosecutors outside the Criminal Law Field”*, adopted by the CCPE at its 3rd plenary meeting, CCPE (2008) 3, Strasbourg, CoE, 2008.

the Covenant leads to the conclusion that the right to justice covers two different judicial paths. One of them is the right to (formal or procedural) review (*legal redress*) of a decision by different instruments of the procedural law (appeal to a higher forum, judicial review). On the other hand the right to justice means the opportunity to start a new, usually *civil-law procedure* in order to have the consequences of an incorrect public-law decision materially repaired.²³ In our thinking a civil law trial aiming at *material reparation* is a form of alternative legal control, since it is not a way of reviewing the administrative acts – it is launched because an administrative act causes material or personal damage but the outcome of the trial does not affect the validity of the act in the case. This substantial reparation in the context of international legal documents is a special instrument of ‘effective remedy’ and at the same time a particular fundamental right. This formulation highlights its importance: on the one hand substantial reparation is a *particular fundamental right* while on the other hand it is a basic *guarantee of other fundamental rights*. Our Civil Code offers two claims (titles) for material reparation of harms caused by public bodies. One of the claims is indemnity due to violation of personal rights, the other is recompense for damages caused by public (administrative, judicial, prosecutorial) bodies. Civil law regulations regarding the two different claims are partly convergent since rules of recompense for damages should also be applied if the plaintiff asks indemnity due to violation of his/her personal rights.

5.2. *Indemnity due to violation of personal rights*

Protection of honour and good faith goes back to “ancient laws”, originally closely linked to *iniuria*, lately known as a special tort in English law. Subsequently it was transformed into a general principle of law and – as a legal abstraction of personality – lost its former attachment to property and commercial relations.²⁴ In Hungary – even if tort of *defamation* has been known by the Civil Code since its adoption in 1959²⁵ – defamation could not be applied against public bodies until the democratic transition since it had a previous criminal (or at least disciplinary) conviction as a condition. In recent years the popularity of defamation torts (and other torts protecting personal rights) is a

²³ See M.P. SINGH, *German Administrative Law in Common Law Perspective* (Berlin - Heidelberg etc., Springer, 2001), pp. 244-270, CORNFORD cit.

²⁴ L. SÓLYOM, *A személyiségi jogok elmélete* (‘Theory of Personality Rights’) (Budapest, KJK, 1983), p. 128 and 131, on Defamation-tort: p. 166, on Privacy: pp. 213 and 229.

²⁵ Which does not mean that the socialist official legal thinking considered this regulation to be non-problematic, see SÓLYOM cit., pp. 16-21.

consequence of the favourable position of claimants: in these trials the burden of proof is reversed. The defendant (the public body) has to prove that its act is not *contra legem (civilis)*. Defense of the public body is aggravated by formulation of the Civil Code. Its text does not contain the term of illegality formally. (While in trials for damages an unsuccessful proof of illegality of the act of the public body leads to a rejection of the claim by the Court. In trials for protection of personal rights (based on defamation or similar torts) liability of public bodies is not excluded automatically if the defendant refers to its legal mandate. It has to prove that the whole administrative procedure is regular. Claims protected by these torts (e. g. utterance of violation of right by the Court, order of the Court to stop violation, prohibition of next activity presupposed to cause violation of rights, public gratification, restoration of the situation *ex ante*) are results of the *objective liability* of the offender (the public body in our case). At the same time objective liability does not lead automatically to indemnity. *Indemnity* should be paid only if the offender (the public body) is not able to prove that it has acted in a manner that can generally be expected in the given situation, its behavior is culpable (*subjective liability*). Only two special claims are exempt: compensation for expropriation or detention without conviction is paid by the State without probing the subjective 'component' of liability. Peculiarities of defamation torts give importance to one of the changes in the jurisdiction of the Supreme Court stating that "facts and evidences of a case can be observed only within the respective procedures of authorities. Reality of facts and appropriateness of legal positions cannot be challenged based on defamation (or similar) torts in civil trials".²⁶

5.3. *Recompense for damages*

One important and quite palpable peculiarity of civil trials against administrative bodies exercising public power is that – contrary to formal judicial review of administrative acts – in civil trials the defendant administrative body loses its specific position of being entrusted with state power and in the civil lawsuit has exactly the same autonomous position than the (individual) plaintiff has.²⁷ The objective side of civil liability is *illegality* of the challenged ad-

²⁶ Decision No. Pfv.IV.20.582/2007/4 of the Supreme Court.

²⁷ This consideration was not questioned even in the socialist era. See G. EÖRSI, *A polgári jogi felelősség kézikönyve* ('Handbook on civil liability') (Budapest, KJK, 1966), p. 29, see also SÖLYOM cit., p. 83.

ministrative act hence it is the intrinsic conceptual component of damage. Only illegal behavior may lead to damage; onerous consequences of an objectively legal behavior cannot be considered being 'damage' even if harm was caused; these consequences are legal inconveniences.²⁸ Objectively illegal behavior and its casual relation to the harm caused receives special emphasis when civil liability of public bodies is tried. It should be recognized that legality/illegality in connection with the activity of public bodies is never an abstraction, it should be considered as based on legal regulations. The exercising of public power is strictly regulated by law. Public bodies are created, their competencies are given, their goals are fixed, their instruments are granted and their rules of proceeding are prescribed by legislative acts. Thus – based on the same reasons than it was mentioned regarding defamation torts – it may be considered that civil lawsuit for liability of public bodies may not serve as formal remedy instrument of the administrative act in the case. Illegality as a condition of civil liability must be analyzed separately irrespective of administrative law validity of an administrative act. If illegality is the objective component of civil liability, then *culpability* is its subjective side.²⁹ Correlation between illegality and culpability is tight but asymmetric. Lack of illegality excludes culpability (or rather it makes uninterested) but from illegality culpability does not follow;³⁰ on the contrary, lack of culpability is a way of escaping from civil liability for the defending public body even if its act is illegal.

5.4. *European aspects of civil liability*

As we can see, joint interpretation of the two rules of the Covenant lead to the conclusion that right to justice covers two different judicial ways of formal review and of material remedy. Formal (or procedural) review affects validity and execution of the supervised decision, while material remedy does not have such an effect.³¹ However, although material remedy does not affect the validity of decisions it eliminates material damages or moral inconvenience caused by maladministrative acts. While formal (or procedural) review has a long history in legal theory and practice³² material remedy (or civil liability of

²⁸ EORSI cit., pp. 107-108.

²⁹ *Ibid.*, p. 124.

³⁰ *Ibid.* cit., p. 126.

³¹ See CRAIG cit., pp. 866-870.

³² See H. BARNETT, *Constitutional & Administrative Law* (7th edition) (London - New York, Routledge - Cavendish, 2009), pp. 65-67; CRAIG cit., pp. 257-273, 371-714; SINGH cit., pp. 119-242; M. KUNNECKE, *Tradition and Change in Administrative Law* (Berlin - Heidelberg - New York,

those exercising public power) is less 'chiselled'³³ even concerning public law acts in general. Grounds of formal review in different legal families are mostly common: the traditional grounds are those known as Lord Diplock' trilogy: illegality, irrationality, procedural impropriety. A fourth ground is the less traditional non-proportionality and – in some special cases – violation of fundamental rights or breach of legitimate expectations.³⁴ If we try to link the special grounds to legal principles, we can say that non-consideration of the ultra vires principle (substantive illegality), procedural faults or errors of substantive law³⁵ may lead to invalidity of an administrative act. While errors of substantive law are well known factors that make an administrative act void in the Continental practice,³⁶ in Britain "Judicial review has traditionally dealt not with the correctness of the findings as such, but with their legality".³⁷ However – mostly as a consequence of the Human Rights Act (1998) – the importance of facts is growing.³⁸ The picture is less clear if we look at civil liability and material remedy. One of the first detailed international documents in this topic is Recommendation No. R (84) 15 of the Committee of Ministers of the Council of Europe to Member States relating to Public Liability.³⁹ It is a disadvantage of the Recommendation from our point of view that one of its definitions, article 5 excludes its effect regarding acts performed in the exercise of a *judicial function*.⁴⁰ Consequently incorrect acts of courts *are certainly not* within the effect of the Recommendation. It could be a topic of another conference to discuss about the question whether activity of prosecutors in courts do is or surely is not judicial function. However, reasons of the text can be considered without answering the question of status of prosecution. The heart of the Recommendation 15 is a list of 8 principles. The most important from a

Springer, 2007), pp. 11-137; R. ERRERA, "Dicey and French Administrative Law: A Missed Encounter?", *Public Law* (1985).

³³ Hilaire Bennett dedicates only one paragraph to this question in her more than 800 pages long monograph, see BARNETT cit., p. 258; see also SINGH cit., pp. 244-270.

³⁴ KÜNNECKE cit., pp. 31, 93-105, 110-114 and 124; SINGH cit., pp. 122, 136 and 175, CRAIG cit., pp. 382 and 647, see also L.N. BROWN – J.S. BELL, *French Administrative Law* (Oxford, Oxford University Press, 2003), pp. 214-215 and 239-249.

³⁵ CRAIG cit., p. 466, BARNETT cit., pp. 66 and 718-720.

³⁶ KÜNNECKE cit., p. 133.

³⁷ CRAIG cit., p. 437.

³⁸ KÜNNECKE cit., p. 75, CRAIG cit., pp. 24 and 475-476.

³⁹ *Recommendation No. R (84) 15 of the Committee of Ministers to Member States relating to Public Liability* (Adopted by the Committee of Ministers on 18 September 1984 at the 375th meeting of the Ministers' Deputies) (Strasbourg, Coe, 1984).

⁴⁰ See also CRAIG cit., p. 998.

theoretical point of view are the first two. Principle I ensures reparation for damages “caused by an act due to a failure of a public authority to conduct itself in a way which can reasonably be expected from it in law in relation to the injured person. Such a failure is presumed in case of transgression of an established legal rule”. Principle II dilates right to reparation – at least in certain categories of acts established by the Member States – “if it would be manifestly unjust to allow the injured person alone to bear the damage, having regard to the following circumstances: the act is in the general interest, only one person or a limited number of persons have suffered the damage and the act was exceptional or the damage was an exceptional result of the act”. Professor Tom Cornford has recently dedicated a complete volume to comments on the Recommendation.⁴¹ His opinion is that the trial opportunities of an injured person are influenced by the fact that public authorities are empowered by law to exercise their powers even if the effects are contrary to the interests of private persons. Consequently the litigant can be successful mostly if the act of a public body is *ultra vires* or in other words unlawfulness is a fundamental element of civil liability.⁴² A third possible definition can be deduced from the German Civil Code: no liability without fault.⁴³ Simple negligence gives enough ground to liability of a public body even if a private party in the same situation would be liable.⁴⁴ Practically it means that a serious level of negligence – abuse of discretion⁴⁵ – is necessary, only an erroneous consideration of facts in a case is not sufficient. The last important element of liability is related to *burden of proof*: since the injured person has to prove that the public body acted in an illegal way or was seriously negligent, public bodies are protected by a presumption against their liability.⁴⁶ This presumption is maintained by the consideration of legislators and judges that public bodies act in favour of the community,⁴⁷ through fear of the courts and of the consequences of opening doors before a more favorable ruling⁴⁸ and through

⁴¹ CORNFORD cit.

⁴² *Ibid.* cit., pp. 3 and 47. BROWN – BELL cit., p. 181, *Compendio di Diritto Processuale Amministrativo*, 3th edn., F. DEL GIUDICE (ed.) (Napoli, Simone, 2005), pp. 190-192; A. IORGOVAN, *Tratat de drept administrativ*. Vol. II, 4th edn. (Bucuresti, ALL Beck, 2005), pp. 457-476.

⁴³ SINGH cit., p. 247, CORNFORD cit., pp. 10-12, BROWN – BELL cit., p. 185.

⁴⁴ CORNFORD cit., pp. 77, 139 and 142, CRAIG cit., pp. 958 and 977-978.

⁴⁵ See KUNNECKE cit., p. 37.

⁴⁶ CORNFORD cit., p. 198, see also KUNNECKE cit., pp. 144 and 212.

⁴⁷ CRAIG cit., pp. 794-795 and 852, CORNFORD cit., p. 198.

⁴⁸ CORNFORD cit., p. 196.

fear of an objectionable defensive approach of public bodies threatened by being responsible in a civil trial.⁴⁹

6. WHAT CONCLUSIONS CAN BE DRAWN?

If we look at the actuality of governments, we may see that democratic decision making is less and less autonomous. Political decision making is non-transparently 'polygonal' in the local-regional-national-(federal-)European-international fields of force and its efficiency is influenced by bureaucratic administration outspreading like a spider's web. As a consequence liberty of action guaranteed by law, and even fundamental rights of the individual (even if not considered to be a human being who is 'merely' the subject of legal regulations) cannot be applied. Complexity and meticulousness of regulations, proliferation of administrative procedures make classical ways of remedy deficient. The law assures that judicial control of administrative acts is in vain if harm to the individual party is not caused by manifest substantive illegality or procedural fault. However rigidity of administrative structures, non-perspicuity of legal regulations or their consequence, bypass the proper carrying out of governmental decisions. It cannot be left out of consideration that formal judicial review is an exceptional remedy and its inevitable attention to detail makes it efficient only if its execution is exceptional. If it is used as a daily, general and ordinary instrument of remedy, it will brake the administrative decision-making, consequently it will brake the effectiveness of the government. The Hungarian Act on General Rules of Administrative Procedures is a good example for our consideration. Either its original text or the novelistic amendments were basically failures. Neither effectuation of the interests of individual parties nor quick decision making by administrative bodies is promoted by the act. The Act reflects art-for-art points of view of drafters. It reflects a merely theoretical concept of law as construction of abstract norms rather than the living rules of behavior.⁵⁰ Some of its regulation seems to be client-centric but it is only hypocritical.⁵¹

⁴⁹ KUNNECKE cit., p. 211.

⁵⁰ Only for example: there is an article in the Act, which enlists those intermediary and procedural decisions of an authority which can be directly appealed (and not only in the appeal against the final decision on merits). This regulation can be helpful the drafter and for the law-students, but for authorities and their private parties it could be much more important the opportunity of appeal regulated just in the same article with the decision in question (e.g. rejection of a claim, cessation of the case, suspension of the procedure and so on).

⁵¹ For example: it is stated in the Act that an administrative procedure should be closed within

The enormous number of pedantic procedural regulations predestinates a great number of procedural faults which may lead to annulment of the final decision with the burden of re-starting the whole procedure. Finally in order to properly serve as 'general' rules the Act should generalize the excessively detailed rules that make it flounder when it meets the different substantive regulations. This situation is balanced by the opportunity – given in the same Act – of having special procedural rules for the certain substantive rules, which produces a strange picture: virtually only one feature is really general within the General Rules: that of the opportunity of creating exceptional rules. An important conclusion can be observed: more and more mechanistic administrative procedures require alternative forms of control. One of the alternative forms observed in this essay is the civil trial for liability (indemnity or damages). The permanently growing number of such lawsuits strengthens so that administrative bodies proceed with rather high levels of faults. This is certainly not acceptable for those who suffer inconvenience without real reasons but at length – by the ruling of the Courts that indemnity or compensation has to be paid from public moneys of the state budget – the harm is spread over the whole society. Such an improper situation of public administration can be corrected by Parliamentary Commissioners who have the duty to give effective protection to the individual against depersonalized administrative structures. Parliamentary Commissioners could be effective, if they abandon the often-found ambition of having more legal power, of becoming a super-authority, and if they focus instead on solutions of problems not perceptible for formal legal remedies. On the other hand prosecutors controlling on the grounds of common weal and by public law exercising of public powers by administrative bodies may help in bringing down the improper behaviour of the authorities. A legal system using some or many alternative forms of control will not make a government fail-safe, but it could be considered a great achievement if the number of formal judicial reviews and those of civil law trials against public bodies is sensibly decreasing. Leastwise it would make government and its control more equilibrated.

22 *working days*, which is less than 30 *days* of the former regulation. But in fact these 22 working days mean almost nothing, since it is understood by the Act as a *net and not gross* period of time inasmuch as another article of the law enlists those sub-periods of time which should not be taken into consideration when the 22 working days are counted (e.g. communication within authorities). Consequently the private party cannot forecast the date of the final decision.

ALESSANDRO CIATTI

FREEDOM OF CONTRACT AND GOOD GOVERNMENT*

1. SOCIAL USEFULNESS AND THE RESTRICTIONS ON FREE COMPETITION AMONG ENTERPRISES

Einaudi repeatedly criticized the third title of the Italian Constitution, which, like the second, “proclaimed aspirations, desires, pathways, promises”, arguing that the rights of the individual “have lost their importance in comparison with the rights of the social man”.¹ In particular, he believed that the limits imposed by the Constitution on the private economic enterprise – based on the presupposition that it would not be developed in discordance with social usefulness (art. 41, subsection 2) – had been based on a false assumption: that social usefulness was a known concept, with its clear semantic delimitation.²

Yet, any elementary book will show us that there “does not exist” a scientific definition of social usefulness. Social usefulness is not that of the “individuals” of a society; – social usefulness does not amount to the arithmetical sum of the usefulness of the individuals belonging to the society. It results from a chemical and somewhat spiritual combination from which something originates without being measurable. If we could admit for an instant the absurd hypothesis that the social usefulness of everything is equal to the sum of the usefulness of the individuals, we would find ourselves face to face with one of the most famous *pons asinorum* of economic science.³

* English revision by Sylvia Hakopian and Rachel Barritt Costa.

¹ L. EINAUDI, “Questo titolo terzo”, *Corriere della sera*, 21 May 1947, now in *Il buongoverno. Saggi di economia e politica*, ed. by E. Rossi (Bari, Laterza, 2004), p. 304.

² Italian Constitution art. 41 [*Freedom of Enterprise*]: (1) Private economic enterprise is free; (2) It may not be carried out against social usefulness or in a way that may harm public security, liberty, or human dignity; (3) The law determines and controls appropriate planning so that public and private economic activities may be directed and coordinated towards social ends.

³ L. EINAUDI, *Questo titolo terzo* cit., p. 305.

Einaudi then feared that such a provision – like all those which, in his view, were supposedly characterised by “supreme wisdom” but which effectively represented the outcome of “fighting for months to reach, in this third title, an empty compromise” – could turn into a dangerous tool in the hands of some parliamentary majority, invading, in name of the common will, the “indispensably sacred territory” of the rights of individuals.

At the time, naturally, he could not express this conception through the specific terminology to which the Italian interpreter is now accustomed (although the expression “social usefulness” has apparently never been used in EU legislation). Italian case law makes ample use of it with regard to a number of different issues. It has been invoked for the decision with regard to the legitimacy of restrictions on the opening hours of business and commercial premises⁴ and of the varied regimes of authorization that impede a wide array of disparate activities⁵ such as those which either block transfer from one place to another,⁶ forbid their expansion,⁷ or prevent the opening of a secondary entrance.⁸ It has also been invoked for assessment of the legitimacy of measures that set a tariff for goods and services⁹ as well as for justification of the prohibition against gambling¹⁰ and measures against prostitution on the street.¹¹ In the name of social usefulness, the equal protection clause

⁴ Corte costituzionale, 2.4.2003, n. 27, *Foro amministrativo-CDS*, 2003, 439; Consiglio di Stato, Sez. V, 5.5.2009, n. 2808; Consiglio di Stato, Sez. V, 12.15.2005, n. 7141; regarding TV sales, see Cassazione, 9.1.1997, n. 8313.

⁵ With regard to private surveillance activity, subject to authorization according to art. 134 Testo unico delle leggi di Pubblica Sicurezza, see, for example, Consiglio di Stato, sez., VI, 10.4.2005 n. 5282; 11.15.2005 n. 6351; 3.14.2006 n. 1309; Tribunale amministrativo regionale per la Liguria, Sez. II, 2.3.2009, n. 153; Tribunale amministrativo regionale per la Puglia, Lecce, Sez. I, 4.27.2006, n. 2334; with regard to the “commerce of articles associated with funeral services”, see Consiglio di Stato, Sez. V, 10.18.1996, n. 1244, *Foro amministrativo* (1996), 2890, as well as Tribunale amministrativo regionale per la Lombardia, Milano, Sez. III, 11.6.2002, n. 4263; advertising of cigarettes and cigars, su Cassazione, 14.9.2004, n. 18431; Cassazione, 3.23.2001, n. 4183, *Foro italiano*, 2001, I, 2219.

⁶ Consiglio di Stato, Sez. V, 23.11.2007, n. 6013 (with reference to official pharmacies); Cons. Stato, Sez. IV, 30.4.2003, n. 2327, *Rassegna giuridica farmaceutica* (2004), pp. 79, 44.

⁷ Tribunale amministrativo regionale per il Lazio, Roma, Sez. II, 3.2.1995, n. 310, *Rivista giuridica della circolazione e dei trasporti*, 1995, 1084, with reference to vehicle gasoline stations.

⁸ Consiglio di Stato, Sez. IV, 6.4.1999, n. 965.

⁹ Like those established for the services of airport handling: Tribunale amministrativo regionale per la Lombardia, Milano, Sez. I, 1.19.1998, n. 57, *I tribunali amministrativi regionali*, I (1998), p. 908; for the service of the private surveillance services: Corte d'appello di Ancona, 5.15.2004, *Diritto del lavoro delle Marche* (2005), p. 69 and the tariffs for the transport of goods: Cassazione, 9.1.1997, n. 8313.

¹⁰ Consiglio di Stato, Sez. VI, 05/06/2007, n. 2978.

¹¹ Tribunale amministrativo regionale per il Lazio, Roma, Sez. II, 22.12.2008, n. 12222, *Giornale di diritto amministrativo*, 4 (2009), p. 420.

has been understood in accordance with the discipline of bankruptcy avoidance of contract,¹² the transfer of risk in sales law,¹³ the dismissal of employees caused by the cessation of economic activities of the enterprise¹⁴ and, on the other hand, illegitimate the lack of a provision limiting the responsibility of road hauliers and truckers.¹⁵ In these examples, the list of which could be vastly extended, the clause has been used either to overcome the resistance exerted by the public powers against free competition among enterprises, or to legitimize the persistence of the distorted mechanism of competition within the market. As Einaudi had expected, the Constituent Assembly thus left the interpreters with the task of understanding the constitutional clause in terms of the idea that a certain moment may more appropriately reveal the "popular conscience". The figure that does not exist has assumed a semblance that looks like a "matter soft as wax and pliable like rubber".¹⁶ It is known that Einaudi's economic *Weltanschauung* expected the State to be responsible for carrying out strong intervention "intended to maintain unbroken the action of competition, the one true force that does guarantee observance of the common interest through composition of opposing interests".¹⁷ Accordingly, he struggled unsuccessfully to include in the Constitution an express prohibition on the passing of statutes intending to form an "economic monopoly", and, wherever these existed, he believed there should be a requirement for the legislator to impose "public control on them either by direct or delegated public administration". This would thwart the tendency of competition to hurtle fiercely towards self-destruction,¹⁸ as the latter would usher in a monopoly, which perhaps Proudhon today would recognize as a "theft", when substituting the term with his idea of property. In seeking to devise a political framework that can oppose the tendency towards monopoly, it is of interest, metaphorically speaking, to divide politicians into two ranks: those of the

¹² Corte costituzionale, 7.27.2000, n. 379, *Banca borsa e titoli di credito*, II (2001), p. 257, annot. Nivazza; Corte costituzionale, 4.6.1995, n. 110.

¹³ Corte costituzionale, 11.19.1992, n. 465.

¹⁴ Cassazione, 5.30.1995, n. 6083, *Giurisprudenza italiana*, I, 1 (1996), p. 194, in *Orientamenti di giurisprudenza del lavoro*, 1996, p. 193 and *Rivista italiana di diritto del lavoro*, II (1996), p. 698, annot. Pilati.

¹⁵ Corte costituzionale, 11.22.1991, n. 420.

¹⁶ With regard to public order, see P. MALAURIE, *L'ordre public et le contrat, Étude de droit civil comparé France-Angleterre - U.R.S.S.* (Reims, Mato-Braine, 1953), p. 4: "Tous les juristes se servent de cet mot magique pour rendre acceptables les règles et les solutions les plus diverses".

¹⁷ L. EINAUDI, "Economia di concorrenza e capitalismo storico. La terza via fra i secoli XVIII e XIX", *Rivista di storia economica* (giugno 1942), p. 64.

¹⁸ Id., "Chi vuole la libertà", *Corriere della sera* (13 aprile 1948), in *Il buon governo* cit., p. 105.

“short road”, who look to the State as the impetus capable of driving men in their economic conduct and forcing them to operate in favour of the collective good, and those whom experience has made deeply sceptical of the workability of economic planning. Men in the latter category are bitter enemies “of the idea that the whole of the economic mechanism should be taken over by the State leviathan” and do not believe that the real world is far from the abstract diagram of full competition.¹⁹ The interventions that Einaudi expected from the public powers were not limited in the *quantum* but rather were characterized by the *quomodo*. Namely, individuals were not to be told what they should or should not do: but rather, the limits should be set within which they would be able to move freely at their own risk.²⁰ Einaudi did not believe that the ideal society could be one “of equal persons”, but rather “of different men, who discover their reciprocal limits within their diversity”.²¹

2. SOCIAL USEFULNESS AND THE FREEDOM OF CONTRACT

Several concepts can be put forward, beginning with the idea of social usefulness, in order to understand the way in which the imposition of the majority could be achieved and obtained either directly by the proper statutes or indirectly by case law. In the latter instance, the court would feel free to address not so much the people “in the name of which it ought to declare the sentence” (art. 101), but rather that part of the population to which it feels the need to do so (breaching its duty to assume full responsibility over the decision). Moreover, the court could address those who it feels would support its power or at least defend its prerogatives. Einaudi wrote that hindrances to the power of the majority

are the extension of the will of the dead, who tell the living: you will not be able to operate at your own libitum, you will not be able to live the life that you like; under penalty of perjury, you must observe the rules, which we deem essential for the preservation of the State we founded. If you seek to change the aforesaid rules, you must first profoundly meditate over the issue, obtain the approval of the majority of your peers, tolerate the fact that a portion of this majority might persistently refuse to approve the deliberate changes you plan to make.²²

¹⁹ L. EINAUDI, “Liberismo e comunismo”, *Argomenti* (dicembre 1941), in *Il buongoverno* cit., p. 246.

²⁰ *Ibid.*, p. 252.

²¹ L. EINAUDI, *Lezioni di politica sociale* (Torino, Giulio Einaudi Editore, 1949), p. 230; see also ID., “La società pianificata”, in *Il buongoverno* cit., p. 289.

²² ID., “Major et sanior pars”, *Idea* (1945), in *Il buongoverno* cit., p. 90.

The idea of economic freedom corresponds unavoidably, in its juridical implication, to a given conception of the legal tool intended to achieve the negotiation, that is to say, the idea of the contract itself.²³ The law of contracts, like that of the market, can become as extensive as the need for a public intervention on the market. On the basis of a single quantitative criterion, one could conceive a law of contracts restricted to the rule, *pacta sunt servanda*, or the mere reception of the agreement in the judicial system. Conceived and comprehended freely by individuals, this reception would determine a legal rule, which the parties would be obliged to observe and could not evade. In such a way, the public powers would therefore convey to the contracting parties: “The limits that you have deliberately planned to your freedom are equivalent to the law”. Such a situation is nevertheless difficult to achieve, and brings into play the fundamental and tight – meshed law of contracts: should the agreement be conceived as a fact or rather as a value of law?²⁴ In other words, is the contract binding because it is the expression of the individual’s will,²⁵ or does it find its legal dimension because it is regulated by the public powers, in which case this would be recognized as “the monopoly of juridicity”?²⁶ That is, would “the law be the track by which the movement of the private will remain efficient”?²⁷ At this point, it is understood that the legal system does not content itself with assisting negotiation, but aims to go further. Indeed, the agreement conceived by the parties, or their will sublimated in the agreement itself, plays an unavoidably secondary role and is reduced to “a fact expected from a legal rule conditioning a legal relation that would draw from the rule, and from that rule only, its legal qualification”.²⁸

²³ Also see T. KRONMAN – R. POSNER, *The Economics of Contract Law* (Boston - Toronto, Little Brown, & Co., 1979), pp. 2 ff.; but see A. SUPLOT, *Homo juridicus, Essai sur the fonction anthropologique du droit* (Paris, Editions du Seuil, 2005), pp. 144 ff.

²⁴ B. DE GIOVANNI, *Fatto e valutazione nella teoria del negozio giuridico* (Napoli, Jovene, 1958), p. 63, see also A. MANIGK, *Die Privatautonomie im Aufbau der Rechtsquellen* (Berlin, Franz Vahlen, 1935), pp. 6, 37.

²⁵ E. DANZ, *Die Auslegung der Rechtsgeschäfte, Zugleich ein Beitrag zur Rechts- und Tatfrage*, 2. Aufl. (Jena, Fischer, 1906), pp. 6 ff., and the considerations of A. MANIGK, *Die Privatautonomie cit.*, p. 105.

²⁶ ID., *Die Privatautonomie cit.*, p. 41; A. PASSERIN D’ENTRÈVES, *Il negozio giuridico. Saggio di filosofia del diritto* (Torino, Giappichelli, 1934), pp. 42 ff., repr. by N. Irti with remarks of the Editor (Torino, Giappichelli, 2006) (see also *Rivista di diritto civile* (2007), pp. 49 ff.).

²⁷ F. VASSALLI, *Sommario delle lezioni sulla teoria dei negozi giuridici*, A. BOZZI (ed.) (Roma, Società Editrice Il Foro Italiano, 1934), p. 9.

²⁸ See again A. PASSERIN D’ENTRÈVES, *Il negozio giuridico cit.*, p. 37; F. VON HIPPEL, *Das Problem der rechtsgeschäftlichen Privatautonomie, Beiträge zu einem Natürlichen System des privaten Verkehrsrechts und zu Erforderung der Rechtstheorie des 19. Jahrhunderts* (Tübingen, Mohr (Siebeck),

In developing this assumption one could deny the parties any remaining autonomous ability to create legal relations, so that the contract would receive its force from the public powers only. Such force, in addition, would necessarily be of a "secondary and derived" nature.²⁹ The effectiveness of the contract, in the usual reconstruction, would therefore depend on the "will of the law and not (on the) will of the person".³⁰ Those who have tried to overcome this approach have either been inclined towards the search for a "supreme rule of qualification" or a rule of authorization – an "*Ermächtigungsnorm*"³¹ – that would allow them to assign the will of the individual a true legal value,³² or they have found themselves compelled to look towards an objective order which, although variable according to circumstances and places, nevertheless leans strongly toward a transcendent order of justice. As a result, its observation simultaneously becomes its implementation. Without a doubt, the judicial order hence cannot admit that the individual's power of self regulation – that is, the freedom of contract itself – can be liberated from the conditioning of such rules as those of legal origin. This is consistent with Einaudi's attitude toward legal intervention in establishing the limits within which individuals can freely exercise their individual choices. Nevertheless politicians (and therefore also jurists) of the "short road", who believe the State should drive men in their economic conduct (compelling them to operate in favour of collective usefulness), have not limited themselves to the search for a foundation of contractual freedom that would allow it to be coordinated by means of general regulation. Instead they have tried to surpass the threshold, with the result that social usefulness may go so far as to play the dangerous role of the arbiter of admissibility in the individual choices expressed by contractors.

1936), p. 51 and R. SCOGNAMIGLIO, *Contributo alla teoria del negozio giuridico* (Napoli, Jovene, 1950), p. 14 f.

²⁹ A. PASSERIN D'ENTRÈVES, *Il negozio giuridico* cit., p. 89.

³⁰ B. WINDSCHEID, *Lehrbuch des Pandektenrechts*, 9 Aufl., I (Frankfurt, 1906), p. 265; the exemplary attempt – with little success according to B. DE GIOVANNI, *Fatto e valutazione nella teoria del negozio giuridico* cit., p. 56 f. – to overcome the assumption was made by Vittorio Scialoja (*Negozi giuridici, Corso di Diritto romano nella R. Università di Roma nell'anno accademico 1892-1893*, collected by Doctors Mapei and Giannini, Rome, 1933, p. 1 f.) "Much is disputed on whether or not the productive cause of the legal relation is an accomplished fact or a rule of the law that attributes those legal effects to that fact itself [...] we believe that the only opinion that does not contrast this logic is the following: neither of the said elements can be considered the exclusive cause of the legal relation: rather both of them adapted together".

³¹ See A. MANIGK, *Die Privatautonomie* cit., pp. 119 ff. and ID., *Das rechtswirksame Verhalten, Systematischer Aufbau und Behandlung der Rechtsakte des Bürgerlichen und Handelsrechts* (Berlin, W. de Gruyter, 1939), p. 37, and also M. WEBER, *Wirtschaft und Gesellschaft*, 1. und 2. Halbbd., hg. von J. Winckelmann (Köln, Kiepenheuer & Witsch, 1956), pp. 523 ff.

³² B. DE GIOVANNI, *Fatto e valutazione* cit., p. 107.

Hence, the existence of the freedom of contract has been recognized as a power enabling individuals to develop their personality by means of social connections, which some scholars of law would include in art. 3, second subsection, of the Constitution;³³ that is to say, it has been demanded that the compulsoriness of the rules given by individuals for achieving the legal rank of juridical relations should not be in contrast with “social usefulness”, which ought to work as an “external limit on the freedom of contract”.³⁴ Therefore public power should ensure that the contractual rule devised by private individuals is endowed with concreteness, while also regulating in detail the formation of contract and equipping it with compulsoriness by means of adequate remedies. Nevertheless the aforementioned interventions should avert the risk that the exercise of freedom of contract could prove to be in contrast with social usefulness, and they should mould the contractual rules to uphold those social or economical policies that the majority is willing to pursue at any given moment. Before invoking Art. 41 Const., it would be worth asking at this point whether or not contractual freedom could have a genuine foundation in the present Italian and European economic Constitution.

3. FREEDOM OF CONTRACT AND THE CONSTITUTION

The link between contractual freedom and the constitution is another tricky issue of present legal science that cannot be completely solved. Yet it is astonishing that the books from which students build up their legal knowledge dedicate little, or merely sporadic attention to the problem. It involves asking the question: (In order to allow freedom of contract to be driven to pursue social usefulness) is the basis of the freedom of private individuals to allocate rules to their economic choices really found in Art. 41 Const.? A number of general studies have been conducted that provide comparisons between the solutions given by Italian doctrinal and legal jurisprudence and by German legal scholars and courts.³⁵ The *Grundgesetz* of Bonn and the Italian Constitution do not reproduce Art. 152, Abs. 1, of the Constitution of

³³ C.M. BIANCA, *Diritto civile*, 3, *Il contratto*, 2nd ed. (Milano, Giuffrè, 2000), p. 30.

³⁴ See G.B. FERRI, *Ordine pubblico, buon costume e la teoria del contratto* (Milano, Giuffrè, 1967), p. 221, as well as M. NUZZO, *Utilità sociale e autonomia privata* (Milano, Giuffrè, 1975), pp. 87 ff. and *passim*.

³⁵ See, among all, L. RAISER, “La libertà contrattuale oggi” and “Funzione del contratto e libertà contrattuale”, in *Id.*, *Il compito del diritto privato. Saggi di diritto privato e di diritto dell'economia di tre decenni*, C.M. MAZZONI (ed.) (Milano, Giuffrè, 1990), pp. 51 ff. and 73 ff.

Weimar,³⁶ which some have (wrongly) interpreted as a protection expressing favour toward contractual freedom despite the fact that it only asked legislation to take any necessary step to eventually achieve that goal.³⁷ At first glance one could assume that such a setup has not hindered the *Bundesverfassungsgericht* from recognizing, at least implicitly, a guarantee for the freedom of contract, especially with regard to Art. 2 Abs. 1, GG, which quite reputedly expresses an individual's right to develop a personality freely.³⁸ Moreover, departing from the idea that private law has the duty to resolve conflicts of interest arising between individuals who find themselves on a legal plan of equality,³⁹ it is important to note the way in which the very famous Lüth case⁴⁰ has correctly emphasized the fact that Art. 2 GG does not offer absolute protection of legal positions, but rather seeks a comparison between and a balance of opposing interests, "nach dem Grad ihrer Schutzwürdigkeit".⁴¹ This provision therefore protects the economic freedom of juridical traffic and contractual freedom only to the extent to which they do not contrast with fundamental rights.⁴²

In addition, contractual freedom has been understood partly as a component of protection of *Berufsfreiheit* (Art. 12 GG), in terms of that which concerns contracts of employment and contracts of service and the constitutional guarantee of the right of property as well as that which concerns contracts of

³⁶ "Im Wirtschaftsverkehr gilt Vertragsfreiheit nach Maßgabe der Gesetze", see CH. GUSY, *Die Weimarer Reichsverfassung* (Tübingen, Mohr Siebeck, 1997), pp. 349 ff.

³⁷ M. RUFFERT, *Vorrang der Verfassung und Eigenständigkeit des Privatrechts, Eine verfassungsrechtliche Untersuchung zur Privatrechtswirkung des Grundgesetzes* (Tübingen, Mohr Siebeck, 2001), p. 286; L. MENGONI, "Autonomia privata e Costituzione", *Banca borsa e titoli di credito* (1997), pp. 1 ff.; H. STOLL, "Die Vertragsfreiheit", in *Die Grundrechte und Grundpflichten der Reichsverfassung*, hg. von H.C. Nipperdey, Bd. 3. (Berlin, W. de Gruyter, 1930), pp. 175 ff. and more recently M. BÄUERLE, *Vertragsfreiheit und Grundgesetz, Normativität und Faktizität individueller Vertragsfreiheit in verfassungsrechtlicher Perspektive* (Baden Baden, Nomos, 2001), p. 113.

³⁸ See again M. RUFFERT, *Vorrang der Verfassung* cit., p. 288, note 6.

³⁹ BVerfGE 30, 173 (199).

⁴⁰ BVerfGE 7, 198.

⁴¹ BVerfGE 47, 285 (318 ss.); BVerfGE 89, 214 (231) (also known among scholars as *Bürgerschaftsentscheidung*): "nach der ständigen Rechtsprechung des Bundesverfassungsgerichts ist die Gestaltung der Rechtsverhältnisse des einzelnen nach seinem Willen ein Teil der allgemeinen Handlungsfreiheit. Art. 2 Abs 1 GG gewährleistet Privatautonomie als Selbstbestimmung des einzelnen im Rechtsleben".

⁴² BVerfGE 8, 274 (328); see E.-U. ERICHSEN, "Allgemeine Handlungsfreiheit", in *Handbuch des Staatsrechts der Bundesrepublik Deutschland*, hg. von J. Isensee, P. Kirchhof (Heidelberg, C.F. Müller, 1989) B. IV, pp. 1185 ff.; B. PIEROTH – B. SCHLINK, *Grundrechte. Staatsrecht II*, 14. Aufl. (Heidelberg, C.F. Müller, 1998) Rn. 370 and Papier H.-J., "Grundgesetz und Wirtschaftsordnung", in *Handbuch des Verfassungsrechts der Bundesrepublik Deutschland*, hg. von E. Benda, W. Maihofer, H.-J. Vogel, 2. Aufl. (Berlin, W. de Gruyter, 1994), pp. 883 ff.

sale and contracts of hiring and leasing (Art. 14 GG).⁴³ One may therefore assume that freedom of contract is recognized and protected under the *Grundgesetz*, even though freedom itself is to be moulded by statutes.⁴⁴ Thus, given the impossibility of eliminating it as a whole (due to the *Sozialstaatsprinzip*),⁴⁵ freedom of contract should be subject to restrictions and limits based on socially or economically justifiable reasons in accordance with the equal protection and proportionality clause.⁴⁶ The protection of freedom contract insured by Art. 2 Abs 1 GG corresponds to a parliamentary duty to provide individuals with adequate space to create self-regulations via contracts of self-determination (*Selbstbestimmung*). Nevertheless, according to *Bundesverfassungsgericht*, contractual freedom lacks a natural basis: on the contrary, it presumes its fulfilment via state intervention.⁴⁷ This vision of contractual freedom rests upon a certain ambiguity between a stricter liberal doctrine – as far as control of the legal limits imposed on contractual freedom is concerned – and a social consideration of juridical relationships that calls for severe control by the legislature in order to accomplish the final goal of economic solidarity.⁴⁸ Up to now, the Italian Constitutional Court has shown little interest in constitutional protection of the freedom of contract.⁴⁹ Among the reasons

⁴³ See M. BÄUERLE, *Vertragsfreiheit und Grundgesetz* cit., pp. 285 ff. and G. DURIG, in *Grundgesetzkommentar*, hg. von Th. Maunz, G. Dürig, R. Herzog, R. Scholz (München, Beck, 1994) sub Art. 2 Abs. 1, Rn. 53 ff.

⁴⁴ "Privatautonomie besteht nur im Rahmen der Grundgesetze, und diese sind ihrerseits an die Grundrechte gebunden. Das Grundgesetz will keine wertneutrale Ordnung sein, sondern hat in seinem Grundrechtsabschnitt objektive Grundentscheidungen getroffen, die für alle Bereiche des Rechts, also auch für das Zivilrecht gelten": BVerfGE 81, 242 (253) (also known among scholars as *Handelsvertreterentscheidung*); the theory is in contrast with the traditional view (see among others H.C. NIPPERDEY, "Freie Entfaltung der Persönlichkeit", in *Die Grundrechte*, hg. von K.A. Betteermann, H.C. Nipperdey, Bd. 4., 2. Halbband (Berlin, W. de Gruyter, 1962), pp. 741 ff. Nipperdey recognized in Art. 2 Abs 1 the foundation of contractual freedom, without which a real market economy could not have been conceivable, and considered it as a fundamental right of the person; others (W. FLUME, *Allgemeiner Teil des Bürgerlichen Rechts*, Zweiter Band, *Das Rechtsgeschäft*, 4. Aufl. (Berlin - Heidelberg - New York, Springer, 1992), pp. 17 ff.) argue that it is the duty of standard legislation to determine the limits of freedom of contract.

⁴⁵ J. ISENSEE, "Das Grundrechts als Abwehrrecht und als Staatliche Schutzpflicht", in *Handbuch des Staatsrecht der Bundesrepublik Deutschland* cit., Band V, *Allgemeine Lehren der Grundrechte* (C. Heideberg, F. Müller, 1992), 143 ff.

⁴⁶ BVerfGE 8, 274 (329); 60, 329 (339), for further reference, see M. BÄUERLE, *Vertragsfreiheit und Grundgesetz* cit.

⁴⁷ *Ibid*, p. 292.

⁴⁸ See the "institutional" theory of freedom of contract by P. HÄBERLE, *Die Wesengehaltsgarantie des Art. 19 Abs. 2 Grundgesetz*, 3. Aufl. (Heidelberg, C.F. Müller, 1983), pp. 96 ff.

⁴⁹ Assuming that "our own Constitution does not provide, either directly or indirectly, a protection of the freedom of contract like that normally presupposed in German Grundgesetz", see

underlying this attitude one may cite the lack in the Italian judicial system of such a tool as the *Verfassungsbeschwerde*, regulated in Art. 93 I Nr. 4 GG. This article grants persons the right to trial in cases involving a fundamental breach of rights by the public powers.⁵⁰ Quite often the *Verfassungsbeschwerde* has given the Court of Karlsruhe the chance to reconsider interventions in cases where courts and Parliament have directly or indirectly hindered freedom of contract by. As a result, German Constitutional Court has been able to elaborate upon the judicial theory of the freedom of contract. Many Italian scholars assume that Art. 2 of the Italian Constitution may refer only to the freedoms of contract that are directed towards the accomplishment of such “social formations” as the family, when based upon marriage (see Art. 29), associations (see Art. 18), trade unions (see Art. 39) or political parties (see Art. 49), which receive express constitutional recognition. Meanwhile, in the field of the economic relations, freedom of contract would receive only indirect constitutional protection, as a tool by which the freedom of enterprise and the right of property can be exercised.⁵¹ This vision of the problems reflects the political and economic attitude of the Constitution.⁵² However, as has been pointed out, “private autonomy moves via market influence itself, and should be reconsidered in the context of the market”; within that context, “the contract holds primary significance: because freedom, and even

P. RESCIGNO, “Introduzione”, in *Autonomia privata individuale e collettiva*, a cura di P. Rescigno (Napoli, Esi, 2006), p. XVI and L. MENGONI, *Autonomia privata e Costituzione* cit., pp. 1 ff.; Corte costituzionale, 3.21.1969, n. 37, *Foro italiano*, I (1969), colonna 781 ff., has judged that “freedom of contract does not (receive) direct protection from the Constitution. Instead, it is indirectly protected in Arts. 41 and 42”; see also Corte costituzionale, 2.11.1988, n. 159, *Giurisprudenza costituzionale* (1988), pp. 553 ff.; Corte costituzionale, 5.15.1990, n. 241, *ibid.*, 1990, pp. 1467 ff.; Corte costituzionale, 6.30.1994, n. 28, *ibid.*, 1994, p. 2188.

⁵⁰ Aside from the breach of fundamental rights, they provide the Court with direct access to the violations of Art 20 Abs 4, 33, 38, 101, 103 and 104 GG by the public powers, see among others D. DÖRR, *Die Verfassungsbeschwerde in der Praxis* (Köln - Berlin - Bonn - München, 1990), Ch. GUSY, *Die Verfassungsbeschwerde. (Voraussetzungen und Verfahren)* (Heidelberg, C.F. Müller, 1988) and, in Italian, M. CAPPELLETTI, *La giurisdizione costituzionale delle libertà. Primo studio sul ricorso costituzionale* (Milano, Giuffrè, 1955) and ID., “Il ricorso costituzionale nel sistema delle impugnazioni”, *Rivista trimestrale di diritto e procedura civile* (1968), pp. 1056 ff., now in ID., *Processo e ideologia* (Bologna, Il Mulino, 1969), pp. 531 ff.

⁵¹ L. MENGONI, *Autonomia privata e Costituzione* cit., pp. 2 ff.; C. CASTRONOVO, “Autonomia privata e costituzione europea”, *Europa e diritto privato* (2005), pp. 29 ff.; L. DI NELLA, *Mercato e autonomia contrattuale nell'ordinamento comunitario* (Napoli, Esi, 2003), p. 17; G. ALPA, “Libertà contrattuale e tutela costituzionale”, *Rivista di diritto privato* (1995), pp. 35 ff.; A. DI MAJO, *Libertà contrattuale e dintorni*, *ibid.*, pp. 5 ff.; S. RODOTÀ, *Le fonti di integrazione del contratto*, new edition (Milano, Giuffrè, 2004), pp. 45 ff.; it has even been assumed that “the Constitution does not deal with private autonomy”: P. BARCELLONA, *Diritto privato e società moderna* (Napoli, Jovene, 1996), p. 388.

⁵² E. BAFFI, *Limiti all'autonomia contrattuale nel pensiero economico e filosofico contemporaneo*, *Rivista critica del diritto privato* (2004), pp. 631 ff.

economic freedom, is protected as a fundamental value in the Constitution. Moreover, this freedom expresses itself in terms of private autonomy of which contract is at least historically the most important epiphany".⁵³ Since the Treaty of Rome, the present-day political scenario – disrupted in recent decades by epoch-making changes⁵⁴ – has provided individual States with the one and only hypothesis under which a judicial system could succeed in expressing an economic constitution that is sufficiently determined and precise.⁵⁵ In this political context, Art. 3, subs 3, of the Treaty on the European Union aims to establish an internal market for the sustainable development of Europe based “on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress”. In addition, Art. 119 of the Treaty on the Functioning of the European Union declares that the activities of the Member States and the Union shall include, as provided in the Treaties, the adoption of an economic policy that would be based on close coordination of Member States’ economic policies on the internal market and on the definition of common objectives, “and would be conducted in accordance with the principle of an open market economy with free competition”. But far from being considered a mere programmatic statement of principles, the logic and course of such a clause hinders not only the adoption of contrasting legal regulations, but also the adoption of “political orientations” which, without being legally defined, to some extent conflict with the model so plainly and precisely outlined in the second paragraph.

Even if freedom of contract is not expressly considered in EU legislation,⁵⁶ it necessarily constitutes a fundamental component for accomplishment of the Union’s public goals with respect to the fundamental freedom embodied in the common European market and state law. This is particularly

⁵³ G. BENEDETTI, “Tutela del consumatore a autonomia privata”, *Rivista trimestrale di diritto e procedura civile* (1998), p. 21; see also F. GALGANO, “Negozio giuridico (dottrine generali)”, *Enciclopedia del diritto*, XXVII (Milano, Giuffrè, 1977), p. 948.

⁵⁴ N. IRTI, *Il dibattito sull'ordine giuridico del mercato* (Roma - Bari, Laterza, 1999).

⁵⁵ See for further references L. DI NELLA, *Mercato e autonomia contrattuale* cit., pp. 103 ff.

⁵⁶ It does not seem that freedom of contract could be based on art. 16 of the Charter of Fundamental Rights of the European Union, which recognizes the freedom to conduct a business in accordance with Union law and national laws and practices; as has been insightfully pointed out, the whole legal system should be considered along with directives and case law of the Court of Justice, see G. VETTORI, “Carta dei diritti e codice europeo dei contratti”, in *Fonti e tecniche legislative per un diritto contrattuale europeo*, P. PERLINGIERI and F. CASUCCI (eds.) (Napoli, Esi, 2004), p. 56 and A. JANNARELLI, *Il diritto contrattuale europeo: le radici politiche di un dibattito*, *ibid.*, p. 71; see also G. VETTORI, “Carta europea e diritti dei privati (diritti e doveri nel nuovo sistema delle fonti)”, *Rivista di diritto civile* (2002), p. 669 ff.

true for directives, in which the limits of freedom regarding transparency and fairness in trade can be noted.⁵⁷ Nevertheless, it does not rise to the rank of fundamental freedom and should rather be considered a tool for the accomplishment of European Union's goals.

The case law of the European Court of Justice shows this very clearly: it assumes that freedom of contract constitutes a "rule",⁵⁸ which cannot be hindered whenever any tool for accomplishment of the same goal is available. Otherwise, it is considered a "principle" that cannot be "limited by an EU statute that specifically intends to introduce restrictions"⁵⁹ and consequently would need to be moulded into the context "of the national applicable law".⁶⁰ One could conclude that in the Italian system, freedom of contract should be presupposed rather than attributed to individuals as representative of the power granted to citizens to develop their own personality through the establishment of social connections.

4. THE GOOD GOVERNMENT OF CONTRACTUAL RELATIONS

If it is true that contractual freedom has a genuine constitutional foundation that rests on the freedom of individuals to develop their personality under conditions of equality, then it becomes implausible to admit that the law (case law or statute law) could constrict that freedom when invoking social usefulness. In contrast, the good Government of contractual relationships lies in the quest for healthy economic competition between contractual rules and legal rules, as individuals are free to regulate their own relations according to reciprocal suitability. This remains valid as long as it does not destroy competition itself, which, at this point, needs protection and must be safeguarded. Hence, arbitrary legislative interventions that constrict contractual freedom for reasons of social usefulness should be distinguished from interventions that are designed to safeguard free competition and which are considered

⁵⁷ L. DI NELLA, *Mercato e autonomia contrattuale* cit., pp. 311 ff.; G. ALPA, "Nuove frontiere del diritto contrattuale", in *Il diritto privato dell'Unione europea*, ed. by A. Tizzano (Torino, Giappichelli, 2001), p. 707; see also C.-W. CANARIS, "Verfassungs- und europarechtliche Aspekte der Vertragsfreiheit in der Privatrechtsgesellschaft", in *Festschrift für Peter Lerche* (München, Beck, 1993), pp. 873 ff.

⁵⁸ Trib. I gr., 9.18.1992, c. 24/90, Automec, *Raccolta della giurisprudenza*, 1992-92, pp. 2223 ff.

⁵⁹ EU Court of justice, 10.5.1999, c. 240/97, Spain v. Commission, *Raccolta della giurisprudenza*, 1999-91, pp. 6571 ff. (conclusion Léger).

⁶⁰ EU Court of justice, 9.7.2006, c. 125/05, VW-Audi Forhandlerforeningen, *Raccolta della giurisprudenza*, 2006-11, pp. 4539 ff.; EU Court of justice, 4.27.1999, c. 69/97, SNUA s.r.l., *Foro italiano*, IV (1999), c. 338 ff.

to be indebted to public power. A first example of arbitrary intervention is provided by legal limitations on the power to withdraw or sell real estate that has been let or rented out for residence or cultivation. With regard to the act of letting or renting out, there has been much debate on the dimensions that should be recognized in favour of the interests of the lessee as regards the stability of the contractual relation. The issues are typically summarised in the formula of the "right to housing", a concept that continues, as has been noted in one of the most recent and in-depth essays on this topic, to be marked by an "unsolved complexity".⁶¹ Overall, the whole question still requires further elaboration in order to allow the interpreter to evaluate and balance it in comparison with other subjective positions of indisputable leading rank such as property. Not only are there very weak indications in the Constitution that would allow an individual to claim the right to a place of abode, but the Constitutional Court itself has not been willing to make actual reference to that right in order "to criticize or reconfigure the relations between the parties of renting contracts".⁶² An astonishing example of the compression of contractual freedom for reasons of social usefulness is given by the regime of "renting restrictions", which lasted from the late post war period up to the nineteen-seventies. During this time the duration of the contract was postponed legally and prevented the landlord from withdrawing the contract and reacquiring possession of the rented estate. Notably this rule was later changed (Law 27 July 1978, n. 392) and at the same time a legislative price cap on rental rates was introduced. Consequently, it affected the rental market for twenty years.

The Italian Constitutional Court realized that the initiative taken was not irrational, and that the discretionary power of the legislator could determine an extension of the contracts already subject to postponement as well as maintain or re-introduce a free regimen for the renting contract based upon the evaluation of a different and subsequent economic trend: The social function of property (see art. 42, subs. 2 of the Constitution), can justify a regime of pegging rent as long as it is a contingent measure and not an ordinary tool for moulding the property law; however, it does not require adoption of the same regime by the Parliament, which is free to achieve at its own *libito*

⁶¹ E. BARGELLI, *Proprietà e locazione, Prelazione e valore di scambio* (Torino, Giappichelli, 2004), p. 19 and M. TRIMARCHI, *La locazione abitativa nel sistema e nella teoria generale del contratto* (Milano, Giuffrè, 1988), p. 9 ff.; F. MARINELLI, "Funzione sociale della proprietà e natura delle cose dall'essere all'essere", in *I rapporti patrimoniali nella giurisprudenza costituzionale*, M. TAMPONI and E. GABRIELLI (eds.) (Napoli, Esi, 2006), p. 19 ff.

⁶² E. BARGELLI, *Proprietà e locazione* cit., p. 17.

the social and economic goals imposed by Constitution.⁶³ A somewhat different approach concerns the way in which EU law seeks to protect (and therefore affect) the contractual positions of consumers toward businessmen. This law does not find its justification in claimed social requirements of usefulness, but rather constitutes a tool for the accomplishment of a "strong competitive market" (as stated in art. 3, subs 3, of the Treaty on European Union and in art. 119 of the Treaty on the Functioning of the European Union; see above). The weakness of the consumer unavoidably becomes a source of distortion and hinders the development of a truly competitive market. Thus it must be fought and overcome as far as possible. The opinions of scholars who tend to justify consumer protection on the basis of social usefulness or of the equality clause cannot be shared. It is quite evident that no such approach considers the protection of the overall market as the first and exclusive goal of that legislation. Protection of individuals is, rather, a possible consequence of the legislation itself but not a necessary one. Finally, the best example of direct State intervention in restricting contractual freedom involves the fixation of the interest rate when in debt. Justinian himself not only reduced the amount of money a creditor could demand from a debtor⁶⁴ from twelve to six percent, but also made great efforts to respond to those who believed that the Constitution could not be applied to loans already in existence when the statute was passed.

De usuris quarum modum iam statuimus, pravam quorundam interpretationem penitus removentes iubemus, etiam eos qui ante eandem sanctionem ampliores, quam statutae sunt, usuras stipulati sunt, ad modum eadem sanctione taxatum ex tempore lationis eius suas moderari actiones, illius scilicet temporis, quod ante eandem fluxit legem, pro tenore stipulationis usuras exacturos.⁶⁵

To those who complained that his intervention was "authoritarian" and "excessive"⁶⁶ it is easy to respond that a "prohibitive" law of this kind finds

⁶³ Corte costituzionale, 16 January 1976, n. 4, *Ammistrazione italiana* (1976), pp. 1043 ff.; *Archivio civile*, 1976, pp. 341 ff.; *Consiglio di Stato*, II (1976), p. 21; *Foro italiano*, I (1976), c. 5 ff.; *Giurisprudenza costituzionale*, I (1976), pp. 23 ff.; *Giurisprudenza italiana*, I, 1 (1976), c. 876 ff.; *Giustizia civile*, III (1976), pp. 114 ff.; *Rassegna dell'avvocatura dello Stato*, I (1976), p. 4 and *Rivista giuridica dell'edilizia*, I (1976), pp. 185 ff.; on which see, recently, F. MARINELLI, *Funzione sociale della proprietà cit.*, psp. 21 ff.

⁶⁴ C. 4, 32, 26.

⁶⁵ C. 4, 32, 27; see C.F. GABBA, *Teoria della retroattività delle leggi*, 3 edn. (Torino, F.lli Bocca, 1891), IV, p. 349.

⁶⁶ K.A. VON VANGEROW, *Lehrbuch der Pandekten*, geb. Ausgabe, Nachdr. d. 7. Aufl. (Marburg,

simple justification in serious economic reasons of order and ethics, and as such deserves to be applied even retroactively to contractual relations pending among creditors and debtors at the time.⁶⁷ No one could seriously doubt the reliability of similar indications: the ethical implications of usury and heavy distortions of the correct mechanism of healthy and loyal competition between individuals are largely sufficient to justify similar interventions by public power in the loans market. Jean Domat wrote, "Usury is a crime [...] that ruins the same foundation of the social order".⁶⁸ At this stage, it is possible to foresee a workable settlement between freedom of contract and its antithesis, namely, social usefulness. When it can be admitted that the latter is malleable in itself and should be read not as a means to restrict the economic freedom of individuals but, rather, as a concept pointing towards a well stated goal, then it will achieve good Government of contractual relations. In this manner, protection of the freedom of contract would not depend upon the absence of regulations, but rather upon the good law that governs the market. Freedom of contract does not remain outside the law, but should be conceived as a function of the law itself. Indeed, the quality control of products and the guarantee of competition among men engaged in business are forms of protection of the individual against the planetary power of enterprises.⁶⁹ In this sense, Art. 41 Const. – and social usefulness – are not in opposition with a truly market-based economic system.

The market cannot be left to itself. We who elect lawmakers know that the market can be distorted by monopolies. [...] And we can and must make the market use its ability to regulate the production and distribution of wealth within certain limits, limits that we consider fair and that act in accordance with our ideals of a society, in which all men have a chance to develop their potential in the best way possible and in which excessive inequalities of wealth and income do not exist – without arriving at an absolute equality, compatible only with the life of the ant colony and the beehive, which for humans are called tyrannies, dictatorships, totalitarian regimes.⁷⁰

Elwert, 1863-1869) repr. Keip, Goldbach, 1998, § 25, p. 6; see also G.F. PUCHTA, *Lehrbuch der Pandekten*, 12. Aufl. (Leipzig, J.A. Barth, 1877) § 111.

⁶⁷ F. LASSALLE, *Das System der erworbenen Rechte. Eine Versöhnung des positiven Rechts und der Rechtsphilosophie. Die Theorie der erworbenen Rechte und der Collision der Gesetze unter besonderer Berücksichtigung des Römischen, Französischen, und Preußischen Rechts*, hrsg. von L. Bucher (Leipzig, K.F. Pfan, 1880), p. 279.

⁶⁸ *Les lois civiles dans leur ordre naturel* (Paris, Veuve Cavelier, 1766), p. 59.

⁶⁹ N. IRTI, "Autonomia privata e forma di Stato (intorno al pensiero di Hans Kelsen)", in *Codice civile e società politica* (Bari, Laterza, 1995), p. 96.

⁷⁰ L. EINAUDI, "Lectures on the Market", in *Selected Economic Essays*, L. EINAUDI, R. FAUCCI and R. MARCHIONATTI (eds.) (Basingstoke - New York, Palgrave Macmillan, 2006), p. 65.

simple business, in which the only element of risk is the risk of a change in the price of the commodity. The Commission has found that the only way to protect the public interest in such a situation is to require the issuer to maintain a reserve fund of a certain amount, to be used to meet the obligations of the issuer in the event of a change in the price of the commodity. This reserve fund should be maintained in a separate account, and should be subject to the control of a public authority. The Commission also recommends that the issuer should be required to disclose the amount of the reserve fund, and the reasons for its maintenance, in its annual report to the public. This information should be made available to the public in a form which is easily understood, and which is accessible to all members of the public. The Commission believes that these measures will be sufficient to protect the public interest in such a situation, and to ensure that the issuer is able to meet its obligations in the event of a change in the price of the commodity.

The market cannot be left to itself. We who are interested in the public interest must be prepared to intervene. It is our duty to ensure that the market is able to function in a way which is consistent with the public interest. We must be prepared to take such steps as may be necessary to ensure that the market is able to function in a way which is consistent with the public interest. We must be prepared to take such steps as may be necessary to ensure that the market is able to function in a way which is consistent with the public interest. We must be prepared to take such steps as may be necessary to ensure that the market is able to function in a way which is consistent with the public interest.

It is the duty of the public authorities to ensure that the market is able to function in a way which is consistent with the public interest. We must be prepared to take such steps as may be necessary to ensure that the market is able to function in a way which is consistent with the public interest. We must be prepared to take such steps as may be necessary to ensure that the market is able to function in a way which is consistent with the public interest. We must be prepared to take such steps as may be necessary to ensure that the market is able to function in a way which is consistent with the public interest.

ALBERTO ANDRONICO

THE DARK SIDE OF GOVERNANCE*

1. A WORD WITHOUT SENSE

It is difficult to say whether the world is changing, or whether, simply, what is changing is our way of interpreting it. It is certain, however, that for some time now, an entire conceptual architecture, the one that made the modern history of international legal thought, appears to be increasingly struggling to keep a hold on reality. The use (and abuse) of a term like *governance* is a telling symptom of this struggle, especially in Italian language. Perhaps it is also an attempt to provide an answer. And this, paradoxically, is taking place by virtue of its indeterminacy and untranslatability, whether claimed or inevitable. Governance is, as we will see, a nonsense word. Or rather: a concept whose sense resides in not having one. It is a concept which, rather than ordering reality, appears to be cultivating the claim that it should adapt to a social situation where what is missing is the resilience and firm hold of the terms which have, for centuries, been at the center of philosophical (and not only philosophical) reflection. Here are two among many such terms: law and order.

Now, because there is something mysterious at play in it, a short story by Kafka can help us approach this topic. The title of the story is "The Cares of a Family Man"; it talks about a strange object.¹ This object can be found in the attic, on the stairs, and in the hallways. It appears to be made of wood. It speaks, laughs and answers. Yet its sounds are similar to the rustling of fallen leaves. It says its name is Odradek, and that it has no abode – at least if the father of the family, who treats the object as a child, is to be believed. The object does no harm to anyone. It neither has a goal, nor practices an activity.

* Translated by K.E. Bättig von Wittelsbach.

¹ See F. KAFKA, "The Cares of a Family Man", in *Id.*, *The Complete Stories* (New York, Schocken Books, 1995), pp. 427-428.

Nevertheless, the father of the family confesses that he is almost pained at the idea that the object could continue to climb up and tumble down the stairs, falling amid his children's feet, and then the feet of their own children – even when he, the father, is no longer around. In brief, Odradek is there: this is all that can be said. There is no concept that can grasp it, or enclose it within a definition. It does, of course, have a name. But the origin of its name is unknown: it is Slavic or German? It is a name, literally, without sense. By the same token, what it designates is without sense: the Odradek.

Very well, then: governance is a little bit like Odradek. One does not really know what it is. Nor, really, where it comes from: from English, surely, but that is not enough. It has no sense. Yet it is there. And we talk about it more and more frequently. So frequently that it has even become irritating. But perhaps it is precisely within the folds of this irritation that its secret is concealed. As Kafka would have it, it is found in the pain that we experience by seeing this strange concept amid our feet, and by thinking that it may continue to tumble down amid our children's feet, and then amid their own children's feet. We, fathers to our families, orphans of that father figure which for centuries has been called the State. Perhaps this is exactly where we should start. But not before saying a few words about the life of words and the functioning of concepts – no small endeavour.

2. TOWARD A PEDAGOGY OF THE CONCEPT

Philosophical problems are often, if not always, problems of language. They are about, literally, being attentive with words. And in particular with those words that take on the role of concepts. The reason is quite simple: we use concepts to order our world, to understand that which surrounds us. Etymology comes to the rescue. The word 'concept', as is known, comes from *cum capere*: to put together, grasp, collect. Concepts, then, are like drawers which thought uses to put things in their proper place. And to signal its distance from that which purely and simply happens. All this in order to open, among other things, the space for critical reflection. Yet these drawers are never to be taken for granted once and for all. They have a life; they are born and they die, just like the words used for designating them; and at times they are transformed, even despite the apparent identity of these same words. Let us look at an example from among the most frequently quoted: the democracy of the Greeks is not our democracy. The word is the same, or rather, there is no other way of translating it, but the concept changes. It changes for

the simple reason that all three – the reference context, the order in which the concept assumes meaning, and the problem which it faces – likewise change.

Gilles Deleuze and Félix Guattari, in a book with a provocatively popular title, explained this in the best possible fashion: every concept refers back to *other concepts*, it gives a form to a *problem*, and precisely because of this it has its history.² Three points, then. First: simple concepts do not exist, which is the same as saying that every concept is made up, in turn, of other concepts and refers back to an order of discourse within which it can find its meaning. Second: every concept refers back to a problem, or is always created as a function of a specific problem to be solved. Third: precisely because it is created as a function of a problem, each concept has its history – not to be confused with that of its word – and therefore its becoming. These are the points to keep in mind when one begins to speak about any concept whatsoever. And in particular when speaking about a concept like that of *governance*, which, as we pointed out at the outset, seems to renounce at least its capacity to put things in order, and any sense that can be called ‘defined’.

The concept of governance, all things considered, risks being a paradoxical concept. A concept without a concept, one might be tempted to say, if this did not sound too provocative. A concept that does not claim to reduce a multiplicity to a unity, but rather to show the complexity of the world in which it is created, and the lack of any possible (and simple) unity. And, in fact, the problem of governance is nothing but this: understanding how it is possible to *govern a complexity*. This is where the attempt to elaborate a new style of government comes from, distinct from the traditional model of hierarchical control and characterized by a higher degree of cooperation between public and private subjects:³ governance, to be precise. Except that what is at stake in this curious concept is not simply a new style of governing but, much more radically, a new concept of governing. A concept basically irreducible to the idea of government (and of social regulation) handed down to us by modern tradition, if only because it is inscribed within the order of a profoundly changed discourse. In sum, an order of discourse which no longer finds its keystone in the state.

² See G. DELEUZE – F. GUATTARI, *Qu'est-ce que la philosophie?* (Paris, Minuit, 1991).

³ See R. MAYNTZ, “New challenges to governance theory”, in H. BANG (ed.), *Governance as social and political communication* (Manchester - New York, Manchester University Press, 2003), pp. 27-40. Within the wide literature on Governance, among the most recent publications, see also M.R. FERRARESE, *La governance tra politica e diritto* (Bologna, Il Mulino, 2010).

3. TOO BIG AND TOO SMALL

Every concept is created as a function of a problem to be solved, or at least, to be given a comprehensible shape, so Deleuze and Guattari suggest. We should perhaps, then, ask ourselves what problem lies beneath this strange concept we are investigating. And the answer, at least in its essential terms, can be condensed into a brief answer: the world can no longer be measured in terms of states. It is too big. And at times also too small. It is too big when it comes to the universalization of markets, ecological challenges and threats linked to the spread of international terrorism. It is too small when local claims, last regional belonging, collective identities different from national identities (claimed or real) etc., enter into play. In brief: to speak of governance means, whether we like it or not, speaking about the crisis of the nation-state. As is well known, the body of literature written on this subject is, to say the least, immense. And this crisis definitely has its roots in the acceptance of the impotence of the formation called state – the true keystone of the conceptual architecture of the judicial and political thought of modernity, it is worth repeating – faced with the social problems mentioned above. These are the problems that demand solutions which the state, closed within its confines (which, however, are becoming increasingly permeable), is not capable of offering. Governance, then: what else is it but the attempt to solve this crisis, by elaborating new forms of social regulation capable of governing this ‘new world’, big and small at the same time? Once again: unity and multiplicity. It is certainly not by chance, in fact, that rather than speaking of globalization, we more and more frequently speak of ‘glocalization’, in order to emphasize that the other side of the globalization, as paradoxical as this may appear, is precisely the birth of various ‘localisms’. Here is a journalistic example, and a story from a home turf: the increasingly heated debate on the appropriateness of reforming the state into a federation, is one of the signs pointing in this direction, albeit still developed within an institutional grammar that seems to be out-of-date.⁴

Two documents have become decisive in this framework. The first dates from 1995, the result of the work by an *ad hoc* U.N. commission known as the *Commission on Global Governance*. Its title is *Our Global Neighbourhood*. The second, from 2001, is *The White Book* of the European Commission devoted strictly to the question of governance.⁵ This paper is certainly not the

⁴ COMMISSION ON GLOBAL GOVERNANCE, *Our Global Neighborhood* (New York, Oxford University Press, 1995).

⁵ EUROPEAN COMMISSION, *European Governance: A White Paper* (Brussels, COM, 2001), p. 428.

place to analyze them in detail, or even to underline their ambiguity, present in particular in the second document.⁶ Nevertheless, it may be useful to recall that both texts stem from an awareness of the inability of state governments to respond to regulatory challenges today, both on the level of international relations and as far as community dynamics are concerned. The recipe is the same: to widen the sphere of the government in order to include the participation of processes and actors, even of a private nature, which so far have been simple objects of regulation.⁷ Both in its supra-national dimension, be it transnational or community-oriented, and inside individual state communities, the key word is: participation. It concerns the 'opening' of the governing process in such a way as to involve in the formulation and implementation of public policies – and even prior to this, in the choice of the goals to set and of the problems to be solved – all potentially interested parties, and not simply more (and only) states.

The problem remains, therefore, that of the governance. It is important to emphasize this. But governance is nowadays no longer interpreted as an exclusive prerogative of the organizations institutionally delegated to it, or the states. And it is no longer translated in terms of planning (from above), which demands nothing other than to be implemented (at a lower level), but it is rather interpreted as a dialogue and continuous learning among (and with) all components of that civil society which once consisted of simple recipients.⁸ According to the dynamics that we have already seen at work in the transition from the Fordist factory to a network of companies, here too there is a shift from the verticalization to the deverticalization of management. Restated in terms much in vogue in scholarly literature: new forms of bottom-up regulation thus take the place of the traditional top-down forms. Governing is no longer done from above, all things considered, but it continues. Or at least that is the idea.

4. THE FUNCTION OF MANAGEMENT

Understood properly, as has been expertly emphasized, *governance* is not synonymous with "government".⁹ But one should add, only as long as we

⁶ See A. ANDRONICO – A. LO FARO, "Defining Problems: Open Method of Coordination, Fundamental Rights and Theory of Governance", in O. DE SCHUTTER – S. DEAKIN (eds.), *Social Rights and Market Forces. Is the Open Coordination of Employment and Social Policies the Future of Social Europe?* (Bruxelles, Bruylant, 2005), pp. 41-96.

⁷ See R. SAPIENZA, "Governance", *Aggiornamenti sociali*, 7-8, 2002, pp. 697-700.

⁸ See H.P. BANG (ed.), *Governance as Social and Political Communication* cit.

⁹ See J.N. ROSENAU – E.O. CZEMPIEL (eds.), *Governance Without Government: Order and Change in World Politics* (New York, Cambridge University Press, 1992).

continue to construe the concept of governance within the order of discourse typical of modernity. From this point of view, in fact, *governance* undoubtedly marks a disparity. However, and this must be reiterated, it concerns a disparity between two different levels of immanence: on the one hand, the juridical and political level of modern state systems; and on the other, the technocratic level of globalisation itself. If the immanence level is changed, then, as a consequence, the translation of the question of government changes: it is now, in fact, construed in terms of governance. Furthermore, the goal of the state, and of the law intended as the expression of the sovereign's will, was to install social order within a defined territory, while leaving behind it the debris of disorder (religious wars, for example). The goal of governance, on the other hand, is simply to keep an open channel of communication among the various components of the social fabric and, at the end of the day, to guarantee the continuity of a process whose main regulator is the technocratic imperative. That is to say, it is a process, as we have seen, which does not appear to have any other goal except that of its own perpetuation. In brief: it is no longer a question of putting things in order, simply because things no longer have their place. Yet we will return to this question of order at the end of this paper. For now, we should look more closely into the main features of transformation of the governance problem, which appears to be one of the decisive points of the concept of governance itself.

At the beginning we noted that the history of concepts is not the history of words. Yet at this point, even the history of the word 'governance' may have something to teach us. Let us begin with the English language, where 'governance' is distinguished from 'government'. While the latter term indicates the institutions formally appointed to the function of governing, the former refers to the activity of governing, its manner of operation and its effects. Nonetheless, it is rarely pointed out that the word 'government' originally was the translation of the French word *gouvernement* which, in turn, is a translation of another term, which has recently made an appearance in English, but much older, which – coincidentally – is governance. In sum, the present shift that leads from *government* to *governance* hides an original trait that should not be neglected. Dante himself, by using the term *governazione* in his *Convivio* (the fourth treatise, IX, 10) also appears to be re-echoing the medieval lemma which is once more in the limelight today.¹⁰ So from the Greek *kybernân*, on to the Latin *gubernare*, through French with *gouvernement*, then on to English

¹⁰ See S. MAFFETTONE, *La pensabilità del mondo. Filosofia e governance globale* (Milano, Il Saggiatore, 2006), p. 38.

with *government*, the Italian *governo* – until we get to *governance* – the root of the meaning is the same: directing, controlling or “piloting”, whichever one prefers, either single minds or a single ship, an enterprise or a company in its entirety.¹¹

Government as management and control – that is the problem. Moreover, the term in use in Germany when talking of governance is in fact, *Steuerungstheorie: theory of management*. It may be useful here, in order to look even more closely at the concept of governance, to open a text published in 1938, not by a philosopher of law or politics, but by a high-level director of *Bell Telephone*, Chester Barnard. Its title is *The Function of the Executive*. In these pages he talks, obviously, of company organization – but that is not all. In Barnard’s work, all forms of organization (understood nowadays as “cooperative systems”) are present, whatever their form or function may be: economic, political, social, religious, military or recreational. The starting point is rather simple: it concerns understanding what motivates different individuals, with different life plans, and different subjective preferences, to collaborate in achieving the goals of the organization to which they belong. And the answer is to be found in the search for a delicate balance between the goals of an organization and the personal motives of its individual members, whose satisfaction cannot be achieved merely with economic incentives. But this is not really the point that we would like to emphasize here. Rather, we are interested in the way in which Barnard addresses the problem outlined in his text: the executive management, to be precise.

Here Barnard’s idea assumes a paradoxical tone: The good executive is a person who knows the art of not deciding. The refined art of executive decision consists, namely, in not deciding on problems that are not relevant now, not deciding prematurely, not making decisions that cannot be effectively made, and not making decisions that others could make”.¹² In sum, Barnard suggests the following: a good executive, in order to be such, rather than being capable of decision-making, must be able to communicate, mediate, coordinate and, above all, offer motivation sufficient to expand the zone of willingness-to-collaborate in every individual member of the organization. The more extensive that zone is, the more effective will the management be. The authority is, then, now re-interpreted as a function of the satisfaction of individual motives. Thus rather than continue to study organizations as

¹¹ See S. VACCARO, “Il dispositivo della Governance”, in A. PALUMBO – S. VACCARO (eds.), *Governance. Teorie, principi, modelli, pratiche nell’era globale* (Milano, Mimesis, 2007), p. 121.

¹² C. BARNARD, *The Functions of the Executive* (Cambridge, Ma, Harvard University Press, 1938).

if they were rational machines that proceed according to pre-established programs, Barnard – and before him the so called “School of Human Relations”, established in Chicago between the 1920s and 1930s – conceive of these organizations as systems influenced both by the subjects that compose them, and by the surrounding environment.¹³ Indeed, companies, just like all other organizations, are no longer measured by the standards of rigorously hierarchical bureaucratic organizations, where the only thing demanded of the individuals is to obey the rules imposed from above, and carry out the role they are supposed to adhere to. Instead, now they begin to be analyzed as real “organisms”, whose correct functioning closely depends on the “human factor”, and thus on harmony and dialogue among different components of the company, and between the company and its environment.

In this framework, there are three main functions singled out by Barnard as typical of executives. First – to assure an efficient system of *communication*, given that communication among people is the first requirement for the existence of an organization, of whatever type it may be; second – to guarantee a constant flow of *resources*, in terms of human resources within and insofar as concerns the organization's relations with its suppliers, clients, shareholders, and so on; third – to establish the goals of the organization, understood, however (and it is important to emphasize this), not as the product of a solitary decision, but as the result of a *process* where all members of the organization are involved at different levels. In short, precisely to the extent to which an organization is now considered as a cooperative system, its functioning cannot ignore the consensus of its members. And this consensus cannot disregard, first and foremost, the choice and definition of the goal to be pursued. The key word thus becomes: participation. Coincidentally, this is same key word found in the documents on global and community governance mentioned earlier, and which would see the light of day a good few years after these predictions were made by Barnard, originally dealing with the dynamics present in companies. We should, however, be careful here: Barnard still continues to discuss the functions of the management. From his perspective, the problem is how to understand under what conditions executive decisions can be effective. These conditions, he believes, are the following: in order to be effective, an order should be understood; it should not appear to be in contrast with the goals of the organization; and it should be compatible with the interests of the people to whom it is directed, and who carry it out. This means that the consensus and participation of those receiving the order come into play. Here we are no longer looking at the verticalization of management, and no longer

¹³ See BONAZZI, *Come studiare le organizzazioni* cit., pp. 58 ff.

talking of a hierarchical structure similar to the bureaucracy of the Weberian kind. But the fact remains – and this is worth emphasizing – that management (and command) is still the focus of debate. But this is clearly also the case in the U.N. and the European Commission documents. Participation, by all means – but still as a function of an effective governance.

5. BETWEEN THE STATE AND THE MARKET

Barnard, as we have seen, wrote at the end of the 1930s. He was concerned, at least at the outset, with problems related to company organization. And yet his predictions have proved to be precious for situating in a framework the events which came about, on a political and legal level, in the mid 1970^s. These were the years in which we were confronted with the failure of the planning of public policies typical of the early post-World War II period: at the level of their elaboration, as much as on the level of their “implementation”, or their real capacity of effectively leading social and economic development toward their established objectives. The idea that one can govern change from above slowly entered into crisis. Also, there was a growing realisation that the failures of public policies derived not so much from the alleged errors of planning, as from the lack of understanding of the role played by those on the receiving end, of their possible resistance, and their capacity to obstruct these policies, even to subvert them. The attention up to then exclusively reserved for the “subject” of political management (first among all: the state), moved progressively toward the “object” of public control, or toward the dynamics of internal regulation of the company itself – the field of private interests. From the concept of government, then, we move on to *governability*: the analysis of the recipients’ willingness to be managed. As in Barnard, the problem now became one of assuring the effectiveness of regulation by taking into consideration the necessary involvement of the “organization’s” members. Using, this time, Bauman’s terminology, we can briefly say: from “heavy modernity”, in which it was assumed that a development model could be designed that would be applied (later) to social reality, attention subsequently moved to “liquid modernity”, where the process of learning becomes decisive, as does the role played by the individual contexts within which the rules are inscribed, and therefore the dynamics of interaction (and retroaction) in the so-called “civil society”. This takes us back to the passage already discussed in the context of the crisis of the idea according to which it might be possible to govern society from above, by recourse to “a model”, and a “plan”.

This having been said, it should be remembered that the planning crisis was followed, in the 1980s, in an almost pendular movement, by recourse to the pure and simple dynamics of the market, considered by many, in those years, to be a solution to the problem. From the *apologia* for state intervention in the economy (the era of great planning having revealed itself to be increasingly inefficient), there followed *an apologia* for the market, understood as a system capable of self-regulation. The choice appeared clear: either the state or the market. Having established the inefficiency of the former, one was left with the latter. This is how the era of so-called “neo-liberalism” began: the era of deregulation, privatization and devolution, where what was contested was precisely the efficiency of political control over the economic dynamics, suddenly considered to be an obstacle to development of the economy. The “private” triumphed over the “public”. These were the years of Reagan in the United States and Thatcher in England, of course. Even this pure and simple recourse to the market, however, progressively began to reveal its cracks. One among many was the potential contradiction between the market principles, on the one hand, and democracy and the demands of social justice on the other. What re-appeared was the demand for political control, although no longer in the form of regulation or planning from above, given the by now irreversible crisis of public institutions, both at the state and international level (or, in any case, at supra-national levels: the case of the European Union is emblematic here). And this is how we return to the problem of *governance*.

Faced with the contrast between the state and the market, the concept of governance intends to offer a solution – literally, a ‘complex’ one: it is not about choosing one or the other, but about re-thinking their links and their interconnections. Once again, it is worth emphasizing the point discussed earlier: namely, the problem is still that of the management of social and economic dynamics. In short, *less state* certainly does not mean *pure market*. But at the same time, *less state* certainly does not mean *less government*. On the contrary: it is about finding a form of management and control truly capable of affecting a situation which has by now become too complex to be governed from above and from a single center of power. *Governance* is thus proposed as the only feasible present-day possibility of governing the market from a social standpoint, capable of accommodating both the limits of centralized planning, and the structurally inherent anarchy of economic exchange. And this, it is argued, can be achieved through a more extended involvement of the various components of so-called “civil society” in the dynamics of government, not only at the time of choosing public policies, but also during their concrete realization (or “implementation”, if you wish). There is no longer any rigid opposition between the “public” and “private”, but rather a possibility of co-

ordination. Rather, there is the unity (of the public) and the multiplicity (of the private sector). Not the unity *against* the multiplicity. Fundamentally, this is a quest for common strategies of intervention related to the objectives of general interest, and in function of effective government at diverse levels: local, national, international, supranational and global.

6. TRANSFORMATION OF THE LAW

Having said this, we need to ask: what will become of the law? Before giving the answer, the question needs to be explained, and this takes us back to the beginning. At the beginning of this paper, we suggested that what governance reveals, and what it seeks, in some way, to answer, is the loss of resilience, and hence the loss of grasp on social reality, affecting an entire conceptual architecture, an architecture typical of the legal and political thought of modernity, whose keystone consisted in the nation-state, with its people, its territory, and a centre of power easily identifiable by a reference to the figure of a sovereign. We also noted that precisely because concepts are never simple, but always live in relation with other concepts, the crisis of the keystone of this architecture inevitably brings with it the transformation of a whole series of concepts constructed within it. In the simplest way possible: the loss of the centrality of the state (an effect of the progressive weakening of its regulatory capacity) implies a revision, not only of the concept of 'government' but also, as a consequence, of other related concepts. If this is true, then the challenge that legal science is today called upon to face appears, in effect, to be that of how to 'invent' new concepts or, at least, to re-structure the traditional ones. A new way of conceiving of the law is being implemented with governance.¹⁴ A way which, in order to be truly understood, demands new categories. There is nothing that can be done to prevent this. The new setup involves considering an order of discourse which has radically changed compared to that which is part of the history of modern thought. And this is anything but easy, if for no other reason than the strong temptation to incorporate the new into the same concepts whose holding power and grasp on reality is being questioned. Yet in order to understand why such a temptation

¹⁴ See, in particular, J. LENOBLE – M. MAESSCHALCK, *Démocratie, droit et gouvernance* (Sherbrooke, Les Editions Revue de Droit de l'Université de Sherbrooke, 2011) and the last chapter in J. LENOBLE – M. MAESSCHALCK, *Toward a Theory of Governance. The Action of Norms* (The Hague - London - New York, Kluwer Law International, 2003), pp. 265-329.

arises, it is necessary quickly to rewind the tape of history, obviously without any claim to exhaustive detail, and focus attention, in particular, on the two concepts mentioned at the outset: law and order.

One need only recall that the modern representation of the law, up until Kelsen, was closely connected to that two-fold and convergent process defined by Norberto Bobbio as the "statualizzazione del diritto" and the "giuridificazione dello Stato",¹⁵ which has been a crucial strand of various different modern theories of the state and the law, at least from Hobbes onward. Suffice it to open the *Pure Theory of Law* by Kelsen to become aware of the force of this conception.¹⁶ Stating, as does Kelsen, that the law is nothing but "a judicial system" means, in fact, seeing it as a set of norms referring to units inasmuch as they are set and imposed by a single and definable power, sovereign if it is legitimate and effective. The judicial system and the state are, in short, two sides of the same coin: what is at play is the centralization of power and its secularization. This is where territorial boundaries and the hierarchy of sources meet: once the universalist tension of the Holy Roman Empire had been reduced, power came to be defined as the capacity to install order in one's own territory, which was possible only by gradually centring the legal ownership of the normative production. In short, in order for the sovereign to be effective, he or she must be unique, and to be unique the sovereign must hold a monopoly over the sources of the law. All sources of the law must be traceable, directly or indirectly, back to the same foundation, be it the will of the sovereign, according to Hobbes (and in part Schmitt), or a norm that legitimizes it, as Kelsen would have it. Now, it is precisely this picture that appears today to have entered into a terminal decline. And with it the idea that the law, thought of essentially in the form of the set of rulings embodied in the legal tradition, is an instrument which the sovereign can use in order to restore order into an originally disordered society.

The law that enters into play when we speak of governance is still certainly an instrument: in short, *a means*. But it is a means which at this point should be re-read within an immediately technocratic plan of immanence. It is a means whose aim is no longer the construction of social order, but the maintenance of that communicative process which, as recalled (among others, obviously) by Barnard, is the condition itself for the existence of any organization, be it public or private. It is, then, not a means that the legitimate

¹⁵ See N. BOBBIO, *Contributi ad un dizionario giuridico* (Torino, Giappichelli, 1994), p. 80.

¹⁶ See H. KELSEN, *Reine Rechtslehre. Einleitung in die rechtswissenschaftliche Problematik* (Wien, Verlag, 1934).

power uses to achieve the goals already outlined at the conference table, but a technique that should guarantee both the legitimacy and the effectiveness of power, through an increasingly extended participation of individuals interested in the choice of public policies, and in singling out the problems which need to be addressed. In this framework, the ability to stimulate and keep the collective learning processes continuously open becomes decisive. The collective learning processes are about deciding together, and above all deciding together when and what is to be decided. A system of norms is therefore no longer conceived as a crystallised immutable system: instead, it is a process capable of singling out, within itself, the objectives to pursue, by learning – reflectively – also from its own failures, and treasuring these lessons. Herein resides an authentically “revolutionary”, but rarely emphasized, character of governance. A small parenthesis on the concept of revolution can, therefore, be surprisingly useful as we approach our conclusion.

7. THE NEW ORDER

Let us begin with this: talking about a revolution means, literally, to be talking about an “upheaval”. Things must change. And they must change in a radical way: *from here to there*, as one would say, making a gesture of turning one’s hand over. In short, *everything* must change. Reality must be overturned like the palm of the hand. All revolutions have claimed to be installing a “new order”. And if one inquires into the difference between the order sought by the revolution, and any other order contested by it, the answer is rather simple. Vittorio Mathieu masterfully explains it: “The new ‘order’ that which the revolution wishes to install, it is an order no longer external to ordered reality. It is an order which does not distinguish itself from reality, in contrast to a ‘form’ which is applied to a ‘content’, or an extrinsic arrangement that regulates the elements laid out, but an order which *identifies itself* with that which it is ordering”.¹⁷ What is at play in any revolutionary claim worthy of its name, therefore, is the passage from *an extrinsic* to an *intrinsic order*. The order wished for by the revolutionaries of all times is an order of a *new kind*, and not simply a *different* order. It is an order capable, finally, of filling the gap between reality *as it should be* and reality *as it is*. And it should no longer be conceived in terms of a model (to take up a term by now familiar to us) to be applied to a social reality, conceived as similar to a

¹⁷ V. MATHIEU, *La speranza nella rivoluzione* (Milano, Rizzoli, 1972), p. 81.

material that can be moulded at will, according to a political initiative coming from the top, from a center of power. Here form and content coincide. Just as to *be* and *ought to be* coincide. And, by the way, who knows: it may not be coincidental that the European Court of Justice in 1963 spoke precisely of a “new legal order of international law”, referring to the juridical community order.¹⁸ But this path could take us too far. Let us, then, remain on the subject of revolution. Hence, the first point that needs to be emphasized is this: revolutionary intolerance has as its object any kind of order extrinsic to the reality that needs to be put in order, and extrinsic to the wills subjected to it. But there are another two points that need to be borne in mind, again following Mathieu’s analysis. Having stated the first, here is the second: *the structural incompatibility of revolution with the law*, and in particular with the form itself of the law. In the revolutionary framework, the law inevitably ends up being oppressive, especially as a manifestation of a structurally external order as compared to the one which needs to be ordered. The case of the law is emblematic. The law is by its nature “external”, since it is a measure of the behaviours that it intends to regulate. It is also “external” with respect to the will of the subject who has created it, and who detached himself/herself from it in the moment it constituted itself as a general rule. It is clear, then, why any revolution cannot but be (also, and maybe above all) a revolution *against the law*. Yet there is another point on that deserves attention – the third point: contrary to a reform, which intends to improve single aspects of reality, a *revolution cannot be transformed into or reduced to a technique*, and certainly not if by the technique we continue to mean a set of instruments used for the achievement of a determined end. If the intention is to overturn everything (as is the aim of revolutionary action), the world which will follow will only become known once the revolution has taken place and not before. In other words: one will never be able to predict the goal – or even foresee it, in fact. The revolution, if anything, will be a technique able to for single it out, but not to achieve it. We now close the parenthesis on the revolution.

8. SHADOWS

Order (external), law and techniques. The revolutionary spirit, as we have seen, contests all three of these terms. And curiously, these same terms are called into question by governance. This should by now be clear, but it is

¹⁸ Case 26/62 (1963) ECR 1; (1963) CMLR 105.

worth reiterating it, given that we are nearing the conclusion. Let us, once again, proceed point by point. First: the order of governance, just as desired by the revolution, is not external but (claims to be) inside the regulated will. Second: what governance intends to solve is the crisis of the idea that a society can be regulated from above, following a model, whatever it may be, and thus following the law of modern thought understood as a privileged instrument of any project of governing society. Third: governance – once again, like a revolution – does not lend itself to being framed as a technique instrumental in the achievement of an already determined goal, but if anything, as a continuous process of learning through trial and error, functional to individuation of such a goal.

Now, if this is true, then it is not hard to understand why, until now, those studying governance have predominantly (albeit not exclusively) come from the ranks of sociologists, economists, scholars focusing on the organization of companies, political philosophers, and not philosophers of law. And the reason is the following: in speaking of governance one is not speaking of the law. Or at least, not of the law as we are used to speaking of it. In short: the focus of discussion is not the law understood as an external measure of action. But, and this is the point: the fact of no longer speaking of the law as modernity has habitually made us speak about it by no means signifies that we cannot talk about it in a different way. On the contrary. The challenge that governance appears to propose is precisely that of how to construct a new grammar, different from the modern edifice, which like all orders of discourse has a history, a life, a development and an end, perhaps precisely the one we are witnessing today. Moreover, it is certainly not by chance that on many sides there is talk of a paradoxical “return to the future”: as if our future (and in certain aspects, already our present) were destined to be similar to our remote past rather than our recent past. Provocatively speaking, in fact, the suspicion may arise that if confronted with a phenomenon like that of governance, a medieval jurist would be better equipped than one of our contemporaries: if for no other reason than because tracing all sources of law back to the legal tradition was not part of his conceptual baggage, not to mention the convergence between the law and the state described earlier, following up on Bobbio’s analysis. Just as foreign to his outlook was the idea that the law was an instrument functional to the construction of a social order. This the focus of debate, in that era, did not center on an “artificial” order to be constructed, but on a “natural” order to be preserved and guaranteed. And the law was thought of as being designed for precisely this purpose: to preserve the conditions of a social order regarded as already given – be it metaphysical, divine or cosmic. Yet precisely this last train of thought allows us also to understand

the limits of this counterfactual hypothesis. The order of *governance*, in fact, is anything but transcendental. Admittedly, it is not laid out at a conference table, and neither is it achieved through the law, but it is still radically immanent and artificial. In brief: it is indeed artificial, but it is spontaneous. It is not an ancient or a medieval order, therefore, and neither is it modern. But if anything, it is literally post-modern.

All things considered, it is an order of the technological age. Or better, as we have already said, of *technocracy*: structurally devoid either of an origin or of a subject that can be considered its author. An order, therefore, that does not depend on anyone. And for which nobody appears to be responsible. But it is precisely here that a shadow falls. It is worth recalling that what we said earlier about management: governance is not a synonym of government, but neither is it the absence of government. The problem is still one of control, orientation and the regulation of social and economic dynamics. But if this is true, one may easily begin to harbour a suspicion that this broader system of governing has no sense, ultimately, other than presenting as *intrinsic* an order destined always to remain *extrinsic*. Thus the participatory structure risks obscuring the way in which power continues to be exercised, and the capacity of a limited number of subjects to direct its dynamics. Let us be clear: the fear is that the "executives" have not disappeared, but are only hidden. And that they are hidden among the folds of a process which, presenting itself as purely horizontal and void of any management from above, actually makes it possible to evade any charge of political responsibility, any question of legitimization of the actors involved in it. Furthermore, and this must be emphasized: the private actors called to take part are typically without any type of formal or democratic legitimization, and their involvement certainly does not constitute a solution to this problem. There has been talk, in this regard, of a *democratic deficit*. And those who raise this kind of alarm may not be wrong. That which risks being hidden is precisely the element of choosing the actors to be included in the dynamics of governance. And, as a consequence, the problem of their legitimization likewise remains shrouded from view. Yet perhaps, when one looks at it carefully, the problem raised by governance is even more radical, and more delicate. In an era such as ours, where the dominating principle appears to be technocratic, we really need to ask ourselves if it is still possible to *govern technology*, or if it is simply *technology that governs*. A truly monumental question, and a disturbing one. For in the latter case, not only are rights, the law, order, the state, and politics at stake, but most of all — our freedom itself. And the possibility of being actors in our own destiny.

...the expression 'good governance' suggests the idea - which I find well represented also in Aristotle's (1984) theory of 'Eudaimonia' (1300a-1300b) - of a social arrangement in which a kind of 'harmony among differences' has been achieved to the extent that the highest possible number of social conflicts can be resolved at the same time granting each and all its individuals the highest possible degree of freedom in expressing their differences when interacting with each other. On the other hand, and whatever its definition may be, governance always entails a reference to the intervention in the social arena on the part of the political power, even when such intervention consists only in providing some basic rules imperceptibly and effectively interact.¹ In this sense, governance can be considered a strategic tool at the politician's disposal that can be used in very different manners. But what is most important in the idea of 'good' governance is the reference to a concrete notion of the good, or rather to the best conception of the good. Consequently, the idea of good governance implies that such a conception of the good does exist which is able to provide the group members, and especially the most powerful among them, with the best set of guiding principles to shift from a given political order to a more satisfactory, and in this sense 'better' one. I find that this is just the problematic side of the notion of 'good governance', given the impossibility to discover the best conception of the good, which is rather constructed by a number of individuals high enough to interact it upon all the group members. This is of course only the political application

Part Three

RETHINKING 'GOOD GOVERNANCE' IN COMPLEX SOCIETIES AND INDIVIDUAL DIFFERENCES

PART THREE

GOVERNANCE AND LIBERTY: THE COMPLEXITY OF THE HUMAN

I. CONCEPTS

The expression 'good governance' suggests the idea - which I find well represented also in Aristotle's (1984) theory of 'Eudaimonia' (1300a-1300b) - of a social arrangement in which a kind of 'harmony among differences' has been achieved to the extent that the highest possible number of social conflicts can be resolved at the same time granting each and all its individuals the highest possible degree of freedom in expressing their differences when interacting with each other. On the other hand, and whatever its definition may be, governance always entails a reference to the intervention in the social arena on the part of the political power, even when such intervention consists only in providing some basic rules imperceptibly and effectively interact.¹ In this sense, governance can be considered a strategic tool at the politician's disposal that can be used in very different manners. But what is most important in the idea of 'good' governance is the reference to a concrete notion of the good, or rather to the best conception of the good. Consequently, the idea of good governance implies that such a conception of the good does exist which is able to provide the group members, and especially the most powerful among them, with the best set of guiding principles to shift from a given political order to a more satisfactory, and in this sense 'better' one. I find that this is just the problematic side of the notion of 'good governance', given the impossibility to discover the best conception of the good, which is rather constructed by a number of individuals high enough to interact it upon all the group members. This is of course only the political application

¹ For a recent but still useful work on the issue of the 'best conception' of the good see Rawls (1993), *A Theory of Justice*, Oxford: Oxford University Press, 2002.

the terms of the... in fact is... a conference... and... it is not an... that if any...

All things... On better... of rights or... but... the... of... and the... of... Let us be clear the first...



And that... it could... of... the... of... This... that... the... of... Yet perhaps... the... not only... And the... than...

FLAVIA MONCERI

RETHINKING 'GOOD GOVERNANCE'.
COMPLEX SOCIETIES AND INDIVIDUAL DIFFERENCES

1. COMPLEXITY AND SOCIAL SYSTEMS

The expression 'good governance' suggests the idea – which I find well represented also in Ambrogio Lorenzetti's fresco "Effetti del Buon Governo" (1338-1339) – of a political arrangement in which a kind of 'harmony among differences' has been achieved, to the extent that the highest possible number of social conflicts can be avoided, at the same time granting each and all individuals the highest possible degree of freedom in expressing their differences when interacting with each other. On the other hand, and whatever its definition may be, 'governance' always entails a reference to the intervention in the social arena on the part of the political power, even when such intervention consists only in providing some basic rules to peacefully and effectively interact.¹ In this sense, governance can be considered a strategic tool at the politician's disposal that can be used in very different manners. But what is most important in the idea of 'good' governance is the reference to a conception of the good, or rather to the best conception of the good. Consequently, the idea of good governance implies that such a conception of the good does exist which is able to provide the group-members, and especially the most powerful among them, with the best set of guiding principles to shift from a given political order to a more satisfactory, and in this sense 'better' one. I find that this is just the problematic side of the notion of 'good governance', given the impossibility to *discover* the best conception of the good, which is rather *constructed* by a number of individuals high enough to impose it upon all the group-members. This is of course only the political implication

¹ For a recent Italian work on the issue of governance see G. FIASCHI (ed.), *Governance: oltre lo stato?* (Soveria Mannelli, Rubbettino, 2008).

of the question. Anyway, I will try to show that there is also an epistemological ground for refusing the idea of good governance, consisting in the fact that human societies are complex systems, and that this prevents us from collecting information enough to evaluate what conception of the good, among the infinite possible ones, ought to be considered the best. To be sure, it is very difficult, if not impossible, to give one single definition of 'complexity'. Here I will refer to the understanding of it suggested by radical constructivism, dating back to Heinz von Foerster² among others, and by contemporary complexity theories, which can be summed up in John Cohen and Ian Stewart's statement according to which "we may tentatively define the complexity of a system as the quantity of information needed to describe it".³ The term 'complexity' refers to the circumstance that a human individual has no ability to completely describe the environment in which it is collocated, that is to say to simultaneously 'compute' all the needed stimuli and data in order to represent reality as it is. As a consequence, human individuals cannot help but *select* only a certain number of them, the ones they subjectively consider as relevant *for them*.⁴ Moreover, thinking about complexity implies more or less immediately a reference to the notion of 'system', to the extent that complexity theories and systems theories appear as strictly intertwined.

This comes as a consequence of the general definition of 'system' as an 'organized complexity', that is to say as something that does not originate from the simple sum of its components, but that also includes all of the pos-

² See H. VON FOERSTER, *Observing Systems*, 2nd edn. (Seaside, CA, Intersystems Publications, 1984). For an introduction to radical constructivism, see B. POERKSEN, *The Certainty of Uncertainty. Dialogues Introducing Constructivism* (Exeter- Charlottesville, VA, Imprint Academic, 2004); A. RIEGLER, "Towards a Radical Constructivist Understanding of Science", *Foundations of Science*, vol. 6 (2001), pp. 1-30; see also E. VON GLASERSFELD, *Radical Constructivism. A Way of Knowing and Learning* (London - New York, Routledge - Falmer, 2002); F. MONCERI, *Pensiero e presente. Sei concetti della filosofia* (Pisa, Edizioni ETS, 2007). On complexity theories see M. WALDROP, *Complexity. The Emerging Science at the Edge of Order and Chaos* (New York, Simon & Schuster, 1992); J. GLEICK, *Chaos. The Amazing Science of the Unpredictable* (London, Vintage, 1998); R. LEWIN, *Complexity. Life at the Edge of Chaos*, 2nd edn. (London, Phoenix, 2001); more generally see N. REISCHER, *Complexity. A Philosophical Overview* (New Brunswick - London, Transaction Publisher, 1998); L.T. KING, *Social Science and Complexity. The Scientific Foundations* (Huntington, New York, Nova Science Publishers, 2000); M.C. TAYLOR, *The Moment of Complexity. Emerging Network Culture* (Chicago - London, The University of Chicago Press, 2001).

³ J. COHEN - I. STEWART, *The collapse of Chaos. Discovering Simplicity in a Complex World* (London, Penguin, 2000), p. 20.

⁴ Especially Niklas Luhmann, stresses the relevance of selection in defining complexity, see N. LUHMANN, *Soziale Systeme: Grundriß einer allgemeinen Theorie* (Frankfurt a.M., Suhrkamp, 1984). Although Luhmann's theory is one of the most important attempts to transfer some features of complexity theories into the investigation of social systems, a deeper discussion of his position exceeds the aims of this article.

sible interactions among those components. As a result, the system as a whole cannot be described and explained without any reference to the relationships connecting its elements, since it can be conceived as a 'totality' in which not autonomy, but interdependence among the parts is the rule. In short, although a specific set of 'complexity sciences', especially within the hard sciences,⁵ does exist, there are clear connections between systems theories and complexity theories, at least when it comes to their core aspects.⁶ As is well known, the term 'system' is frequently used in the social sciences to indicate an 'aggregate' of human individuals, for instance in expressions such as 'social system', 'political system', 'economic system', etc. Before applying one or more complexity theories to 'human systems',⁷ the sense should be clear in which they can be labeled as 'complex', as well as the fact that the application of complexity theories to social sciences presupposes some modifications of the original models coming from the hard sciences. In a word, we might state that human systems are complex in the sense that they address problems to which a 'computable solution' is not to be found. But this is not the mainstream position within social sciences, which generally consider complexity as overlapping with 'difficulty'.⁸ As a result, they keep on search-

⁵ Such complexity sciences are "nonlinear dynamic systems theory, non equilibrium thermodynamics, dissipative structures, the theory of self-organization, catastrophe theory, the theory of self-organized criticality, antichaos, and chaos theory" and they "all purport to offer fresh perspectives on the central problems in the specific domain from which they emerge" (K.M. MATHEWS, M.C. WHITE and R.G. LONG, "Why study the Complexity Sciences in the Social Sciences?", *Human Relations*, vol. 52, n. 4 (1999), pp. 439-462: 439). Despite the differences in theoretical approach, "a unifying theme is a focus on systemic change, an attempt to understand the temporal behavior of both spatially simple and complex systems. Beyond this admittedly broad area of convergent interest, however, much variation and uncertainty is attached to the usage of these perspectives" (*ibid.*, p. 443).

⁶ For an introduction to systems theory see L. VON BERTALANFFY, *General System Theory* (New York, Braziller, 1968); E. LASZLO, *The Systems View of the World. A Holistic Vision for Our Time* (Cresskill, NJ, Hampton Press, 2002). G. MIDGLEY, "Science of Systemic Intervention: Some Implications of Systems Thinking and Complexity for the Philosophy of Science", *Systemic Practice and Action Research*, vol. 16, no. 2 (2003), pp. 77-97 states that there is an overlapping between complexity theories and systems theories (see esp. n. 2), whereas R.D. STACEY, D. GRIFFIN and P. SHAW, *Complexity and Management: Fad or Radical Challenge to Systems Thinking?* (London, Routledge, 2000), takes the opposite position.

⁷ According to L. BIGGIERO, "Sources of Complexity in Human Systems", *Nonlinear Dynamics, Psychology, and Life Sciences*, vol. 5, no. 1 (2001), pp. 3-19, "human systems are characterized by the presence of all sources of complexity, and therefore are the most complex systems we face with. This perspective sheds an anthropomorphic light on the entire issue of complexity, which we address as *observed irreducible complexity* (OIC)" (pp. 4-5).

⁸ There is a clear difference between complexity and difficulty. As Biggiero states, "many problems are difficult, and therefore few are predictable. In this sense, complexity is a question of degree, and specifically the degree of our ignorance. An object is more or less complex depending on the ignorance (quantity of information) we have about it, and depending on our ability to make

ing for an 'ultimate' solution to *whatever* problem such systems may pose to theoretical investigation, ending up, just for this reason, by considering systems in a more 'traditional' or 'classic' sense, and definitely not as complex systems. This implies that human systems, and the 'institutions' in which they articulate, are defined and described more often than not according to the assumption that they are static and isolated structures aiming to organize reality. They are still conceived as closed entities able to represent the 'status', 'situation' or 'configuration' of the set of phenomena they refer to. As a consequence, they are granted the ability to correctly represent the 'real' situation and to give a reliable description of it. However, the main problem with this picture of human systems is that it assumes that all of a system's components can be collected and described, as well as their interactions, that is to say that it takes for granted the possibility to 'compute' the system as a whole because its components are known, as well as their patterns of interaction. Furthermore, as we shall see, such a position does not take into account the role of a system's emergence. On the contrary, a complex system can be defined as a set of elements, but not as an 'aggregate'⁹ of finite and discrete parts whose sum would give birth to the system, as happens in the case of 'classic systems'. A complex system *emerges* from the sum of its parts *plus* their interactions and relationships. Thus, a system is a complex one if describing its components does not suffice to describe it as a whole, so that we need to also consider the interactions occurring among the parts. In its turn, the notion of 'emergence' is very difficult to define because it cannot be described in the terms of traditional science's 'linear' language. John Holland, one of the leading figures of the 'theory of emergence', describes its substance as "much coming from little".¹⁰ More generally, this difficulty hints to the fact that traditional scientific tools are not (completely) adequate to investigate complex systems, because their analytical character prevents them from considering

distinctions, that is, to perceive differences and therefore get information" (L. BIGGIERO cit., p. 5). However, "current debate in natural sciences and epistemology is (more or less explicitly) claiming that there is a qualitative difference in meaning between complexity and difficulty", with complexity referring "to objects which are predictable only in the short run and that can be faced only with heuristic and not optimizing strategies" (*ibid.*, pp. 5-6). Consequently it can be stated that "when difficulty is close to infinity, it becomes complexity: the explanation of such transformation lies in the criteria established to create a threshold in the continuum between zero difficulty (certainty, perfect order, perfect predictability) and complexity" (*ibid.*, p. 6). It is my contention throughout this article that in human systems the possibility of a 'zero difficulty' is never given.

⁹ On the notion of 'aggregativity' see W.C. WIMSATT, "Emergence as non-aggregativity and the biases of reductionism", *Foundations of Science*, 5 (2000), pp. 269-297; *Id.*, "Reductionism and Its Heuristics: Making Methodological Reductionism Honest", *Synthese*, 151 (2006), pp. 445-475.

¹⁰ J. HOLLAND, *Emergence: From Chaos to Order* (Reading, MA, Addison-Wesley, 1998), p. 1.

the surplus of stimuli and data emerging from the interactions among the parts.

Whereas classic static systems stress the notions of autonomy and independence of the parts, complexity and complex systems stress the idea of *interdependence* both at the level of the constituting parts, and of the relationship among different systems considered as 'totalities'. But the most important consequence of shifting to the notion of complex systems is that a joint consideration of the notions of complexity, system and interdependence leaves room to focus on diversity, difference, and diversification. The role of diversity for complexity and systems theories is paramount because internal diversification is one of the substantial features of a complex system, within which a high number of elements interact with each other according to very different and unpredictable modalities. Moreover, complex systems' internal diversification is also the engine of its quite pronounced dynamism, as opposed to the statics of classic systems. Complex systems are always highly dynamic, be they conceived as 'open systems' (as is the case with von Foerster), or as 'closed systems' in accordance with an 'operational closure' (as is the case with Humberto Maturana and Niklas Luhmann).¹¹ Finally, it should not be forgotten that dynamic processes occur not only among the parts, but also among parts, systems and environment (the broader context in which parts and/or systems are situated). The notion of dynamics is linked to those of interaction and relationship, among which however a distinction should be drawn. Whereas interaction underlines the dynamic character of the exchange processes occurring among parts, systems and environments, relationship is more static in character. Interaction is the original phenomenon by means of which all of a system's constitutive features mutually transfer stimuli and data under the condition of systemic interdependence. From the infinite interactions among parts (or among systems through their constitutive elements) relationships do emerge whose basic feature is the recurrence of particular transfer or exchange patterns crystallizing in static, though highly provisional and fluid, entities. In short, the distinction between interaction and relationship amounts to the circumstance that interaction is a *process*, while relationship is a *product* of such a process, which implies selecting par-

¹¹ The concept of an 'operational closure' directly refers to that of 'autopoiesis' originally introduced by H.R. MATURANA – F.J. VARELA, *Autopoiesis and Cognition: The Realization of the living* (Dordrecht, Reidel, 1980), and then by N. LUHMANN cit., as the basis of his theory of social systems. For a deeper discussion of autopoiesis as applied to social systems see J. MINGERS, "Can Social Systems Be Autopoietic? Assessing Luhmann's Social Theory", *The Sociological Review* (2002), pp. 278-299; Id., "Can Social Systems be Autopoietic? Bhaskar's and Giddens' Social Theories", *Journal for the Theory of Social Behaviour*, vol. 34, no. 4 (2004), pp. 403-427.

ticular features of the interaction at the expenses of others. A relationship consists in a reduction of complexity based on a selection performed in the course of an interaction. As should be clear by now, there are good reasons to state that human systems can be conceived as complex systems, but the direct application of complexity theories within the field of social sciences seems not possible for two main reasons. Firstly, because complexity theories are not a unitary and clearly outlined body of knowledge, and this implies that what can be transferred would be either a particular complexity theory of choice (e.g. self-organization theory), or a selection of features extrapolated from two or more theories (e.g. from chaos theory and the theory of emergence). Secondly, because complexity theories have been originally formulated to address and investigate the questions and difficulties posed by specific complex systems, no one of which is a *human* system. Social scientific discourse is about human institutions emerging from the interactions among human individuals, and giving birth to patterns of order constructed *by* and *for* human individuals. The possible analogies with patterns of order elaborated by other species of living beings cannot be thought of as a model of 'social behavior', because such analogies are not given by nature, but constructed by human beings who believe they see some similarities in structure, behavior and aims in the arrangements emerging from the interactions occurring among the members of other species. However, this conclusion is mistaken for two main reasons. The first is that the role the (human) observer plays in elaborating the relevant analogies is not taken into account. The second has to do with the mistaken assumption according to which (human) observers would be able to properly understand other species' structures, which are instead 'rationally' inaccessible unless by conferring an anthropomorphic character to non-human systems.

In the field of human institutions complexity can have two different meanings. On the one hand, complexity is what characterizes the context, situation and environment in which institutions emerge from the interactions among human beings. This kind of complexity points to the fact that any human individual is situated within a context that it is unable to entirely describe because of the limits of its computational abilities, with the consequence that any concrete interaction is unavoidably conditioned as well as limited in space and time. On the other hand, complexity has a meaning more directly linked to institutions. They can be considered as complex phenomena, although they emerge from the interactive exchange of reductionist descriptions of the context, which are subjectively constructed. Each human individual elaborates – *computes* – a set of patterns of order to survive within a complex environment and to solve a similar problem – effectively reducing environmental complex-

ity. But each individual set of patterns is different from all others, because the interactions with the environment (including living and non-living 'beings') are uniquely shaped for each single individual, and cannot overlap with each other. At the 'aggregate' level, institutions emerge from a reiterated exchange of subjective descriptions of the environment *among human individuals*, as intersubjective patterns of order on which an explicit or implicit agreement has been reached. Anyway, before institutions can establish themselves, a further selection is needed, that is to say a further reduction of complexity aiming to establish that some of them are the 'correct' or 'true' ones for all group-members. As emergent phenomena, institutions are complex systems, but in that their task is to provide us with applicable patterns of order, their complexity must be further 'simplified' to let them become effective at the intersubjective level. Therefore, shifting from the subjective to the intersubjective dimension implies a further level of complexity, which has no longer to do with the direct confrontation between a single individual and the environment, but the one between that same individual and the infinite and *different* descriptions of the environment elaborated by all other individuals.

2. GOOD GOVERNANCE AND INDIVIDUAL DIFFERENCES

Contemporary societies can be surely conceived as complex systems, whose internal interdependence, dynamism, and diversification are clearly evident, although the social sciences still keep on investigating them as if they were classic systems, maybe also because they lack adequate conceptual tools, still to be elaborated. Their complexity should prevent us from thinking it possible to describe and control them, especially by means of interventions aiming to direct them, to change them 'for the better', in a word to 'govern' them. Indeed, the notion of 'governance' hints at interventions within society with the aim of causing a modification for the better, but its outcome is unpredictable because a complex system is highly dynamic, and it is impossible to gather sufficient information on its initial configuration as a whole. This implies that any expectation concerning the result of intervening on the initial conditions in order to modify them in the desired direction entails a high margin of error. Moreover, such modification *might* also be for the worse, without any possibility of knowing it in advance, and this is the main reason why the very idea of governing complex systems should be refused in advance. On the other hand, refusing any governance (or any government, for that matter) is also impossible, due to its being a social institution, that is to say something spontaneously emerging from interactions as a tool to simplify complexity by means of an intersubjective agreement on some patterns of order and organi-

zation. Therefore, elaborating a model of order for human systems without any reference to some kind of governance is also impossible because in any one of them patterns of governance do emerge as necessary tools to reduce environmental complexity. What we can do is to acknowledge that no theoretical models or pragmatic strategies of governance would be able to effectively reduce the inherent complexity of a human system to the extent that it could be exhaustively observable, describable, predictable and controllable. As a social institution, governance shares with all other institutions their provisional and fluid character, for they are bound to change according to the modifications occurring at the level of the individual interactions from which they emerge. The usual discourse about governance still considers social and political systems in terms of classic system theory – that is to say as static systems –, even when it tries to take into account their internal dynamics, and ends up by adjusting the theoretical models already at our disposal to complex systems, giving up the possibility to elaborate ‘new’ ones. This attempt to apply old theoretical tools to ‘new realities’ overlaps with the typical and unavoidable operation through which the observer intervenes in reality in the very moment of observation, by selecting a number of stimuli and data from the flux of becoming and moving from the already constructed assumptions of the preferred theoretical approach. A relevant form of intervention upon initial conditions has been already discussed in the field of quantum theory by Werner Heisenberg,¹² and should be further investigated by social scientists especially in its consequences and potentially ‘catastrophic’ effects. The point is that any selection depends on an evaluation judgment stating that the stability of the system should be preserved by holding to the pattern of order that the chosen theoretical model provides for reality. In contemporary political theory and philosophy such a model coincides with liberal democracy, which seems to be still unquestionable, though it is surely possible to wonder about its actual viability under current conditions.

In its turn, the idea of stability has no correspondence with ‘reality’, being rather constructed in the process through which the complexity of becoming is reduced to something human individuals can grasp – a *being*. At the end of the day, the stability of a political order conceived as a static system consists in the assumption of its being articulated in finite and discrete sub-structures (i.e. institutions) aiming to confer meaning to interactions, by virtue of the self-referential character of the system itself. The illusory character of stability,

¹² See W. HEISENBERG, *Physics and Philosophy* (London, Penguin Books, 2000). The reference is here primarily to the notion of ‘relations of uncertainty’ or ‘principle of indeterminacy’.

and the idea of preserving it through intervention, more generally depend on the structural impossibility of the human constitution to grasp diversity in real time, unless by reaching an adequate threshold of perception. As Gregory Bateson clearly demonstrated, the human mind – which is surely to be conceived as a complex system – has no ability to perceive continuous and gradual differences, and although in each 'thing' or 'event' infinite differences are *potentially* contained, only very few of them are elaborated in information, that is to say in 'differences producing a difference'.¹³ In short, diversity is a substantial feature of complex systems, but the inability to perceive it 'in real time' is a substantial feature of human structure. Diversity is constantly present in human systems – it is what properly *is there* – but it can be perceived by human individuals only when it *manifests itself* in such a way that it becomes accessible to human cognitive structure (with different modalities and at different moments). It is just for this reason that the becoming evident of a difference is not the sign of a *ongoing* change, but of an *already occurred* one, and therefore perceivable using the tools at a human individual's disposal. To take just one example: the circumstance that so-called cultural diversity currently manifests itself in all its relevance does not mean that it was not there *before*, and that it will have a relevance only *from this moment on* urging us to take it seriously. It means that the fact that human systems are essentially multicultural, and that this character must be adequately considered, is *at last* evident, and therefore explicitly addressable. This leads to the importance of *time* for human systems and institutions. They change continuously because their substantial features are continuously renegotiated in the infinite interactions among individuals, who use them as criteria, norms, or rules to construct effective pragmatic strategies. However, individuals cannot perceive such change in 'real time' and react to it at different moments according to their individual 'perception threshold', so to say. And since institutions are the emergent outcome of recurrent interactions, such a gap in the individual processing of differences results in their quite slow change, because in order for institutions to be replaced it is necessary that a high enough number of individuals perceive the relevant 'differences that make a difference'. Moreover, further time is also needed in the successful case, because at the systemic level the change in even a single institution implies a modification of the system as a whole, given the interdependence of its parts. Therefore, it is not surprising that the request for institutional change is at first usually doomed or rejected, often

¹³ See G. BATESON, *Steps to an Ecology of Mind* (San Francisco, CA, Chandler, 1972); ID., *Mind and Nature: A Necessary Unit* (New York, Bantam Books, 1979).

provoking the attempt to compel the individuals who no longer recognize the legitimacy of a particular institution to retreat and conform. This move is understandable, at least initially, because the system tries to eliminate the menace by all means at its disposal, in order to preserve its 'equilibrium', that is to say to survive in its current configuration. This form of systemic intervention is only partially effective, because it moves from the mistaken idea that the change is taking place and not already occurred, and the intervention should consist in an attempt to restore the initial conditions, whose effects however might lead just to that same self-destruction which the system intends to avoid.

Due to the need to remain within the 'linguistic game' of traditional thinking, which lacks a language more adequate to the concrete *becoming*, until now I have considered human systems as if they were 'something' having their own existence beyond their parts and their mutual interactions. On the contrary, such assumed existence must be considered as a self-deception, for a system *exists* only by virtue of the interactions from which it emerges. A system's emergence and reconstruction in a particular configuration result from the activity of human beings, and this implies that it would be mistaken to assume that a system has a separated 'individuality'. Such a statement implies that there is a responsibility on the part of the individual in constructing, preserving and modifying the single institutions and the system as a structure of order and organization, with which no other can be entrusted, especially not the system as if it had its own will and tools, independent of those of individuals. The circumstance that a system is addressed as a 'thing in itself' simply depends on its complexity, since not even the system as a 'constructed order' can be completely reduced to a single description by the part of the individuals, too many steps being needed to compute it. I find that also multiculturalist theories end up by being trapped in this misunderstanding, although they try to elaborate a model of political order moving from the correct assumption that 'diversity matters'.¹⁴ They fail because diversity is never considered in its own terms, being instead defined with reference to the identity discourse, and through it to the traditional conception of systems. Also identity is a social institution aiming at conferring stability to the interactions by means of elaborating a set of 'norms' or 'rules' to minimize the impact of individual differences. In multiculturalist discourse, individuating the relevant 'cultural

¹⁴ For a deeper discussion of multiculturalism in the light of complexity theories and radical constructivism see F. MONCERI, *Ordini costruiti. Multiculturalismo, complessità, istituzioni* (Soveria Mannelli, Rubbettino, 2008).

identities' for a multicultural political system is a preliminary step toward the definition of its borders: not all differences matter, but only the set of them that can be 'categorized' on the basis of selected affinities or similarities. Moreover, reducing (a selected number of) differences to clearly definable identities seems not to be the first step toward the elaboration of a new model of order, but the attempt to more or less deeply modify the previous model for it to better fit the achieved awareness that diversity matters. This process is evident in multiculturalist theories, because in all of them the more or less explicit aim is to introduce some 'correctives' within the model of liberal democracy to make it more flexible to cultural diversity, by means of individuating and stressing one of the elements already present in traditional formulations. For instance, Will Kymlicka underlines the role of citizenship, which should be understood as 'differentiated citizenship' in order to let it include the particular diversity that matters (that is to say, national and ethnic diversity).¹⁵ Seyla Benhabib focuses on the discursive and deliberative aspects of democracy, which end up by overlapping with a communicative process in the light of a discourse ethic with the aim to allow the free manifestation of the infinite 'narratives of the (cultural) self'.¹⁶ As for Bhikhu Parekh, he stresses the relevance of multicultural dialogue within a society in which some minimal (but in any case 'liberal') rules should be accepted by all members. Such dialogue could give birth to a generalized consensus about principles, favored by the targeted action of basic institutions, especially education.¹⁷ As a whole, multiculturalism seems quite unable to think radically of diversity because at the end of the day concrete differences always dissolve within a number of identities, also because of an assumed need to protect the 'tradition' of political thought as well as its achievements (liberalism and democracy as models of the best political order). A further problem is that institutional change results from the activity of 'identity groups', which negotiate the structural modifications with the system. However, such reference to a 'group' as if it were an individual obscures the circumstance that groups cannot negotiate: only the concrete individuals identifying with such groups can do it. Subscribing to the idea that only groups can negotiate has the potentially dangerous consequence that only those requests are legitimate for which a single indivi-

¹⁵ W. KYMLICKA, *Multicultural Citizenship: Liberal Theory of Minority Rights* (Oxford, Clarendon, 1995).

¹⁶ S. BENHABIB, *The Claims of Culture: Equality and Diversity in the Global Era* (Princeton, NJ, Princeton University Press, 2002).

¹⁷ B. PAREKH, *Rethinking Multiculturalism. Cultural Diversity and Political Theory*, 2nd edn. (Houndmills, Basingstoke, Hampshire, Palgrave Macmillan, 2006).

dual is able to find an 'identity group' ready to promote and struggle for them in the context, but with which he is compelled to identify. In fact, renegotiations of institutions occur at the level of individual interactions, in which some of their aspects or features are unceasingly put under question, until the moment in which it becomes evident that an institution as a whole is no longer able to work as a legitimate pattern of order. Institutions change only by virtue of such renegotiations, assuming a different shape that individuals show to find more adequate by gradually shifting to the modified institution, while gradually discarding it in its previous configuration.

To sum up, it can be stated that diversity matters in and for itself because it is an essential feature of interactions, if only as the 'background noise' that no complex system can eliminate since it is the 'tank' from which novelty and innovation emerge. Furthermore, diversity and novelty overlap in the sense that the latter emerges any time we are able to perceive a degree of diversity higher than the existent models are capable of including, with the result that we try and modify them according to such perception, instead of simply and automatically discarding the surplus of diversity. The constant and continuous innovation of the models of order through diversity and the systemic complexity it induces is mandatory for every human system. However, this does not mean that institutions, including governance, might be modified to the extent that they could include all differences present within the context, that is to say to the extent that *they were no longer necessary, and could therefore disappear*. This is impossible because human beings cannot help but resort to them to reduce complexity. If things are so, we can assume that there is an inescapable conflict between the need to elaborate a reductionist model of political order and to preserve the internal dynamics of the complex system, that is to say between the drive to maintain and to change the complex system. In our present case this means that there is an inescapable conflict between governance and individual differences. On the one hand, at the systemic level the exercise of power through governance cannot reach a point at which individual differences are so controlled that the system is tendentially motionless, since this would lead to its implosion and self-destruction. On the other hand, at the individual level the exercise of the power to 'break the rules' cannot reach a point at which interacting becomes too dangerous, due to the impossibility to elaborate expectations. In short, the dynamics between governance and individual differences is an engine of the system as a whole, from which unpredictable patterns of 'harmony between differences' do emerge, but always 'at the edge of chaos'. Of course, the interplay between governance and individual differences is an unbalanced one. While individual differences are not organized and often peripheral, governance as a social institution can

rely on the consensus, if not of all, at least of the part of a majority of group-members. In this sense, the power of governance over individual differences mirrors the power of the insiders over the outsiders in a group, and this is surely an obstacle to the free interplay of individual differences within a system. But what is most important is the fact that governance presupposes a human type, a model of the human being that is at the same time the starting point and the target of its interventions within the system. There is no political notion, which could not be based upon some anthropological assumptions, because politics and its tools are constructed *by* and *for* human beings, and this is true also for governance, the action of which is informed by a conception of what a human being should be and is targeted at such a human being. The perverse effects of the (unavoidable) reference to an ideal type of 'human being' fall on the different types of 'abnormal' human beings – among them sexually different people, 'disabled' people, and even 'strangers' –, whose catalogue is at the members' disposal in any given cultural context. What is clear from the body of work by old and recent authors, among them especially Michel Foucault,¹⁸ is that the set of tools we label 'governance' intends to achieve that kind of 'good society', in which each member more or less perfectly resembles the 'good human being' as expected by the chosen anthropological model. Therefore governance, if unwittingly, is also a means to transform all members of the society into good human beings through its practices, so forcing individual differences to come as near as possible to the ideal type of human being – in a word, to 'normalize'. And so it happens that the idea of resorting to governance to accomplish the 'good society' results in the performance of 'bad' actions in order to achieve the 'good human being' as the only fitting member in such society. Anyway, as I hope to have shown, from the standpoint of complexity and systems theories the idea could well disappear according to which governance should be 'good', or lead to a good society if not to the best political order. Governance is no more than a set of strategic tools to reduce complexity by attempting to preserve and maintain the already established order through targeted interventions. We should try to reduce our use of it, at the same time being very careful as to its consequences for individuals, because each component of a complex system has just the same relevance as all the others, this being true for any individual, including the one

¹⁸ M. FOUCAULT, *Discipline and Punish: The Birth of the Prison* (London, Penguin, 1979); ID., *The Will to Knowledge. The History of Sexuality*, 1 (London, Penguin, 1998); *Ethics Subjectivity and Truth. Essential Works of Foucault 1954-1984*, P. RABINOW (ed.), vol. I (New York, The New Press, 1997).

labeled as 'abnormal' and/or 'deviant' by the ruling majority. This implies acknowledging that all individual differences should be granted the possibility to freely perform their role of irritating the system to make it change, without any restriction on the basis of already elaborated models of order, which should be rather continuously modified and replaced by more fitting ones.

MAGDA FONTANA

POLICY IN COMPLEX SOCIAL SYSTEMS

If we object that historicizing, psychologizing and sociologizing are not the business of economics, then we must conclude that the objector thinks that the long term growth theory is not the business of economics.

HERBERT SIMON 1984, 22¹

1. THE ECONOMISTS' HUBRIS

Even after disenchantment with the beneficial and efficient properties of the self-organization of market, economists have trusted their abilities in controlling the economy. The idea of intervening in the economy when it fails to adjust spontaneously or when there is the need of steering it toward a (politically) given direction has dominated economics in the last century independently of the prevailing theoretical background. In fact, the various schools of economic thought differ mainly in the prescribed control tools (e.g. monetary vs. fiscal policy), sharing unfaltering confidence in the idea that the economies work as machines and that 'equilibrium' is the key to their functioning. By 'control' I mean the possibility of adjusting, according to the prescriptions of the various economic theories, some given variables such as public expenditure or the quantity of money with the aim of obtaining full employment and stable prices. Implicitly, control requires the possibility of forecasting both the trend and the turning points of economic systems. Sadly enough, the history of control and prediction of economic phenomena is beset with failures.² The record of failures is as long as the discussion concerning their

¹ H. SIMON, "On the Behavioral and Rational Foundations of Economic Dynamics", *Journal of Economic Behavior and Organization*, 5 (1984), pp. 35-55.

² For an account of policy failures in the United Kingdom see D. SIMPSON, *Rethinking Economic Behaviour. How the Economy Really Works* (London, MacMillan, 2000).

causes. Switches in policies are the consequences of this debate: theories used by economists have been held responsible for the ineffectiveness of their applications. A classical example is the discussion generated by the Lucas critique (1976)³ on large-scale macro-econometric models. He raised a crucial issue: the parameters of those models vary with the undertaken policies (they are structural) and therefore their predictions are likely to be misleading. Lucas' suggestion was to model the micro parameters of the models, that is to say preferences, technology constraints and so forth, in order to understand what the agent would do as a consequence of a policy. The aggregation of individual responses would have generated the macroeconomic impact of the change in policy. Kidland and Prescott (1977)⁴ developed Lucas' thesis by opening up the search for micro foundation of macroeconomic models. Dynamic stochastic general equilibrium (DSGE) models constitute the most recent development of this line of research. With respect to previous efforts they try to include historical time and random events. However, in order to assure solvability and simplicity DSGE usually neglects part of the economic systems such as the financial markets and the banks whose importance has been remarkably highlighted by the last economic crisis. In the wake of the recent financial crisis and subsequent recession that models – especially DSGE – have failed to capture, the discussion concerning the need for new economic theories has gained new vigor. This essay participates in this debate by observing the issue from a different perspective. I formulate the hypothesis that the cause of the policies failures is not to be found in theories rather it resides in their underlying ontology. It is the assimilation of the economy to a machine ruled by equilibrium that deceives economists.

2. A DIFFERENT PERSPECTIVE⁵

Starting from the late 80^s, economics has witnessed the increasing influence of complex system analyses. According to this literature, economies are complex adaptive systems that exhibit five essential features. First, com-

³ R. LUCAS, "Econometric Policy Evaluation: A Critique", in K. BRUNNER – A. MELTZER (eds.), *The Phillips Curve and Labor Markets* (New York, American Elsevier Pub. Co., 1976).

⁴ F. KIDLAND – E. PRESCOTT, "Rules Rather Than Discretion: The Inconsistency in Optimal Plans", *Journal of Political Economy*, 85 (1977), pp. 473-491.

⁵ The topics discussed in this paragraph are covered at length in M. FONTANA, "Can Neoclassical Economics Handle Complexity? The Fallacy of the Oil Spot Dynamic", *Journal of Economic Behavior and Organization*, 76 (2010), pp. 584-596.

plex systems are comprised of many morphologically diverse parts. Economies consist of a huge number of individual agents, organized in a great variety of groups and institutional structures. These parts are morphologically diverse. Removal of one part leads the system to self-reorganize and arrive at a series of changes aimed at compensating for the gap in the system. These agents are heterogeneous. Second, complex systems exhibit a variety of non-linear dynamics. This is due to the fact that the different components operate on different temporal and spatial scales. In turn, this implies that aggregate behavior cannot simply be derived from the summation of the behavior of individual components. Even when a catalogue of the activities of most of the participating sub-components is available, an understanding of the effect of changes on the whole system is far from achieved. Third, complex systems are open, dissipative systems that maintain themselves away from thermodynamic equilibrium. Indeed the large fluctuations we observe in economic time series seem to indicate that economies tend to operate in a critical state, way out of balance, where minor disturbances may lead to events (avalanches) of all dimensions. Such state is what the literature on complexity refers to as self-organized criticality.⁶ Fourth, complex systems can respond adaptively to change, in ways that tend to increase their probability of persisting. Their interacting parts adapt by changing their behavior (even in innovative ways) as conditions change and experience accumulates. In turn, the environment of any adaptive element largely consists of other adaptive parts. Therefore, a portion of any individual's efforts at adaptation is spent adapting to other adaptive individuals. This feature is a major source of complex temporal patterns. Fifth, complex systems have irreversible histories. In nature, each individual organism is the unique result of the interaction between its genetic code and the environment; in social phenomena each epiphany is the product of individual actions, under a given institutional setting, in precise circumstances of time and space.⁷ The complexity perspective implies a radically different perception of the nature of economic phenomena (as compared to the mainstream view) that relies on heterogeneity, processes and evolution. This attitude, as far as theorizing is concerned, results in the rejection of the pervasiveness of linearity, of the perfect rationality postulate, of the centrality of equilibrium, and of reductionism; when it comes to modeling, it results in

⁶ P. BAK, *How Nature Works* (Oxford, Oxford University Press, 1997).

⁷ J. BROWN, "Complex ecological systems", in G. COWAN - D. PINES - D. MELTZER (eds.), *Complexity: Metaphors, Models and Reality* (Reading, Massachusetts, Perseus Books, 1994). See also S. KAUFFMAN, *The Origins of Order. Self-organization and Selection in Evolution* (New York, Oxford University Press, 1993).

the refusal of the view of economics as a purely mathematical science. The view of economies as complex adaptive systems breaks the logical link that supports the relation between economics and policy: the ability to predict future outcomes. According to complexity theory, economies often exhibit chaotic behavior. There are several definitions of chaos, the common underlying concept, however, is the randomness or irregularity that arises in a deterministic system. The intuitive notion is that of a time evolution with sensitive dependence on initial conditions – that is, arbitrarily close initial conditions display independent evolution as time proceeds. Sensitivity to initial conditions implies unpredictability; the system exhibits path-dependence, and although in principle it should be possible to predict future dynamics as a function of time, this is in fact impossible because any error in specifying the initial condition, no matter how small, leads to an erroneous prediction at some future time. Therefore, it seems that from the complexity perspective policies should renounce prediction. Is it feasible? At first sight, adhering to this ontology promises a better understanding of the functioning of economic phenomena but seems to imply the stall of economic policy, a sort of cogent *laissez faire* that is not supported by normative statements on welfare. The scarce literature on the topic⁸ tends to assimilate complex adaptive systems to spontaneous orders⁹ implicitly endorsing my conjecture. On a closer inspection, however, it might be possible to reject the nihilist hypothesis and figure out methods and ambits of viable intervention.

3. ON THE ECONOMIC MAN¹⁰

The models sketched in the previous paragraph share a common feature: individual behavior is assumed to be rational. The traditional conception of economic man is deeply rooted in positivism and relies on Benthamian utilitarianism to create a theory based on a logical mathematical language that applies to an individual (referred to as *homo oeconomicus*)¹¹ that pursues his

⁸ D. COLANDER (ed.), *The Complexity Vision and The Teaching of Economics* (Cheltenham, Edward Elgar, 2000).

⁹ N.J. VRIEND, "Was Hayek an ACE?", *Southern Economic Journal*, 68 (2002), pp. 811-840.

¹⁰ The issues regarding cognitive psychology are thoroughly covered in S. RIZZELLO, *L'economia della mente* (Roma - Bari, Laterza, 1997). The psychological themes discussed in this paragraph are inspired by and rely on his research.

¹¹ J.S. Mill has introduced the concept of *homo oeconomicus* in his essay "On the definition of political economy and on the method of investigation proper to it", appeared in the *London and Westminster Review* of October, 1836.

own welfare by spending as less resources as possible. *Homo oeconomicus* chooses in accordance with a preference ordering that is given, complete, and subject to perfect information acquired without incurring any cost. He always chooses the alternative that leads him to the preferred consequences; in other words he maximizes his own utility¹² subject to the constraints of endowments. This is known as the *rationality postulate* which figures as a premise in almost every traditional economic argument. In this ambit a choice is a mere internalization of the only possible choice and the decision making process takes place in a deterministic way. This system, well depicted in the general equilibrium theory, is a logic of choice¹³ rather than a theory of human action. Criticisms of this mono foundational approach are numerous. For instance, Daniel Kahneman has set forth sources of irrationality in which humans systematically overestimate or underestimate risk. However, I believe that the search for micro foundations should not be conducted by opposing rational to irrational behavior. That is to say that non-maximizing behavior is not necessarily irrational. It is better understood as rational behavior under limited cognitive and computational skills. Complexity theory stresses the role of learning and adaptation and introduces heterogeneity in features of agents and in their decision making process. The latter is supposed to be path dependent, that is to say that action is influenced by individual specific traits, experience, and feed back with the environment.¹⁴ On these issues, F. Hayek and H. Simon have preceded complexity theorists. On the one hand, Hayek (1937) questioned the traditional assumption according to which agents have perfect knowledge that is given without effort. Moreover, in *The Sensory Order*,¹⁵ he formulated a theory according to which knowledge is acquired through a process, partly neurological, that has been shown to be strongly path dependent.¹⁶ Simon, on the other hand, elaborated the concept of bounded rationality¹⁷ that concerns the limits of the computing and cognitive

¹² Where there is uncertainty about future outcomes, he maximizes his expected utility, i.e. the utility of an outcome multiplied by the probability of its occurrence. See J. VON NEUMANN – O. MORGESTERN, *Theory of games and economic behavior* (Princeton, Princeton University Press, 1944).

¹³ F. VON HAYEK, "The use of knowledge in society", *American Economic Review*, 35, 4 (1945), pp. 519-530.

¹⁴ A. NEWELL – H. SIMON, *Human problem solving* (Englewood Cliffs, NJ, Prentice Hall, 1972).

¹⁵ F. VON HAYEK, *The Sensory Order: An Inquiry into the Foundations of Theoretical Psychology* (London, Routledge and Keagan Paul, 1952).

¹⁶ S. RIZZELLO (1997) cit.

¹⁷ H. SIMON, "Theories of Bounded Rationality", in C.B. McGUIRE and R. RADNER (eds.), *Decision and Organization* (Amsterdam, North Holland, 1972).

ability of the human mind. He also emphasized the potential of the human mind by setting forth that individuals use a kind of rationality in their decision making process that he defines as being 'procedural'. In short, when facing problematic situations, individuals apply already experimented routines. Simon and Hayek's theories have a common core in the statement of an interactive relationship between the environment and the individual. The latter interacts with the external world through the feedback mechanism thanks to which both the agent and the environment change continuously.¹⁸ The subject adjusts his behavior on the basis of the information that he receives from the external world. Information is perceived and elaborated in order to provide an *interpretation* of the outer environment. These operations are ruled by interpretative schemes that are innate (hereditary) and dynamic. These modify themselves through *adjustment* and *assimilation*. When an individual perceives elements that have already been experimented the interpretative scheme is applied without any amendment (assimilation), whereas when there are elements of novelty, the new elements are associated with what was already known but the interpretative scheme changes to embody them (adjustment). It is worth noting that the interpretative schemes are not rigidly separated from one another for they can combine to produce new ones. Every individual accumulates different experiences and creates a different system of connections. It follows that "if two people have been exposed to different experiences in the past, with resulting differences in the stock of conceptual representation they have formed, may act on the same data differently".¹⁹ Consequently, it is very unlikely that different individuals would perceive the same phenomenon in exactly the same way.²⁰ The process that transforms information into knowledge is path dependent. This line of reasoning does not end up in solipsism: there are shared mental models that permit communications and behavior in accordance with shared rules. This point of view must be taken into account when managing social systems since heterogeneity in perception is a primary cause of non-linearity that profoundly affects the effects of policies. Knowledge of the (mechanism of change of the) prevailing mental models becomes indispensable. Freeman Dyson alleges that mental models reverberate on the structure of societies. These have levels that exhibit

¹⁸ This cognitive aspect further clarifies the notion of co-adaptation of complex adaptive systems.

¹⁹ B. ARTHUR, *On Learning and Adaptation in the Economy* (Santa Fe Institute Working Paper 92-07-038, 1992), p. 8.

²⁰ A. DENZAU - D. NORTH, "Shared mental models: ideologies and institutions", *Kyklos*, vol. 47(1) (1994), pp. 3-31.

different rates of changes. The mix between fast and slow levels is responsible for the resilience of the system. The former carry innovation and the latter retain the memory of a system and provide stability. Policy intervention should regard the faster levels that are more reactive. The completion of the European Single Market can be interpreted along these lines. The artificial creation of an area of free trade required about 260 directions approved by the European Union. Among them only 26 regarded property rights. It seems that property pertains to the slower level while changes are better conducted by rules of governance and rules of exchange.

4. ON COMPARISON

DSGE models embed individual behavior in equations that do not interact. The policy effects are computed for each agent and then aggregated. Conversely, complexity theory stresses the role of connections and interactions. In an economic system these are the formal and informal rules, the institutions, which establish what can be done within the system and 'how' this can be done. Even a superficial observation of the world outside the window will convince the reader that institutions differ across countries. Therefore, the overall configurations of economies vary as well. It follows that considering the economies as complex adaptive systems implies the need for a better understanding of the effects of institutions on economic performance. Comparison is an important tool at hand. As naïve and banal this statement can appear it is however ripe with implications. First, in order to compare, economists must admit that economies are different from one another. Second, economists must learn about institutions, culture and history. These are major departures from the traditional approach in which all actors and all systems are the same and in which transactions take place in a social vacuum. Let me make this point clearer with an example borrowed from Douglas North.²¹ At the beginning of the XVIth century, Spain and England were facing different situations. The former was emerging as a non-unified country, from the period of Moorish domination on the Iberian Peninsula, while the latter had developed, since the Norman Conquest, a unitary feudal system. Both countries had to solve a similar problem: they had to raise funds in order to finance the increasing expenses of warfare. The fiscal crisis had led in both

²¹ D. NORTH, *Institutions, Institutional Change and Economic Performance* (Cambridge, MA, Cambridge University Press, 1990).

countries to the emergence of some form of representativeness such as the Parliament in England and the Cortes in Spain. In both countries the main sources of income derived from the trade of wool. The evolutionary path that starts from these initial conditions is well known. In England it led to the solution of the fiscal crisis but also to the birth of an economic empire. In Spain, it revealed itself inefficacious in the solution of the fiscal crisis and produced insecure property rights, confiscation of assets, and three centuries of relative stagnation. In England the state was organized in a highly hierarchical way while in Spain it was decentralized but densely connected. Connective complexity implies that a network with many nodes is less adaptive, so we must conclude that Spain had a lower degree of adaptability than England. Connective and computational complexity stresses that the act of transforming information (increasing expenditures) into useful knowledge (fiscal policies) takes place according to mental models grounded on experience and culture. In England, there existed a consolidated culture that favored the protection of property rights, while, in Spain, the culture was mainly grounded on Christian values and pushed towards cooperation and sharing. If in England the sacrifice of property rights seemed an absurd solution, in Spain the confiscation of private goods seemed viable. Finally, dynamic complexity shows the reason why in Spain – once it had been acknowledged (there were a lot of complaints sent to the *junta de reformation*) that the development path was inefficient – the government was not able to make a change. Complex systems are path-dependent: the state of a system at time t depends on the state of the system at time $t-1$. It follows that it is impossible to conceive of an abrupt shift from one trajectory of development to another. I strongly believe that history and comparison are powerful tools greatly underestimated in models that rely exclusively on economic variables.

5. ON HISTORICAL TIME

In discussing path dependence I have introduced the role of historical time in policy making. This consideration implies a simple, self-evident effect: change induced by policy takes place in time, therefore it is not sufficient to have the reasonable certainty that a given intervention will drive the economy toward a new, possibly more desirable, state. It is necessary to appreciate the length of the transition. This has been a major problem in pre-DSGE macroeconomic models. In models grounded on equilibrium time had a purely logical dimension: adjustments descended from initial assumptions without any attention to the actual time needed to accomplish them. Explorations of this

question have led to (un)surprising results. Epstein and Hammond²² demonstrate that the time necessary to reach a fixed point (an equilibrium) in a very simple setting is increasing in the number of the agents participating in it. This statement implies that the high number of agents operating within an actual economy should result in a long – probably too long to be of any help to policy makers – transition to equilibrium. It follows that transients are more important than the final states. However, there are more profound philosophical and methodological implications deriving from the inclusion of time in economic policy making. The idea of engineering the economies through policy reflects a notion of time that characterizes modern societies. Time is an arrow pointing toward a better future. According to this view, there is a sort of ladder and each step leads societies to an irreversible progress. This view reverberates on economic policies that constitute repositories for hope and reassurance: once a crisis has been solved it will not reoccur. From this perspective, crises do not only produce economic damages in themselves but also fear since they represent a failure of the ability of science and technology to win over uncertainty. There is a less familiar, but probably more realistic conception of time that would result in a different role for economic policies. If time is circular then being out of a crisis does not imply that it will not show up again in the future. All the states of the economy are possible. The effect on policy is strong and well expressed by Keynes in an article regarding war:

Our power of prediction is so slight, it is seldom wise to sacrifice a present evil for a doubtful advantage in the future. [...] It is the paramount duty of governments and of politicians to secure the well being of the community under the case in the present. There is this further consideration that is often in need of emphasis: it is not sufficient that the state of affairs which we seek to promote should be better than the state of affairs which preceded it; it must be sufficiently better to make up for the evils of the transition.²³

Let me turn to the methodological side of the argument. The passing of time is relevant only if we admit that it has some effect on the economy, that is to say that time brings changes. Therefore logic compels us to state that if the economy changes in time then theories describing them should change

²² J. EPSTEIN – R. HAMMOND, “Non explanatory equilibria: an extremely simple game with (mostly) unattainable fixed points”, in J. EPSTEIN, *Generative Social Science. Studies in Agent-Based Computational Modeling* (Princeton, Princeton University Press, 2006), pp. 75-85.

²³ J.M. KEYNES, *Burke's Timidity on Embarking on War* (1904), reproduced in R. SKIDELSKY, *John Maynard Keynes: Economist, Philosopher, Statesman* (London, Macmillan, 2003), p. 97.

too. Thus, if economies and theories change to accommodate the effects of time then economic theories are not general. It also follows that any solution found by policy makers on the ground of a changeable society is spatially and temporarily bounded in its application.²⁴

6. ON INSTITUTIONAL CHANGE

My discussion has slightly shifted the analysis from 'control' to 'change'. While in traditional economics policies are intended to drive economics towards a given objective, in complexity theory the awareness of the ubiquity of path dependence and the relevance of mental models suggest a wariier approach to the topic. It is crucial to get acquainted with the 'levels of society' that carry change and when possible to take advantage from the ongoing dynamics. Among those levels institutions are the most prominent. Change, as I have already pointed out in the Spain versus England example, needs to be incremental. D. North²⁵ argues that institutional change can be influenced by the presence of increasing returns in imperfect markets characterized by high transaction costs. Moreover, he alleges that the process that yields the emergence of these institutions is strongly dependent on history and on the self-reinforcing mechanisms typical of complex adaptive systems. As a new institution appears, the fixed costs that individual and organized agents have to face to adapt to the new rule are high. Over time agents learn how to adjust their actions in order to reap the benefits from environmental change. Thus, the institutional framework affects organizational and individual change. Such an influence is enhanced by the presence of coordination and network externalities in interaction. These, in turn, favor the emergence of informal constraints that marginally amend and extend the formal rules. These relations support the idea that institutional change is a complex phenomenon that is further complicated by interpretation at the individual level. Individuals interpret environmental complexity in the light of their experience filtered and integrated by the prevailing culture; their cognitive processes are path dependent.

²⁴ J. PADGETT – C. ANSELL, "Robust Action and the Rise of the Medici, 1400-1434", *The American Journal of Sociology*, 98, 6 (1993), pp. 1259-1319.

²⁵ *Ibid.*, pp. 1259-1319.

7. ON METHODS

One of the more radical aspects of conceiving economies as complex adaptive systems is that their analysis often escapes mathematical treatment. The Santa Fe Institute has catalyzed the emerging application of simulation techniques, namely agent-based, to social systems and has provided a natural tool to deal with policy in complex systems. Agent-based economics aims at analyzing

fundamental social structures and group behaviors as emerging from the interaction of individuals operating in artificial environments under rules that place only bounded demands on each agent's information and computational capacity. We view artificial societies as laboratories where we attempt to grow certain social structures in the computer [...] the aim being to discover fundamental local or micro mechanisms that are sufficient to generate the macroscopic social structures and collective behavior of interest.²⁶

This idea is close to that of the economic phenomena as the unintended result of decentralized interaction of individuals with the inclusion of the more recent ideas of Simon's bounded rationality and of Hayekian incomplete knowledge. Technically this is implemented by programming on three interacting levels. First, the model needs agents (firms, consumers...) that can have the desired levels of heterogeneity (technology, endowments, gender, age...). Second, agents populate an environment that is separate from them and with which they interact. Finally, the model needs rules that govern agents' and environmental behavior as well as the interaction between the two. For instance, imagine a population of agents living on a lattice gathering and exchanging a resource necessary for survival. There will be individual rules of movement, gathering and trade for the agents and rules of reproducibility of resources for the environment. The computer will place the agents on the grid and let them behave according to the rules without any intervention on the researcher side. The behavior of the system will be observed at the micro level (the story of each agent can be tracked) and at the macro level as an aggregation of the behavior of the individuals. In agent based modelling, social science is interpreted as an experimental science: models are laboratories in which one can make different hypotheses upon the phenomenon under study and observe the output: i.e: observations of regularities emerging from micro

²⁶ J.M. EPSTEIN - R.L. AXTELL, *Growing Artificial Societies: Social Science from the Bottom up* (Cambridge, MA., MIT Press, 1996), p. 4.

rules and the robustness of such regularities. As in biology the results are interpreted in terms of candidate explanation (sufficiency of rule to generate a given regularity) and not in terms of general laws.

8. ON POLITICS

Beinhocker notices that economic ideas have been always linked to the world of politics:²⁷

paradigm shifts in economic theory have led to reconfigurations of the political landscape. Adam Smith's ideas helped inspire a dramatic expansion in free trade in the nineteenth century. Karl Marx theories provided the impetus for cataclysmic changes in the twentieth century. The Neoclassical paradigm laid the intellectual foundations of Western capitalist economies, while Keynesianism tempered that orthodoxy with a role for the state.

He then poses an important question of how will the ideas of complexity will affect politics? Continuing along Beinhocker's lines we must ask if complexity sides with left or right ideas. I have already anticipated that by stressing the impossibility of controlling the economies and forecasting their outcomes it seems to favor a non interventionist orientation, however by insisting on non-optimal market results it opens up an active role for the state that recalls the ideas of the left. Beinhocker concludes that complexity economics is a third way that remains distinct from the received dualization of politics. The detailed discussion of this issue falls beyond the scope of this essay, however I can derive a general statement that regards the link between politics and policy. I believe that the link between political ideas, economic theory, and policy solutions works in both directions: it is circular. Once an ideology is backed by an economic theory it starts to generate policies that are instrumental to the ends of that given ideology. According to complexity theory, policy solutions change according to the different states and configurations of economies: for instance, a liberalization policy would be detrimental in a given country and helpful in another. I believe that economists should have a more nuanced ideological color.

²⁷ E. BEINHOCKER, *The Origins of Wealth: Evolution, Complexity and the Radical Remaking of Economics* (New York, Harvard Business School Press, 2006), p. 415.

9. CONCLUDING REMARKS

Policy making in non-linear systems must be open to learn from neighboring endeavors in order to open up the black box of economies. In the past, economic theorists have attempted at over simplifying the functioning of economic systems with the aim of extracting fundamental principles. Complexity economics re-discovers Marshallian wisdom: "*The forces of which economics has to take into account are more numerous, less definite, less well known, and more diverse in character than those of mechanics; while the material on which they act is more uncertain and less homogeneous*"²⁸ and stands to profit from new mathematical and computational methods. Economic policy is going to free itself from the rigid categories that have entrapped it so far. According to complexity theory, in the face of the same objectives (steady growth, low unemployment, stable prices) tools are not predefined and definitive. Any aprioristic position must be reconsidered in the light of the uniqueness of economies in time and space.

²⁸ A. MARSHALL [first edition 1890, eight edition 1920], *Principles of Economics*, 2 vols. (vol. I *Text*, vol. II *Notes*), C.W. GILEAD (ed.) (London, Macmillan, 1961), p. 772.

FRANCESCO DI IORIO

MIND, MARKET AND OPEN SOCIETY IN HAYEK'S THOUGHT *

1. INTRODUCTION

The present article underlines the linkages between Hayek's political philosophy and his theory of mind. As Cubeddu¹ pointed out, one of the most original contributions of the Austrian author is the fact that he defended the subjectivist theory of values and its political implications on a neurophysiological basis. This aspect of Hayek's work has probably been less studied than others. The paper aims to contribute to filling this gap. It analyses this issue by comparing the Austrian scholar's work with some recent contributions from the field of cognitive science, namely the neurophenomenological paradigm of the self-organization of mind as intended by Maturana and Varela.² The article is structured as follows. Section two provides an overview on Hayek's cognitive psychology. It stresses the fact that according to him knowledge has an interpretative nature. Section three focuses on the Austrian scholar's idea that the mind is a complex self-organized system. Section four underlines the analogy between the functioning of the mind and that of the market that is highlighted in Hayek's thought. Section five explains his theory that the subjective theory of value is justified by neurophysiological presuppositions and the logic of self-organization which govern sensorial knowledge. The last section – section six – analyses the political implications of Hayek's cognitive psychology. Following Maturana's and Varela's approach, it argues that the kind of theory of mind which has been developed by the Austrian scholar justifies, from a

* I wish to express my gratitude to Philip Giurlando for having made my English more understandable.

¹ R. CUBEDDU (1995), *Friedrich A. Von Hayek* (Roma, Borla), p. 62. See also P. HERITIER (1997), *Ordine spontaneo ed evoluzione nel pensiero di Hayek* (Napoli, Jovene), pp. 31 ff.

² See F.J. VARELA (1989b), *Connaître les sciences cognitives. Tendances et Perspectives* (Paris, Seuil).

neurobiological point of view, Gadamer's idea of the "historical finitude" of man by offering arguments in favor of pluralism and an Open Society.

2. THE INTERPRETATIVE NATURE OF THE SENSORY KNOWLEDGE

Hayek developed his theory of the mind on the basis of an intuition he had in the twenties when he was a young student torn between his passion for economics and that of psychology. *The Sensory Order* exposes one of the first connectionist theories of perception. Few people know that Hayek made a very important contribution to psychology and the cognitive sciences, as has been acknowledged by eminent neurophysiologists such as the Nobel Laureate Gerald Edelman.³ In addition to the employment of his theory of self-organization for the explanation of the market, he applied it to the functioning of the brain. According to Hayek, all knowledge is interpretation. For him, the mind is not the mirror of nature: the sensory qualities are constructions depending on *a priori* categories; differing from Kant's categories, Hayek's categories are not invariable, but depend on biological and personal memory: "Every sensation [...] must [...] be regarded as an interpretation of an event in the light of the past experience of the individual or the species".⁴ Since perception is based on *a priori* categories, the mind reproduces only partially and imperfectly the external world. Perception by categories is based on the fact that the mind is able to link typical sets of stimuli to typical meanings. Hayek⁵ expresses this concept in terms of "Primacy of Abstract" (he

³ See J.-P. DUPUY (2000), *The Mechanization of Mind. On the Origins of Cognitive Science* (Princeton - Oxford, Princeton University Press); G.M. EDELMAN (1987), "Through a Computer Darkly: Group Selection and Higher Brain Function", *Bulletin-The American Academy of Arts and Sciences*, XXXVI (1), pp. 20-49; ID. (1987), *Neural Darwinism: The Theory of Neuronal Group Selection* (New York, Basic Books); J. FUSTER (1995), *Memory in the Cerebral Cortex: An Empirical Approach to Networks in the Human and Nonhuman Primate* (Cambridge, MA, The MIT Press); P.R. MACH (2001), "Préface", in F.A. HAYEK, *L'ordre sensoriel. Une enquête sur les fondements de la psychologie théorique* (Paris, CNRS Editions); B. SMITH (1997), "The Connectionist Mind: A Study of Hayekian Psychology", *Hayek Economist and Social Philosopher: A Critical Retrospect*, S.F. FROWEN (ed.) (London, McMillan).

⁴ F.A. VON HAYEK (1952), *The Sensory Order. An Inquiry into the Foundations of Theoretical Psychology* (London, Routledge & Kegan Paul Ltd.), p. 66. See also R. AGONITO (1957), "Hayek Revisited: Mind as a Process of Classification", *Behaviorism: A Forum for Critical Discussions*, vol. 3, no. 2, pp. 162-171; W.N. BUTOS - R.G. KOPPL (2006), "Does the Sensory Order Have a Useful Economic Future?", *Advances in Austrian Economics*, E. KRECKE - K. KRECKE (eds.), vol. 8 (Oxford, JAI Press).

⁵ F.A. VON HAYEK (1987), *New Studies in Philosophy, Politics, Economics and the History of Ideas* (London, Routledge & Kegan Paul), p. 35.

also talks about *pattern recognition* or *rules of perception*). In other words, the author of *The Sensory Order* agrees with his fellow-citizen and friend Popper: “all we know about the world”, he writes, “is of the nature of theories and all ‘experience’ can do is to change these theories”.⁶ Consequently, Hayek holds that the tendency to order phenomena in typical categories or classes is not a purely rational and conscious ability.⁷ It is first and foremost a tacit or meta-conscious capability; a property of categories through which the mind operates: “the richness of the sensory world in which we live [...] is not – Hayek states – the starting point from which the mind derives abstractions”, but “the product” of meta-conscious abstractions.⁸ Those classification (or categorization) processes generating perceptions are not procedures of simple classification: they are, instead, modes of “multiple classification”.⁹ Firstly, this implies that, in spite of what is assumed by behaviorism, they never concern a single stimulus, but always groups of stimuli or events. Secondly, it means that knowledge never presupposes the use of only a single a priori category, but it always demands the use of several a priori categories. The detailed analysis of the functioning of this logic of multiple classification does not constitute part of the scope of the current work. It is sufficient to specify that this particular classifying activity constantly tends to rectify the interpretations, to which it leads according to the continuous flow of new experiences. Moreover, it allows the experience of a large abundance of sensory qualities. This is in accordance with the fact that it allows the overlapping of several abstract schemes of meanings. This is the reason why by observing a certain object, we can simultaneously gather a large number of particular characteristics. We can realize, for instance, that this item is a house, that it is a yellow house, that it is a house in an *art nouveau* style, that it is a house with three floors, that it is a house with a garden and so on.¹⁰ Hayek makes a distinction between the sensory order and the objective or physical order. He defines the sensory order as the order of analogy and difference relations amongst the sensory qualities (in terms of dimension, color, weight, etc.). It is the way through which these qualities, and not the objective or physical facts, differ from each another. It is also the whole set of meanings of the phenomenal reality. The difference

⁶ ID., *The Sensory Order. An Inquiry into the Foundations of Theoretical Psychology* cit., p. 143.

⁷ ID., *New Studies in Philosophy, Politics, Economics and the History of Ideas* cit., p. 44.

⁸ *Ibid.*, p. 44.

⁹ F.A. VON HAYEK, *The Sensory Order. An Inquiry into the Foundations of Theoretical Psychology* cit., p. 50.

¹⁰ ID., *New Studies in Philosophy, Politics, Economics and the History of Ideas* cit., p. 44.

between the sensory order and the physical or objective world is shown by natural sciences. Natural sciences tend to “revise” and “correct” our sensorial categorizations in order to grasp the features of the physical world. While, for instance, we visually perceive water and ice as different things, they classify them as the same thing by considering their chemical structure. The methodology of natural sciences helps us to understand the relativity and the theoretical nature of our sensorial knowledge. Even if the methodology of natural science can be considered thus as “objectivist”, Hayek stresses that this does not imply that natural sciences analyze a world that is more real, that the physical world is an “abstract” or theoretical construction, and that even this world is built in a selective way from a particular perspective and is linked to our adaptive needs.¹¹ It is the outcome of an *alternative* classification compared to the mental one that produces new meanings and operates according to experimental theories.¹² For Hayek, it is impossible to conceive neutral and purely objective knowledge. Consequently, Hayek does not conceive scientific knowledge as based on different presuppositions from ordinary knowledge.¹³ Hayek proposes a connectionist explanation of the neurophysiologic processes which allow the sensory categorization or classification. For him, all sensory qualities depend on the way impulses are channeled through the neural networks. The latter are the connections amongst neurons that the impulses are able to activate. For every *kind* of perception there is a peculiar *kind* of channeling of the impulses:

[M]y theory maintains that the sensory (or other mental) qualities are not in some way originally attached to, or an original attribute of, the individual physiological impulses, but that all of these qualities are determined by the system of connection by which the impulses can be transmitted from neuron to neuron; that it is thus the position of the individual impulse or group of impulses in the whole system of such connections which gives it its distinctive quality.¹⁴

¹¹ *Id.*, *The Sensory Order. An Inquiry into the Foundations of Theoretical Psychology* cit., p. 143.

¹² *Ibid.*, pp. 145-146.

¹³ See C. HERMANN-PILLATH (1992), “The Brain, its Sensory Order, and the Evolutionary Concept of Mind: On Hayek’s Contribution to Evolutionary Epistemology”, *Journal of Social and Evolutionary Systems*, no. 15; T.J. MCQUADE (2007), “Science and Market as Adaptive Classifying Systems”, *Cognition and Economics. Advances in Austrian Economics*, E. KRECKE, C. KRECKE and R.M. KOPPLE (eds.), vol. 9 (Oxford, UK, Elsevier Ltd.).

¹⁴ F.A. VON HAYEK, *The Sensory Order. An Inquiry into the Foundations of Theoretical Psychology* cit., p. 53.

According to this connectionist approach, the way neurons work is not controlled by a central unit, but is simply based upon certain “rules” which define the modalities and the conditions for their activation. So whether or not a neuron becomes part of a chain of connections, carrying nervous impulses, depend solely on these rules. This means that perceptions *emerge* according to a logic of self-organization.¹⁵ This process of self-organization is continuously nourished by the flow of new experiences. These new experiences are able to partly modify the structure of neuronal connections. Hayek’s connectionist approach presupposes that a learning process is incessantly running, developing under a *trial and error* fashion. This process consists in a substitution of classification modalities, inbred or acquired, with new classification modalities.¹⁶ This explains the way an individual, after a time lag, can perceive the same fact or object differently. Hayek rules out a complete identity of human minds for two reasons. The first relates to the fact that the structure of neuronal connections is partly modified by experience; the second concerns biological evolution. This logic makes the perfect correspondence of the individual’s anatomic structure rather impracticable. From these two presuppositions it follows that a perfect identity of the perceptive modalities is in turn impossible. Human minds will in fact be sufficiently similar to allow the mutual comprehension amongst individuals, but “they will not be identical”.¹⁷ According to Hayek, the modalities of categorization (the “rules of perception”) allow us to single out typical problematic situations. They incorporate, in the meanings they create, information about the modalities of action (the “rules of action”) that are useful to face them. Both perception and action rules can be defined as “abstract” because they can be applied to abstract classes of events. A trivial example of this principle is represented by the consequences that a driver who perceives a red traffic light knows what he has to do.¹⁸ Another very important aspect of Hayek’s connectionism is that consciousness is only the *tip* of an iceberg. According to the Austrian author, there is a tacit or implicit dimension of knowledge.¹⁹ This tacit dimen-

¹⁵ *Ibid.*, pp. 64, 114. See also F.J. VARELA, *Connaître les sciences cognitives. Tendances et perspectives* cit.

¹⁶ F.A. VON HAYEK, *The Sensory Order. An Inquiry into the Foundations of Theoretical Psychology* cit., pp. 98 ff. See also J.-M. BESNIER (2005), *Les théories de la connaissance* (Paris, Puf), pp. 75-79.

¹⁷ *Ibid.*, p. 110.

¹⁸ F.A. VON HAYEK, *New Studies in Philosophy, Politics, Economics and the History of Ideas* cit., pp. 35 ff. See also P. NEMO (1988), *La société de droit selon Hayek* (Paris, Puf).

¹⁹ *Ibid.*, p. 45. See also M. POLANYI (1958), *Personal Knowledge: Towards a Post-Critical Philosophy* (Chicago, University of Chicago Press); H.L. DREYFUS – S.E. DREYFUS (2000), *Mind Over Machine. The Power of Human Intuition and Expertise in the Era of Computer* (New York, Paper Back).

sion allows us to use certain skills (such as that of gestalt perception) without being able to verbally explain what exactly entails the capability to use them. Hayek's connectionism lets us comprehend that the mind is not limited to the sole capabilities of logic deduction. The *tacit* dimension of knowledge produces the necessary assumptions for rational choice. It defines the basic framework of the process of conscious decision. Namely, it selects a basic set of meanings and possible alternatives for action which is the foundation of the rational reasoning.²⁰

3. THE MIND AS A COMPLEX SELF-ORGANIZED SYSTEM

Hayek specifies that the theory of the presuppositions of consciousness that he proposes represents a mere "explanation of principle".²¹ It only takes into account the general logic of the functioning of mind. The Austrian scholar excludes the possibility for the mind to eventually arrive at a comprehensive self explanation. Namely, Hayek denies the possibility for an *explanation of detail* of its running that would permit "to substitute a description in physical terms for a description in terms of mental qualities".²² Consequently, he rules out the possibility to precisely forecast the results of its operations. He considers that the mind belongs to the "complex phenomena" category.²³ Given that, it is impossible to know all the interdependent variables contributing to determining such a complex order. Since the mind is an open and self-organized system, these variables change in a continuous and unforecastable way. Moreover, this kind of order, employing a concept used by Maturana and Varela, it is endowed with "autonomy".²⁴ As increasingly clarified by the connectionist and anti-objectivist cognitive scientists, the behavior of a self-organized order is neither determined by a program introduced from the outside and followed mechanically (the behavior of a self-organized order is not comparable to that of a machine that has been previously programmed,

²⁰ F.A. VON HAYEK, *The Sensory Order. An Inquiry into the Foundations of Theoretical Psychology* cit., pp. 132 ff.

²¹ *Ibid.*, p. 182.

²² *Ibid.*, p. 189. See also R. NADEAU (2001), "Friedrich Hayek et la théorie de l'esprit", in J.-P. COMETTI - K. MULLIGAN (eds.), *La philosophie autrichienne de Bolzano a Musil. Histoire et actualité* (Paris, Vrin).

²³ F.A. VON HAYEK (1967), *Studies in Philosophy, Politics and Economics* (Chicago, The University of Chicago Press), p. 55.

²⁴ H.R. MATURANA - F.J. VARELA (1980), *Autopoiesis and Cognition. The Realization of the Living* (Dordrecht, D., Reidel Publishing Company).

such as a computer), nor by the effects applied by the surrounding environment. Basically an order of this kind does not passively undergo such effects (its behavior has nothing to do, for instance, with that of a pool ball that is, on the contrary, entirely determined by the external forces acting on it). The cause behind the behavior of a self-organized order is not to be sought outside it.²⁵ An order such as the mind actively employs random novelties that appear in the environment in a continuous and unpredictable manner, to constantly self-reprogram itself. Its logic is to safeguard its autonomy from the outer environment and thus its capability to operate. An order of this kind is not pre-determined as it is not possible to foresee the random novelties affecting neither its behavior, nor the way they will impact on the outcomes of its processes of self-organization and upholding of autonomy.²⁶ By virtue of its working modalities, a self-organized order is the “cause of itself”.

In addition, Hayek considers a logical limitation which rules out the possibility to precisely forecast the results of the mental operations – he explicitly speaks of a Goedelian limit. Since knowledge is based on categorization, it is logically impossible to fully explain the presuppositions of our knowledge. No categorization can be completely explained. “There is on every level, or in every universe of discourse, a part of our knowledge”, he writes, “which, although it is the result of experience, cannot be controlled by experience, because it constitutes the ordering principle of that universe”.²⁷ To get around this problem a classifying apparatus of a higher complexity compared to that of the human mind would in fact be required – an apparatus that, moreover, would in turn be, for the same logical reasons, unable to exhaustively explain its functioning.²⁸ For this reason, too, we cannot completely explain in physical terms the functioning of mind ruling out any reference to mental qualities.

Given these three limits, an *explanation of principle* of the sensory order is the only feasible route. From that it follows that it is impracticable to reduce the social sciences to physics.²⁹ Moreover, other important consequence de-

²⁵ F.A. VON HAYEK, *The Sensory Order. An Inquiry into the Foundations of Theoretical Psychology* cit., pp. 122-127.

²⁶ See also H. ATLAN (1979), *Entre le cristal et la fumée. Essai sur l'organisation du vivant* (Paris, Seuil), pp. 157 ff.; J.-P. DUPUY (1990), *Ordres et désordres. Enquête sur un nouveau paradigme* (Paris, Seuil), pp. 109-124.

²⁷ F.A. VON HAYEK, *The Sensory Order. An Inquiry into the Foundations of Theoretical Psychology* cit., pp. 169-170. See also ID., *Studies in Philosophy, Politics and Economics* cit., pp. 60-63.

²⁸ *Ibid.*, pp. 184-190. See also P. NEMO, *La société de droit selon Hayek* cit., pp. 60-61.

²⁹ *Ibid.*, p. 191.

rives from Hayek's theory of perceptions. As the mind is a system based on *autonomy*, as intended by Maturana and Varela, and as it is impossible to fully comprehend the way it functions, the idea that states that cognitive processes can be conceived in deterministic terms needs also to be ruled out. This allows us to criticize the *behaviorist* approach in psychology. Moreover, it allows a claim for methodological individualism. By reason of the mind's complexity and the fact that such order is the "cause of itself", the "data" for the explanation of the action cannot be external to the individual. This conclusion, Hayek stresses, "is, of course, of the greatest importance for all the disciplines which aim at an understanding and interpretation of human action".³⁰ The Austrian author regards the explanation for action as necessarily resulting in a reconstruction of the ideas motivating the individuals: he maintains that the "data" of social sciences are internal to the actors.³¹ Hayek considers the thesis of sociological holism according to which the sense the action has for the individual is irrelevant as wrong and misleading. "Unless we can understand what the acting people mean by their actions any attempt to explain them [...] is bound to fail".³² The possibility to apply such interpretative procedure calls for the existence of a *quid* common to the researcher and social actors. Hayek states that such an element does exist by virtue of a genetic predisposition.³³ It depends on the universality of the logical structure of human mind and its perceptive basic categories.³⁴ According to Hayek the error of conceiving cognitive processes in deterministic terms is plainly illustrated in Karl Mannheim's approach: "In particular, it would appear that the whole aim of the discipline known under the name of 'sociology of knowledge' which aims at explaining why people as a result of particular material circumstances hold particular views at particular mo-

³⁰ *Ibid.*, p. 193.

³¹ See F. DI IORIO (2009), "Hayek's Connectionist Psychology as a Defense for the Sociology of Good Reasons", *Raymond Boudon. A Life in Sociology. Essays in Honour of Raymond Boudon*, M. CHERKAOUI and P. HAMILTON (eds.), 4 vols. (Oxford, UK, The Bardwell Press); ID. (2010), "The Sensory Order and the Neurophysiological Basics of Methodological Individualism", *The Social Science of Hayek's 'The Sensory Order'*, W.N. BUTOS (ed.) (Bingley, UK, Emerald); P. HERITIER (1997), *Ordine spontaneo ed evoluzione nel pensiero di Hayek* cit., pp. 31 ff.

³² F.A. VON HAYEK (1952), *The Counter-Revolution of Science Studies on the Abuse of Reason* (Indianapolis, Liberty Press), p. 53.

³³ ID., *The Sensory Order. An Inquiry into the Foundations of Theoretical Psychology* cit., pp. 99-103.

³⁴ See also W.N. BUTOS - R.G. KOPPL (2006), "Does the Sensory Order Have a Useful Economic Future?", *Advances in Austrian Economics*, vol. 8, E. KRECKE and K. KRECKE (eds.) (Oxford, JAI Press).

ments, is fundamentally misconceived".³⁵ In opposition to Mannheim Hayek reaffirms that, given the sensory order's characteristics, the causes of actions can not be traced back to the influences coming from the external contest: "To us – he writes – human decision must always appear as the result of the whole of a human personality – that means the whole of a person's mind – which, as we have seen, we can not reduce to something else".³⁶

4. THE ANALOGY BETWEEN MIND AND MARKET

As we pointed out, according to Hayek's connectionist paradigm the way neurons work is not controlled by a central unit, but is simply based upon certain "rules" of activation.³⁷ It follows that perceptions *emerge* according to the logic of self-organization.³⁸ Due to the above, some authors have correctly underlined that an analogy does exist between Hayek's theory of the mind and his conception of the market. Both these phenomena are for him *spontaneous* and *knowledge-generating* orders.³⁹ It is possible to schematically summarize the analogies which exist between mind and market according to Hayek:

1) Both are adaptive classifying systems which generate knowledge by a sort of categorization. As Butos and McQuade point out, while the mind creates by classification the meaning of reality in order to allow an adaptation of the behavior, the market generates a classification which concerns the goods

³⁵ F.A. VON HAYEK, *The Sensory Order. An Inquiry into the Foundations of Theoretical Psychology* cit., pp. 192-193.

³⁶ *Ibid.* See also P. HERITIER, *Ordine spontaneo ed evoluzione nel pensiero di Hayek* cit., pp. 31 ff.

³⁷ Hayek does not illustrate in depth the activation modalities of neurons. He goes so far as to agree with Hebb, who was the first to analyze this issue in detail. See F.A. VON HAYEK, *The Sensory Order. An Inquiry into the Foundations of Theoretical Psychology* cit., note 1, p. 64 and note 1, p. 114. Also see D.O. HEBB (1949), *The Organization of Behavior; a Neuropsychological Theory* (New York, Wiley).

³⁸ See F.J. VARELA, *Connaître les sciences cognitives. Tendances et Perspectives* cit., pp. 60-61.

³⁹ See W.N. BUTOS – T. MCQUADE (2002), "Mind, market and institutions. The knowledge problem in Hayek's thought", *F.A. Hayek as a Political Economist. Economic Analysis and Values*, J. BIRNER, P. GARROUSTE and T. AIMAR (eds.) (London - New York, Routledge); W.N. BUTOS – T. MCQUADE (2005), "The Sensory Order and Other Adaptive Classifying Systems", *Journal of Bioeconomics*, vol. 7, pp. 335-358; T. MCQUADE (2007), "Science and Market as Adaptive Classifying Systems", *Cognition and Economics. Advances in Austrian Economics*, E. KRECKE, C. KRECKE and R.M. KOPPLE (eds.), vol. 9 (Oxford, Elsevier Ltd.); B. SMITH (1997), "The Connectionist Mind: A Study of Hayekian Psychology", *Hayek Economist and Social Philosopher: A Critical Retrospect* cit.

and their prices.⁴⁰ Giving a specific price to every good, it allows the coordination of the economic activities and the cost minimization. Consequently, it works like a cybernetic system, based on feedback regulation, just as the mind does. While in the mind the transmission of information and the categorization are based on chains of neurons, in the market they are based on chains of prices.⁴¹

2) Both are complex systems based on the logic of self-organization. They do not have a single locus of control, but are polycentric. Their functioning depends only on the existence of general rules that bind the behavior of the parts. It does not depend on a central calculation. Hayek himself underlines this similarity. Commenting on the nature of market society, he states: “the brain of an organism which acts as the directing centre for that organism is itself in turn a polycentric order, that is, that its actions are determined by the relation and mutual adjustment to each other of the elements of which it consists”.⁴²

This fact has important epistemological consequences. As Varela underlines, self-organization is a necessary attribute of complexity.⁴³ The performance of complex self-organized orders would be inconceivable as the outcome of central direction. Both the idea of considering the mind as a computer and the idea that it is possible to centralize the direction of economic activities are fallacious for systemic and cognitive reasons. No computer or central planner can use the distributed and tacit knowledge which mind and market can use.⁴⁴

3) As self-organized orders, both adapt themselves to continuing and unpredictable changes and both have consequently a dynamic structure. Inside these systems, order always coexists with a certain degree of disorder because they re-adapt themselves continually. In this way they can preserve their functioning.⁴⁵ In the case of the mind the re-adaptation that results from new experiences concerns the systems of connections, while in the case of the mar-

⁴⁰ W.N. BUTOS – T. MCQUADE, *The Sensory Order and Other Adaptive Classifying Systems* cit., p. 345.

⁴¹ B. SMITH, “The Connectionist Mind: A Study of Hayekian Psychology”, *Hayek Economist and Social Philosopher: A Critical Retrospect* cit., p. 113.

⁴² F.A. VON HAYEK, *Studies in Philosophy, Politics and Economics* cit., p. 73.

⁴³ F.J. VARELA, *Connaître les sciences cognitives. Tendances et Perspectives* cit., pp. 61-77.

⁴⁴ See J. PETITOT (2002), “Vers des lumières hayekiennes: de la critique du rationalisme constructiviste à un nouveau rationalisme critique”, *Friedrich Hayek et la philosophie économique*, A. LEROUX and R. NADEAU (eds.) (Colloque de Cerisy, no. 2).

⁴⁵ See J.-P. DUPUY, *Ordres et désordres. Enquête sur un nouveau paradigme* cit.

ket the re-adaptation concerns the structure of production and division of labor. As Atlan points out, the time of this kind of system is indeterministic.⁴⁶ Their future is not inscribed in their past. It depends on the way in which future changes influence their capacity of self-organization – it is unforeseeable. This phenomenon has been well analyzed concerning the market by O'Driscoll and Rizzo who criticize the theory of general equilibrium because of the fact that it is based on a *Newtonian* time, underlining that to understand the market it is necessary to use a “dynamic conception of time” as intended by Bergson.⁴⁷

4) Both are emergent phenomena. Mind emerges from the brain and especially from the activity of neurons in conformity to the rules that regulate their functioning. The market emerges unintentionally from the intentional actions of individuals who follow specific ethical principles and civil laws. As we will analyze further, a fundamental characteristic of the emergence lies in the fact that it creates systems that are endowed with attributes irreducible to the attributes of their basic components. The mind cannot be reduced to the brain. Similarly the market cannot be reduced to the intentions of individuals.⁴⁸

5) Both are evolutionary orders, the outcome of a long process of trial and error.⁴⁹ These orders developed in an indeterministic way by adaptation to unforeseeable facts or conditions. This fact is one of the sources of Hayek's criticism of the constructivist mentality. “Man” – he states in the epilogue of *Law, Legislation and Liberty* – “is not and never will be the master of his fate: his very reason always progresses by leading him into the unknown and unforeseen where he learns new things”.⁵⁰

5. THE NEUROPHYSIOLOGICAL BASICS OF THE SUBJECTIVE THEORY OF VALUE

Hayek's theory of the sensory order, in addition to legitimizing the *interpretative* method, is relevant for another reason. As Cubeddu stresses, it es-

⁴⁶ H. ATLAN (1979), *Entre le cristal et la fumée. Essai sur l'organisation du vivant* (Paris, Seuil).

⁴⁷ G.P. O'DRISCOLL – M.J. RIZZO (1996), *The Economics of Time and Ignorance* (London, Routledge), p. 51.

⁴⁸ See R. NADEAU (2003), *Cultural Evolution True and False: A debunking of Hayek's Critics*, in Acts of 7th ESHET Conference, Paris.

⁴⁹ See B. SMITH, *The Connectionist Mind: A Study of Hayekian Psychology* cit.

⁵⁰ F.A. VON HAYEK (1979), “The Political Order of a Free People”, vol. 3 of *Law, Legislation and Liberty* (Chicago, University of Chicago Press), p. 176.

establishes the subjectivism of values from a neurophysiologic viewpoint.⁵¹ Hayek's cognitive psychology claims that value is not an objective feature of things, but a mental construction. Moreover, it excludes the possibility of a complete identification of the ways individuals build it. According to Hayek, human minds will be sufficiently similar to allow mutual comprehension and interaction amongst individuals, but "they will not be identical".⁵² First, a perfect anatomical correspondence of human minds is impossible; second, an identity of personal experiences which influence the mental processes of self-organization must also be ruled out. Consequently, it is necessary to exclude a perfect matching of the individual assumptions of subjective evaluations. Also for this reason, the relation between the action and the environmental context is more complex compared to what is maintained by those advocating the *objectivistic* and *collectivistic* approach in social sciences. Moreover, the relation between *The Sensory Order* and the Austrian theory of value allows a better understanding of why Hayek maintains that knowledge is dispersed in society. This does not only depend on the fact that there are *particular circumstances* of time and place which change in a continuous and unforeseeable way. It also depends on the fact that the individual evaluation of these circumstances is based on tacit presuppositions which are partly personal. One individual who knows a particular circumstance disposes of a kind of information which is not shared by others first and foremost because his mind can interpret this circumstance in a way which is partly unique.⁵³ In addition, since the mental presuppositions of evaluation are linked to personal experiences, the continuous change of the *particular* circumstances of time and place in turn partially modifies the individual presuppositions of evaluation. This fact contributes to making the social process non-deterministic and unforeseeable.

6. MIND, HISTORICAL FINITUDE AND OPEN SOCIETY

As is well known, according to Hayek political liberty is justified by the limitations of human knowledge. The Austrian scholar thinks that totalitarian-

⁵¹ R. CUBEDDU, *Friedrich A. Von Hayek* cit., p. 62.

⁵² F.A. VON HAYEK, *The Sensory Order. An Inquiry into the Foundations of Theoretical Psychology* cit., p. 110.

⁵³ See F. DI IORIO (2006), *Dalla teoria della dispersione della conoscenza alla cibernetica economica: l'auto-organizzazione del mercato secondo F.A. von Hayek* (Roma, Quaderni del centro di metodologia delle scienze sociali della Luiss); G.P. O'DRISCOLL – M.J. RIZZO, *The Economics of Time and Ignorance* cit.; S. RIZZELLO (1999), *The Economics of Mind* (Northampton, Ma, Edward Elgar).

ism is the product of a cognitive conceit.⁵⁴ The analysis of the epistemological implications of his theory of mind helps us in understanding his political philosophy. Three considerations should be made on this point. First, due to the fact that Hayek's cognitive psychology rules out the possibility of explaining action by using a holist and mechanistic approach, it defends the principle of responsibility. In other words, it allows one to argue in favor of the value of individual choice by showing that the latter is the outcome of self-determination. Since sociological collectivism denies that the individual is responsible for his own acts, it paves the way for the political collectivism. It plays down the importance of free choice. *The Sensory Order* provides arguments to criticize this perspective.⁵⁵ As Hayek states, "though, logically, methodological collectivism and political collectivism are distinct, it is not difficult to see how the former leads to the latter and how, indeed, without methodological collectivism political collectivism would be deprived of its intellectual basis".⁵⁶ The second point which has to be stressed concerns the idea of spontaneous order. For Hayek, the replacement of the latter with an organized or controlled order erasing individual freedom prevents individuals from using the knowledge distributed in society. It implies negative unintended effects. As we pointed out, the impossibility of mastering all the variables of the social process and controlling it – the impossibility which explains the non-intentional consequences of political constructivism – depends, among others, on neurobiological causes. According to the Austrian scholar, the ignorance which justifies the spontaneous order is first and foremost based on the uniqueness of the personal presuppositions of perception.⁵⁷ Hayek's theory of mind provides a neurophysiological foundation of the subjective theory of value and contributes to explaining the distribution of knowledge. It helps us in understanding the impossibility of an effective economic and social planning. The third consideration of the political implications of *The Sensory Order* concerns the incompatibility of an objective ethics and the Open Society. The uniqueness of the personal basics of the mental interpretations and the fact that

⁵⁴ See F.A. VON HAYEK (1988), *The Fatal Conceit. The Errors of Socialism* (Chicago, The University of Chicago Press).

⁵⁵ See F. DI IORIO, *Hayek's Connectionist Psychology as a Defense for the Sociology of Good Reasons* cit.; ID., *The Sensory Order and the Neurophysiological Basics of Methodological Individualism* cit.

⁵⁶ F.A. VON HAYEK, *The Counter-Revolution of Science Studies on the Abuse of Reason* cit., p. 154.

⁵⁷ R. CUBEDDU, *Friedrich A. Von Hayek* cit., pp. 62 ff.

they are linked to the effects of a biological and cultural evolution contribute in defending the pluralism of values and democracy.⁵⁸ From the standpoint of the Austrian author, ethical choices are indispensable. However, they are historically and personally variable preconditions of the objective and controllable knowledge. Differently from what constructivists maintain, they cannot be rationally and unequivocally founded. Hayek's theory of the sensory order combines well with Hume's law. According to the Austrian scholar, a perfect and rational agreement on ethics is impossible. He defends the ethical relativism of the Open Society.⁵⁹ The relationship between the pluralism of values and the self-organization of mind has also been pointed out by Varela and other cognitive scientists which have recently implemented and improved the kind of connectionist and non-objectivist theory of mind Hayek has sketched in *The Sensory Order*. These authors – who usually do not quote the Austrian scholar – have underlined that the Hayekian-like theory of mind matches well with Gadamer's and Vattimo's hermeneutical approach and the idea of the *historical finitude* of man. If our knowledge depends on our common sense and if our commonsense in nothing more than our biological and cultural tradition, we have to come to the conclusion, they argue, that foundationalism is wrong: "what we took to be solid ground is really more like shifting sand beneath our feet".⁶⁰ This requires not only that we give up with a certain philosophical tradition "but that we learn to live in a world without foundations".⁶¹ According to this view, the logical implication of the mind's self-organization and the criticism of the objectivism is the defence of what Vattimo calls "*weak thought* (*pensiero debole*) – that is, a kind of thought that would give up the modernist quest for foundations, yet without criticizing this quest in the name of another, truer foundation".⁶² The only political system which is compatible with this theory of knowledge is the one that is open to alternative points of

⁵⁸ F.A. VON HAYEK, *The Sensory Order. An Inquiry into the Foundations of Theoretical Psychology* cit., pp. 251-252.

⁵⁹ See E. DI NUOSCIO (2006), *Il mestiere dello scienziato sociale. Un'introduzione all'epistemologia delle scienze sociali* (Napoli, Liguori), pp. 177 ff. See also ID. (2004), *Epistemologia dell'azione e ordine sponeo. Individualismo ed evolucionismo in Herbert Spencer* (Soveria Mannelli, Rubettino), pp. 171-172.

⁶⁰ F.J. VARELA, E. THOMPSON and E. ROSCH (1991), *The Embodied Mind. Cognitive Science and Human Experience* (Cambridge, MA, The Mit Press), p. 217.

⁶¹ *Ibid.*, p. 218.

⁶² *Ibid.*, p. 229. See also D. ANTISERI (1993), *Le ragioni del pensiero debole. Domande a Gianni Vattimo* (Roma, Borla).

views. In Varela's opinion, the processes which govern the world of life and the emergence of consciousness "should teach us that the true and ultimate foundations of knowledge are tolerance and pluralism, that is the capacity to see the relativity of our perceptions and values which allows us to respect others".⁶³

THE LAC COURSE'S CRITICAL REASONS

One is realizing in that we have the means that we need to get along very well without life.

A. Introduction

First and foremost, the possibility of making us as free and being ourselves. Decisions in business and everyday. One is the characteristics of the system.

I. Freedom

I. LAC, FREEDOM BY VIRTUE OF BEING CRITICAL.

I believe that there is no better way to define liberty than to make it coincide, on the one hand, with free choice and the exercise of critical reason and, on the other, with the acknowledgment that the legitimacy of the State is not conditional on respect for principles of a religious nature. Hence both the individual who engages in critical debate as a means to regulate his actions and the State that enables every citizen to enjoy the freedom and the right to criticize all people and all their must be regarded as free. The major truth for any individual who recognizes the legitimacy of the State lies in the concept of being free even when they are governed by rules that do not coincide with our own religious beliefs. In the same sense, a State will be free if it does its legislative and its social rules automatically in free voluntary agreement, but further rules are established only after rigorous policy, scientific and other public debate.

Lacs are neither fundamentalists nor moderate. They do not regard other persons either as subjects upon whom to impose their own points of view or as the business to be converted. Instead, a lac is always open to criticism and self-criticism and, having shown critical reasons, is a person susceptible of

⁶³ F.J. VARELA (1989), *Autonomie et connaissance. Essai sur le vivant* (Paris, Seuil), p. 31.

ENZO DI NUOSCIO

THE LAIC CHOOSES CRITICAL REASON*

God is teaching us that we must live as men who can get along very well without him

D. BONHOEFFER

'Trial and error', the possibility of making an attempt and being mistaken; freedom of criticism and opposition; these are the characteristics of free regimes.

L. EINAUDI

1. LAIC, PRECISELY BY VIRTUE OF BEING CRITICAL

I believe that there is no better way to define laicity than to make it coincide, on the one hand, with free choice and the exercise of critical reason and, on the other, with the acknowledgment that the legitimacy of the State is not conditional on respect for principles of a religious nature. Hence both *the individual who chooses critical debate as a means for conflict resolution and the State that enables every citizen to enjoy the freedom and the right to criticize all people and all ideas* must be regarded as laic. The same holds for any individual who *recognises the legitimacy of the State and its decisions as being laic even when they are governed by rules that do not coincide with our own religious beliefs. By the same token, a State will be laic if it draws its legitimacy not so much from subscribing to fixed religious principles, but rather from pre-established rules that safeguard rights, liberties and open public debate.*

Laics are neither fundamentalists nor missionaries: they do not regard other persons either as subjects upon whom to impose their own point of view or as the faithless to be converted. Instead, a laic is always open to criticism and self-criticism and, having chosen critical reason, is a jealous custodian of

* English revision by Rachel Barritt Costa.

individual liberties.¹ The laic State itself respects *inviolable conscience* and thus free personal convictions, while at the same time guaranteeing the ideal of a public arena where no individuals, institutions, knowledge or viewpoints are exempt from criticism. Laicity is therefore a peculiarity of democracy:² no dogmas are prohibited, nor does laicity impede individuals from regarding ethical or religious principles as either absolute or negotiable. Rather, unlike the tradition that has evolved historically in the Catholic Church and which continues to be the case in some parts of the world with various religions, laicity makes no attempt to transfer these dogmas into the public sphere and to adopt them as the favoured perspective for solving problems affecting the whole community. Moreover laicity, given its nature as a forum for debate, offers no refuge that would allow dogmas to be shielded from criticism – and from self-criticism – and in some cases to be imposed on others. Laics thus do not confuse private dogmas (of any nature) with public truths. They are well aware that the truths of faith are the outcome of testimonies while scientific truths are demonstrated. Laics who are believers – but equally, those who are not – are conscious that there exist no empirical or rational demonstrations showing that the actual facts do, or do not, constitute “the whole”. Laics who are believers are not afraid of debasing their beliefs by admitting that the latter are not based upon demonstrative reason. On the contrary, in their perspective the belief system they have espoused becomes all the more authentic as they become increasingly conscious that faith is the answer to rational doubt (or to the failure of reason *more geometrico*). Moreover, they acknowledge that the quest for an explanation which science cannot provide does not necessarily imply seeking a religious answer. They never fail to remember that there is always an individual choice behind a decision to adhere to the precepts of a certain religion. On the other hand, laics who do not believe are far from attempting a rational rebuttal of transcendence, and do not regard confidence in the explanation provided by religion as revealing a weakness of reason or yielding to irrationality. Galileo’s distinction between science: “how the sky goes”, and faith: “how we rise into the sky” sits well with them; as does Wittgenstein’s warning: “even if science could supply replies to all our answers, the most important issues of our life would not even be touched on”. Laics who believe are well aware of the risk of opening the

¹ G. BONIOLO, “Introduzione”, in ID. (ed.), *Laicità. Una geografia delle nostre radici* (Torino, G. Einaudi, 2006), p. XX.

² G.E. RUSCONI, *Come se Dio non ci fosse. I laici, i cattolici e la democrazia* (Torino, G. Einaudi, 2000), p. 7.

floodgates to fundamentalism if the meaning of life is identified by its religious sense. By the same token, laics who do not believe know that whoever relies on science to cope with the problem of the meaning of human existence will suffer the same fate as Ivan Karamazov, who, during moments of despair, would insult the great scientist Claude Bernard, for whom science was of no assistance in tackling the drama of his life. Therefore any laic, whether a believer or not, is a gnoseological fallibilist and an ethical relativist who nurtures the “ethics of doubt” in public discussions: a laic, precisely by virtue of being such, is conscious that even the most diverse values are neither devoid of sense nor absolute.³ A laic realizes that the never ending quest for answers is an anthropological condition from which man will never be able to free himself, because “from the very beginning the Gods have not revealed everything to the mortals” (Xenophanes of Colophon). It follows that it is “not the truth an individual possesses or claims to possess, but rather the sincere endeavour he has endured to attain it that represents the genuine value for man” (Lessing).⁴ However, in contrast to an argument frequently put forward, laicity cannot coincide with a pure and simple choice of method, namely the method of critical discussion.⁵ It is inevitably and, primarily, a choice of values: whoever is engaged in practising this methodology considers the pluralism of ideas, individual liberties, protection of the human person, free subjective determination and the solution of problems as values to safeguard and implement through the laic behaviour of the individual person and thus of the State.⁶ Consequently, it is not until such a choice has been embraced, circumscribing the boundaries of criticism, combating intolerance and safeguarding a place for public and free debate, that State becomes truly

³ G. ZAGREBELSKY, *Contro l'etica della verità* (Roma-Bari, Laterza, 2008), pp. 87-90.

⁴ G. GIORELLO, *Di nessuna chiesa. La libertà del laico* (Milano, Cortina, 2005), pp. 23-25.

⁵ With regard to the latter I share the arguments expressed by G. Fornero who, after having distinguished between a “weak laicity” and a “strong laicity” (*Bioetica cattolica e bioetica laica* (2005), Milano, Bruno Mondadori, 2009), focuses in a subsequent work on “the strength of weak laicity”, showing that the latter cannot be reduced to a mere “proceduralism”, which is a neutral sample of operational rules. It also substantiates itself in a set of values linked to such rules, which are the same principles of democracy and of the Western World” (G. FORNERO, “Due significati irriducibili di laicità”, in E. D'ORAZIO (ed.), *La laicità vista dai laici* (Milano, Egea - Università Bocconi, 2008), pp. 61-74). I also share Fornero's attempt to delineate a critical locality, able to markedly depart from any fundamentalism, including that of laics. See also, in addition to the mentioned works, the third part of Fornero's, *Laicità debole e laicità forte. Il contributo della bioetica al dibattito sulla laicità* (Milano, Bruno Mondadori, 2008).

⁶ C. MAGRIS, “Laicità e religione”, in G. PRETEROSI (ed.), *Le ragioni dei laici* (Roma-Bari, Laterza, 2005), p. 110. U. SCARPELLI, *Bioetica laica* (Milano, Baldini & Castoldi, 1998), pp. 5-8; S. RODOTÀ, *Perché laico* (Roma-Bari, Laterza, 2009), pp. 56-60.

laic, and thus “neutral”.⁷ Any presumed ethical or religious truths of the State, or any privileged approach to an interpretation of life, are thus relinquished. No primacy is assigned to a specific concept of the world that would require the State to abide by the principles of laicity, for which the State itself would be the guarantor.

2. FOR THE LAIC NOT EVERYTHING IS POSSIBLE... HOWEVER

Having identified laicity with liberty, with the exercise of criticism and legitimacy construed as respect for the State and the Rule of Law, defining the role that religion can fulfil in a laic State becomes easier. If laicity substantiates itself in the choice of critical reason, then it cannot be considered as a form of supreme phase of non-confessionalism, which imposes a reduction of the religious presence in public debate or of religious expression in civil society. Nor, least of all, can laicity be interpreted as a denial of the value of transcendence or as the enlightened self-sufficiency of reason, with the latter becoming the sole source for the solution of every single existential problem. On the contrary the laic, being aware of the boundaries of human reason and of the impossibility of constructing an ethics applicable *erga omnes*, deems the religious point of view to be a precious reference point for individual and social issues. The laicity of the State consists in “neutrality” in terms of the visions of the world that are compatible with the Rule of Law and, above all, it resides in the fact that the legitimacy of decisions and institutional roles is uniquely connected to respect of established rules and not to the espousal or rejection of religious or philosophical principles. Once this approach has been embraced, it is clear that even religion, like any other vision of the world, can indeed profitably nourish public debate.⁸ Laicity – which should, however, be on its guard against the danger of contradicting its own principles – does not force believers to take part in the public disputation on *etsi deus non daretur*,

⁷ When Bobbio states that “laicity expresses a method rather than a content”, since “the laic attitude is not a new culture in itself, but a condition for the cohabitation of all possible cultures”, this distinction (between method and content) cannot be followed too closely since the laic, who assesses “the cohabitation of all possible cultures extremely positively”, has already implemented an ethical choice, and consequently seeks to create and uphold the conditions for such cohabitation. N. BOBBIO, “Perché non ho firmato il ‘Manifesto laico’”, in E. MARZO – C. OCONE (eds.), *Manifesto laico* (Roma - Bari, Laterza, 1999), p. 127.

⁸ J. HABERMAS, “La religione nella sfera pubblica”, in Id., *Tra scienza e fede* (2005), Italian translation (Roma-Bari, Laterza, 2008), pp. 19-21 and J. RAWLS, *Political Liberalism* (New York, Columbia University Press, 1996), pp. 90-95.

just as it does not impose upon non-believers the requirement of behaving *etsi deus daretur*.⁹ It demands, instead, that all persons, believers and non believers, fully accept the established procedures for creation of consensus and for reaching decisions (starting with the majority principle), which could be defined as *rules of composition* of the several visions of the world. In contrast, a religion that seeks to be able to operate overtly and occupy a public space (as is currently the case in Europe with Islam and other religions) does not need the consensus of others, but rather requires its followers to abide by the rules that are to be recognised independently of personal beliefs of any nature. Hence it is the rules and not the contents that allow such a religion to be manifested, and consequently they have to be accepted *etsi Deus non daretur*. A religion or a political ideology which – for any reason – denies the legitimacy of such principles would automatically place itself outside the laic State.¹⁰ In other words a laic cannot follow the message that Paul addressed to the Christians in ancient Rome: *nulla potestas nisi a Deo* (*Letter to Romans*, 13,1). The *status of being a citizen*, enjoying rights, having a dignity and a morality, abiding by the rules, cannot be subordinated to the *worshipper status*, which obeys the dogma and the authorities of a certain church. For laics, in a public space there are no criticism-free zones, but this by no means leads them to the conclusion that in the absence of absolute values, “anything goes”. The same applies to faith: the laic cannot accept the idea put forward by Dostoevskij’ that “if God does not exist, then everything is possible”, since only God could inspire moral actions. To forestall man’s temptation to act as God, the laic, precisely by virtue of being laic, need not necessarily think in the manner of Ivan Karamazov;¹¹ on the other hand, a *hybris* of reason that has led to fanaticism has been nurtured not only by various strands of philosophy and by atheistic and materialistic ideologies, but also by religious concepts. *Etsi deus daretur* ed *etsi deus non daretur*, *freedom of religion and free-*

⁹ A striking violation of the principle of laicity can be found in the *A Letter Concerning Toleration* by J. Locke, according to whom in a laic and tolerant State there can be no place for the non believers. “Those denying the existence of God, he writes, cannot be tolerated by any means, because for atheists neither promises, nor the contracts or oaths, that are constrains of the civil society, can be regarded as inviolable and sacred; moreover if the belief in God is banished, everything in the world would be corrupted”; J. LOCKE, *A Letter Concerning Toleration* (1689) (London, Routledge, 1991), p. 53.

¹⁰ G. SALVEMINI, “Libertà ideologica” (1948), *Opere*, vol. V, *Scritti sulla scuola* (Milano, Feltrinelli, 1966), p. 129.

¹¹ This argument, as pointed out by Zagrebelsky, can evidently be turned on its head: “if we believe in God, we can believe he is with us, Gott mit uns, and, upon this principle, we can place ourselves beyond good and evil, since God is beside us”; G. ZAGREBELSKY, *Contro l’etica della verità* cit., p. 83.

dom from religion are two principles that have equal dignity in the laic State,¹² under the condition that whoever adopts them acknowledges the non religious nature of the legitimacy of the State itself.¹³

3. THE ADVOCATES OF LAICITY AND OF CONFSSIONALISM ARE NOT LAICS

Both believers and non believers can thus be laic. This notwithstanding, one can hardly consider as laic the set of believers and non believers who do not respect freedom of individual conscience, or those who aim to ensure a privileged position in the public arena for a particular religion or vision of the world. Such groups interpret the legitimacy of the State not in terms of compliance with the Rule of Law, but of conformity to religious principles or values of another nature, thus confusing, in the most extreme cases, religious principles with the main political goals, or sacred scripture with the Constitution or a political agenda. Despite holding diametrically opposed positions, the advocates of laicity and the confessionalists nevertheless share a violation of the principle of laicity. But let us briefly review their respective positions. Those regarded as advocates of laicity argue that the distinction between God and Caesar acts as a divide which hinders criticism or participation in public discussion on religious grounds. In the public sphere, they do not grant equal dignity to the positions inspired by religion; they aim to relegate the religious dimension to a basically private arena, or markedly limit public expression of one or more religions, even if the religion or religions in question abide by the Rule of Law. Moreover, they demand that believers as such should be in some sense penalised, maintaining that the paramount condition for access to public discussion must be that of thinking and acting "as if God did not exist"; they ascribe to the State the task of taking the place of individual choice of conscience, and they endeavour to use religion as *instrumentum regni*. In short, advocates of laicity attempt to assert some privileged truth, in an anti-religious manner, or deem the non-religious perspective to be

¹² On this, see G. FORNERO, *Laicità debole e laicità forte* cit., pp. 261-265, which carefully warns against an ideological use of the principle *etsi Deus non daretur*.

¹³ Rousseau wrote: "in present times, where there is no longer, nor can there never be, an exclusive national religion, it is necessary to tolerate all the religions that tolerate the others, as long as their dogma have nothing contrary to the duties of the citizens. On the other hand, whoever dares to state that: "Outside the church there is no salvation" has to be expelled from the State, except in the case where the church represents the State and the pope is the prince. Such a dogma can only be applied to a theocratic State; in any other State it is dangerous"; J.-J. ROUSSEAU, *Social Contract* (1763) (Kila, MT, Kessinger Publishing, 1998), p. 149.

the most favourable.¹⁴ But any such approach ends up attributing, in different forms and degrees, an ethical task to the State. In this context it is hardly surprising that one of the most uncompromising theorists of the ethical State, Giovanni Gentile, did not hesitate to remark that “the ethical State is a fairy-tale”.¹⁵ Acting analogously, yet from the opposite perspective, a confessional State ensures more favourable treatment for the disciples of a given religion, non-believers being penalised in the public arena; by the same token, it does not assure all religions the same public support (with regard to taxation, for instance, or the school system).¹⁶ Equally, a confessional approach is manifested by believers who do not acknowledge that the legitimacy of the State, its institutions and political decisions are not dependent on respect for religious principles. Such believers tend not to abide by the rules whenever the latter depart from their own principles of faith (an exception should be made, in this case, for the extreme case of a conscientious objector, a right perfectly in line with the laic principle and legally safeguarded), attributing greater moral force to respect for the precepts issued by a religious authority compared to the respect that should be due to the rules of the State. They demand that the State should choose a religion (almost always their own) as the official or the preferred creed, and they do not recognise that the sense of life may not coincide with the religious interpretation. They firmly believe that there is no alternative between God and Nothingness.

4. WE HAVE TO BE LAIC BECAUSE WE ARE FALLIBLE AND “IGNORANT”

The conception of laicity embodied by the heading of this section is one based on freedom and possibility of criticism. It can be supported by two lines of argument. There is a *gnoseological* argument: laicity understood as personal behaviour, and the State based upon postulates of a cognitive nature,

¹⁴ This is what E. Lecaldano does with great clarity, seemingly to consider as not authentic a life inspired by religious principles, when he writes: “atheism is the most favourable intellectual frame for the establishing of a morality”, since, “only when human beings have put aside – and buried – God will they be able to live and fully follow the demands concerning their lives and follow them in the right directions”; E. LECALDANO, *L'etica senza Dio* (Roma - Bari, Laterza, 2006), p. XI.

¹⁵ G. GENTILE, *Genesi e struttura della società* (1930) (Firenze, Sansoni, 1975), p. 37.

¹⁶ Salvemini wrote in a famous essay on laicity: “the laic school should not impose upon students religious, philosophical or political beliefs, according to authorities that have been removed from the control of reason. It should instead allow the students to create for themselves, with complete freedom and consciousness, their own political, philosophical and religious beliefs”; G. SALVEMINI, “Che cos'è la laicità” (1907), in ID., *Il programma scolastico dei clericali* (Firenze, La Nuova Italia, 1951), p. 34.

versus a *sociological* argument, which holds that laicity itself finds its best guarantee in the “open society”, and in allowing more effective satisfaction of the “feeling of religiousness”.

Let us start with the *gnoseological* argument. Laicity, taken as fully open to criticism and willing to contemplate self-criticism, is a principle inherent in the very idea of an “open society” (open to the largest possible number of visions of the world and closed only to intolerant minds). It can be defended according to three theories, analysed in depth elsewhere, which we will briefly recall here:

a) the “fallibility of human knowledge”: as stressed by Karl Popper and, as already highlighted by Alfred Tarski in his *Semantic theory of truth* (which demonstrates that it is logically impossible to demonstrate the definitive truth of any theory), any claims of infallibility – and thus of having absolute knowledge – are totally disrupted;

b) the “dispersal of human knowledge”: as demonstrated by Friedrich von Hayek: the greater portion of knowledge is linked to “situations that are peculiar in time and space” and is produced “on the spot”, only when a problem needs to be solved; therefore this implies that it is impossible to centralise all knowledge. It follows that any claims for omniscience supposedly capable of planning for the whole of society are demolished at their very roots;

c) the “Hume law”: it is not *logically* possible to derive values from facts. Thus there can be no objective ethics based on an empirical foundation which can be applied *erga omnes*; the moral choices derive from conscience and not from science. The latter assists us in moral choices, but cannot replace it.

If in science it is not possible to establish with certainty what is true – for strictly epistemological reasons – then nobody can own the entire knowledge base that would make it feasible to draft *ab imis* a society; furthermore, if in the ethical sphere there is no rational methodology for assessing the *objective* superiority of a value, then critical discussion between fallible individuals becomes the only tool for dealing with and attempting to solve common problems. This is the “open society”, where there is scope for the widest possible number of visions of the world, philosophical conceptions, ideologies, political ideas and also religious beliefs – for the majority, but not for all. In the “open society” only the intolerant are denied the right to citizenship, since they aim to impose their viewpoint with brute force, thereby contravening the tenets of the Rule of Law. These are individuals who have the presumption of possessing absolute truths. If laicity coincides with the adoption of a critical attitude, with the rejection of fundamentalism, and embodies a continuous approach of doubt and research, then we have to be laic because we are

fallible, since knowledge is necessarily dispersed and there is no objective criterion for determining what is right and what is not right.

5. WE HAVE TO BE LAIC IF WE SEEK TO ACHIEVE THE BEST SATISFACTION OF RELIGIOUS SENTIMENT

Here we present a threefold sociological argument. Insofar as the community of critical discussion represented by the "open society" is a laic space freed from *privileged viewpoints*, it represents the most adequate environment for satisfying the "demand for religiousness". Three arguments can be put forward in support of this approach:

a) What is important is to promote continuous dialogue among fallible individuals who have in common the attempt to solve problems by putting forward alternative solutions. Admittedly, the laic principle holds that unquestionable dogma is denied the right of citizenship in the public arena, and it is certainly true that critical discussion presumes the absence of infallible people. However, it contributes to the elimination of human absolutes from the historical world. That is to say, critical discussion is a tool that tends to eliminate indubitable knowledge, thereby reducing the possibility that reason might become the Goddess of Reason and averting the risk that the sphere of faith may be inappropriately occupied by mortal absolutes. Human knowledge that is not absolute and a historical world that is not sacred *saves the space* of transcendence: absolutes must be sought outside this world.

b) Religion represents a *private* choice, pertaining to an individual's conscience. In a laic State, the crucial principle in force holds that conscience is the judge of power rather than the opposite state of affairs. Compared to the States characterised by laicity and confessionalism (leaving aside theocracies and totalitarian States), the laic State ensures the inviolability of conscience and refrains from judging the morality or immorality of private choices, insofar as religious matters are concerned. It safeguards, on the one hand, the autonomy of political power vis-à-vis religious power, and on the other, individuals and their freedoms, while including freedom of worship without State interference. As stated by Guido Calogero, laicity "is not, in its innermost essence, a protection of the State from the church. It is the defence of every man from the intrusiveness of bad States and churches."¹⁷ Religions

¹⁷ G. CALOGERO, *Filosofia del dialogo* (Milano, Edizioni di Comunità, 1962), p. 125. The main path, according to Calogero, for avoiding this intrusiveness is to refrain from considering the Church and the State as superior entities with respect to the individuals that compose them; *ibid.*, p. 130.

are free to instil transcendental elements into our daily lives, to proclaim salvation and revealed knowledge, provided they do not use force or appeal for the support of the coercive power of the State to eliminate the dimension of the choice of conscience.

c) If a religion is *private* in its specific choice, it is *public* in its public expressions. A laic State not only guarantees private freedom to worship, but also ensures the potential wider public expression of religions, provided they are compatible with the regulations of the Rule of Law and, in particular, with the legitimation of institutions and their decisions. As noted earlier, citizens are free to take part in public discussion even in the name of religious values (on the human person, life, etc.). What is not granted in a laic State is to adduce any value (religious or otherwise) in order to challenge the legitimacy of decisions and institutional roles. Now, if on the one hand the laic State does not judge morality in private life and the religiousness of citizens, on the other it can create conditions – as has occurred over the course of history – for the widest public expression of religious ideas, while upholding two crucial principles: all creeds should be treated in the same manner, and steps must be taken to prevent the establishment of such conditions from having a negative impact upon non believers. Any attempt at introducing a hierarchy, supporting one specific religion over others, or promoting a religion that penalises non believers or, on the contrary, granting favourable treatment to non believers, implies, as we have seen, a violation of the laicity principle.

Given these three remarks we may conclude that inasmuch as the laic order of the “open society” allows a broad offer of “competing” religious theories, i.e. the most widespread expression of the largest possible number of religious principles compatible with the Rule of Law, it can be characterised as the one that best satisfies the demand for religiousness. Just as scientific theories constitute the answers to scientific problems, equally, religious beliefs offer the answers to religious issues. At the same time, just as deeper insight is gained into the problems of science when there is an increase in the number of schools and theories competing to achieve the most advanced results, by the same token the momentous issues of religion (the meaning of life, the ultimate explanations on the universe, etc.) can be given more appropriate answers as the spectrum of religions becomes wider and richer. It is certainly no coincidence that empirical research shows the highest rate of believers in the United States, where there is the largest number of religious faiths.¹⁸

¹⁸ R. BOUDON, *Declin de la morale? Declin des valeurs?* (Paris, PUF, 2002), pp. 34-36.

GRAZIANO LINGUA

THE ECONOMY OF IMAGES, OR THE SYMBOLICAL HORIZON
OF SOCIAL EXCHANGE*

1. Sending to press his collection of essays entitled *Il Buongoverno* [Good Government],¹ Einaudi chooses to insert in the body of the text some details about the Sienese fresco by Ambrogio Lorenzetti, *Effects of Good and Bad Government on Town and Country* [*Effetti del Buon e del Cattivo Governo nella campagna e nella città*] (1338-1340). The exact intention of this gesture is not fully apparent. However, it makes one think that this is not just a decorative decision, but that it has something to do, in a profound way, with the theoretical objectives of the volume and, more generally, of the statesman's thought. Now, faced with Einaudi's decision two interpretive lines are open to us. The most immediate one is that of reading and decoding the image in its relationship with the text; of analyzing the content of the fresco, the historical reconstruction of the environment and the sources of the painting; and eventually comparing how much more or differently (with respect to the ideal of good government) the image can express something that the essays contained in the collection do not. Going in this direction one might find the analysis of Lorenzetti's work by P. Schiera, N. Rubinstein, Q. Skinner useful. These scholars have highlighted the merging of politics and theology in the painting.² There is, however, a second reading, more radically philosophical, which consists not so much in an interrogation of the painting, but in the interrogation of the gesture of putting the artistic image in a collection of

* Trans. by Marika Josephson.

¹ L. EINAUDI, *Il buongoverno. Saggi di economia e politica (1897-1954)*, E. ROSSI (ed.) (Bari, Laterza, 1954).

² Cf. P. SCHIERA, "Il bonum commune fra corpi e disciplina: alle radici della politica nel medioevo", *Democrazia e Diritto* (Sept.-Dec. 1991), pp. 31-51; N. RUBINSTEIN, "Political Ideas in Senese Art: The Frescoes by Ambrogio Lorenzetti", *Journal of the Warburg and Courtauld Institutes*, XXI (1958), pp. 179-207; Q. SKINNER, *Vision of Politics. II. Renaissance Virtues*, Cambridge, Cambridge University Press, 2002.

essays that work on one register (namely an economic-political one) apparently far from that of imagery and the aesthetic experience. This is the interpretive direction that I would like to propose, reading Einaudi's choice as an occasion for opening reflection on the role images play in the social construction of sense and, more generally, the comprehensive symbolical frame of living-in-common. In a perspective such as this, artistic images inhabit every discourse, even those which are economic-political, in a demanding way, more so than merely as an exposition of determinate contents, because they work with that which, in words, remains "off the field". They allude – outside of what they concretely demonstrate – to the relationship that society establishes with its own self-representation, offering a cue for reflecting on how philosophy can reckon with the symbolical matrices that contribute to constructing social identity.³ On this point the question that Paolo Silverstri poses in his recent study dedicated to the theme of good government in Einaudi becomes particularly interesting:⁴ Can Lorenzetti's fresco, outside of its contents, claim to have an intrinsic communicative-normative scope, or better, can this image of art not only represent an ideal form of society which escapes u-topically into the various reductionisms in which it develops the concrete conduct of human affairs, but also have a performative function for the spectator, guiding him toward a different view of reality? It is clear that replying to the question posed by Silverstri involves a deviation from the specific Einaudian legacy to a discussion that includes more about the anthropological and political significance of images. It seems to me nevertheless that to attempt a reading in this sense could contribute to clarifying the mythical-ideal dimension of good government and offer us a series of elements which the simple decodification of Lorenzetti's fresco, as an illustration of the Einaudian text, simply could not. There are at least two stages of such a reading that seem to me inescapable: in the first place there is the comprehending of sense in which images have an intrinsic truth-telling capacity even in registers of knowing that are less aesthetically minded-thanks to their symbolic potential of putting forward some-

³ A fundamental contribution to rethinking the role of the aesthetic in the social sciences and in particular in law is offered by the "dogmatic anthropology" of P. Legendre. See for example what is said in P. LEGENDRE, *Della società come testo. Lineamenti di un'antropologia dogmatica*, trans. it. and ed. P. Heritier (Torino, Giappichelli, 2005), pp. 127-167; ID., *Dieu au miroir. Étude sur l'institution des images* (Paris, Fayard, 1994), pp. 91-178. For a synthetic portrait on this aspect of the philosophy of P. Legendre see P. HERITIER, "Legendre e la fondazione antropologica dell'estetica giuridica", in P. LEGENDRE, *L'occidente invisibile*, trans. it. and ed. P. Heritier (Torino, Giappichelli, 2009), pp. 89-118.

⁴ P. SILVESTRI, *Il liberalismo di Luigi Einaudi, o del buon governo* (Soveria Mannelli, Rubettino, 2008), pp. 17-24.

thing that, if different, would remain unsaid; that is, indicating allusively to what is otherwise unavailable to us. The second stage would be comprehending in what sense the aesthetic-symbolic element could claim to have a normative dimension, that is, could have a constitutive role in the general economy of exchanges of sense that constitute the bond of a society, or better, that which keeps people together in a common identity even if that identity separates from their constitutive differences.

2. Before going directly into these two questions, an introduction is necessary: to reach the anthropological and social significance of the production and the use of images one must have some distance from the "logocentric" system that characterizes the vast majority of our social knowledge (in as much as it claims to be an expression of Science). This does not so much substitute a knowledge of images but rather implements it, *critically recognizing* the capacity that images have to put different planes into relation with one another, to create identity and ties, and to establish belonging. And this is precisely the point: if we think about being able to saturate the social transmission of sense with the word, inflecting it in many texts of juridical, political and economic doctrines, we remain impotent in understanding what is at work within the mechanisms of representation of the identities in which individuals recognize each other as subjects and collect themselves into a community. If only logic is valuable, every experience that brings the iconic back to the scene should be removed or classified as irrational, but doing so impedes us from understanding the depth of its sense.

The history of the relationship that the West has built with images risks being a history of this continual removal. One sees it from the Platonic suspicion of art through today's theories of visual communication. We have faced this paradox for millenia, in which we believe that it is necessary to remove images from our knowledge, in order to see better, as if we could see right there where there is nothing visible, as if the intelligible did not have anything to do with concrete forms. For this reason we tend to think of images prevalently on the register of aesthetic pleasure and not according to the epistemological register of truth and the anthropological one in which we construct identities. This is what Plato's myth of the cave, for example, teaches us: Plato rejects images not in order to distance the concept of vision from knowledge, but in order to radically subjugate the knowledge of a different vision, purely intellectual, that has nothing to do with concrete visibility. This myth brings us to the heart of the Platonic trait of Western rationalism: the conviction, that is, that precisely that which cannot be seen with the bodily eyes is intel-

ligible for the eyes of the mind, because only these are not disturbed by the impurity of passion and the ambiguous materiality of the body.

This suspicion toward images which the West carries in its genetic code is properly articulated in a series of apparently different registers, which, even in their differences, exhibit the same difficulty of thinking about this dimension in depth. I review three succinctly, as they are useful for the discussion that follows:

a) The first register is strictly tied to the Platonic model which attributes an insufficiency to artificial images with respect to truth because they are not real objects, but imitations of appearance rather than truth (*Republic*, X, 598 b). In the mimetic trait that characterizes every image made by man there is a fictional dimension that is intrinsically illusory and that impedes looking into the face of what is really valuable.⁵ Said briefly: the image cannot tell the truth because it is ontologically empty, it doubles the real, building imaginary worlds and touching dimensions rendered opaque by sentiment and desire. If I want to know, I must distance myself from images, from appearances, from passions, as does the prisoner of Plato's cave, who, unshackled from his chains, is not contented by the shadows [*skias*], but "looks toward the light" [*pros to phos anablepein*] (*Republic* VII, 515 c).

Even admitting that already in Plato and then in another way much more clearly in Neoplatonism, images can also have a positive role, in as much as they are copies that maintain some relationship with the original,⁶ it yet remains true that the legacy of Platonism, as is underlined by François

⁵ On the suspicion of images in Plato there are some classic places other than book X of the *Republic*, in which imitative art is defined as far from the truth because it produces illusory copies of objects, including the passage of the *Sophist*, 265-268 in which Plato classifies the art of imitation in the copy [*eikastike technē*] and in appearance [*phantastike*]. The first generates copies that are homologous to their models "such that their internal proportions are maintained", while the second produces images that are homologous to their models in an apparent way because "the craftsmen nowadays dismiss what's true and work at producing in their images not the proportions that are but those that seem beautiful" (*Sophist*, 236a).

⁶ Accordingly, the position of Plato's images is ambivalent because, on the one hand, the analogical dimension of *mimesis* is thought of in degrading terms, from which we get the condemnation of imitative art as incapable of reaching the truth, on the other hand, it is thought of in relational terms (cf. *Timaeus* 28a-29b) for which the empirical reality as a manifestation of the ideal world is valued. Cf. A. VASILIU, *Du Diaphane. Image, milieu, lumière dans la pensée antique e médiévale* (Paris, Vrin, 1997), pp. 208 ff. The positive aspect of the analogical dimension of the icon will be particularly developed in Neoplatonism, where the essential cosmological function of putting the different ontological planes of reality into relationship with one another is attributed to the image. "Every sphere of being", explains E. von Ivanka, "tends to generate an image of itself in an inferior sphere, which creates a relationship with the first like a ray of sun to a luminous source", cf. E. VON IVANKA, *Platonismo cristiano. Ricezione e trasformazione del Platonismo nella patristica*, trans. it. by E. Peroli (Milano, Vita e Pensiero, 1992), p. 50.

Dagognet in his *Philosophie de l'image*, “decides what follows” in as much as it opens the path to devaluing the illusory trait of images, of their mixture of *res factae* and *res fictae*, as a result of which one risks “no longer knowing where the real is situated”.⁷

b) The second register instead sees in the image an uncontrollable surplus, an intrinsic idolatrous quality determined by the fact that the image incorporates what it represents, and imposes it to sight. This is the Jewish legacy, by means of which we try to confront the power of images through a system of prohibition. The archetype of this position is found in Exodus 20:4-6, the Biblical commandment which prohibits the production and adoration of images.⁸ What should be noted about this, however, is that the Old Testament prohibition is not based on the ontological insufficiency of the image, but on its oversufficiency – its surplus – of the tendency that images have to shackle the gaze, to eliminate liberty, and to impose themselves as idols to adore without any possibility of critical distance.⁹

With prohibition, the Hebrew Bible brings to the fore a position that returns every time the relationship with visual communication is in crisis: when the idolatrous risk of images is made all too evident, it discards the purifying system of iconoclasm, founded on the conviction not only that one should, but that one must do without images. We discover a secularized residue of this attitude of radical rejection in the apocalyptic-iconophobic rhetoric of certain critical theories of mass communication that are not able to do other than denounce the invasion of the image – political propaganda, trash TV, etc. – but do not know how to get outside of that denouncing, when instead the problem is the good government of visibility and the critical relation which one must learn to have with regard to it.

c) The third system, finally, is tied to the fear of impurity, of the rational non-transparency of the image. The image, much more than the word, is strictly connected to desire because it doesn't go along the path of formalization, but exposes, without mediation, forms to our passion. This is the original sin of the image, which has its archetypal figure in the sin of Eve, who “saw how beautiful the tree was and how good its fruit would be to eat” (Genesis

⁷ Cf. F. DAGOGNET, *Philosophie de l'image* (Paris, Vrin, 1984), p. 25.

⁸ A portrait of the principle problems posed by the Jewish prohibition of Exodus 20 can be found in K.-H. BERNHARD, *Gott und Bild. Ein Beitrag zur Begründung und Deutung des Bilderverbotes im Alten Testamente* (Berlin, Evangelische Verlagstalt, 1956). In more synthetic terms, see G. SED-RAJNA, “L'argument de l'iconophobie juive”, in F. BOESFLUG – N. LOSSKJ (eds.), *Nicée II 787-1987. Douze siècles d'images religieuses* (Paris, Cerf, 1987), pp. 81-88.

⁹ Cf. M.-J. MONDZAIN, *Le commerce des regards* (Paris, Seuil, 2003), pp. 29 ff.

3,6).¹⁰ The image brings bodies to the fore and says that the intelligible is not directly accessible, but only indirectly, passing through the pulsating opacity of the flesh. Images cannot be controlled by the mind, they have everything to do with an incessant phantasmic production and lust. Tertullian, already in the second century, denounced the fact that they aroused a perverse and carnal fantasy¹¹ and this sentence would return as a refrain in every puritanical persecution of images.

In the contemporary epoch it is psychoanalysis which picks up this link between the image and desire, but, even in this case, it has not done so without ambiguity. After having recognized that the unconscious is played out fully upon images, and that therefore these play a fundamental role in the construction of identity, Freud ends, however, by claiming that the iconic material should be translated into a conscious language,¹² otherwise its effect is pathological. This because the associative logic of images does not permit a correct transmission of sense in as much as it is governed by a libidinal energy that appears irrational and that blocks communication of the subject with himself.

3. How can we, however, overcome the logocentric system that we have inherited? How is it possible to critically confront these different registers of suspicion that are often transformed into a clear negation and destruction of images? I will try to respond to these questions through a genealogy of Western tradition to see if what founds the suspicion or refutation might not dialectically transform itself into an opportunity to negotiate a positive iconic thought, which recognizes in images the role that they have in the individual and social construction of the human. To start with, a terminological clarification is useful because if we want to reinstate the anthropological function in the iconic we must see what is fully at stake in the experience of images and not just look at them as objects which interest us merely from an aesthetic point of view. Along this path the Greco-Hellenic philosophical genesis of the concept of the image proposed by M.-J. Mondzain¹³ will help. For one thing,

¹⁰ For more on this, see R. DEBRAY, *Vita e morte dell'immagine. Una storia dello sguardo in Occidente*, trans. it. A. Pinotti (Milano, Il Castoro, 1999), p. 65.

¹¹ Cf. TERTULLIAN, *De Virginibus velandis* and *De spectaculis*. See further interesting observations by P. GOODRICH in *Oedipus rex. Psychoanalysis, History, Law*, London, University of California Press, 1995, pp. 56-57.

¹² Cf. what he says about J.-M. FERRY, *Les grammaires de l'intelligence* (Paris, Cerf, 2004), pp. 21-39.

¹³ The observations that follow are from M. FISEROVA, "Image, sujet, pouvoir. Entretien avec

the Greek term *eikon* is not just a noun, but the residue of a verbal form of the present participle: when Plato or the Christian thinkers of the first millennium speak of *eikon* they do not designate a thing, an object, but a “mode of appearance in the visible spectrum”.¹⁴ When speaking of visible objects, the figurative works, the neuter *eikonisma* is in fact used in Greek. The more correct translation of *eikon* would therefore be “the similar”: a reality that acts by resembling what is other than itself, which appears and makes itself appear as the form of “as if”, that is, an illusion which imitates, but is not that which it represents. What interests us is not therefore the objective dimension of the image, but its operational force, its capacity to generate ties to what is other than itself, a capacity that is precisely of the image in a different and more intense way from what is of the word, because the image exhibits its own content not through abstract codification, but through the reproduction of a visible similarity. In this sense, the Greek term shows as image both, first of all, a system of analogous relation, and then only successively an object, as a specific modality through which this system acts on the person who produces and uses it. This dimension – both fictional and analogous – of the image is a weakness for Plato because it is not possible to construct a knowledge on that which seems, on that which appears to be other, but *is not* in and of itself. In this way, the image has a derivative ontological consistency which, along the lines of the copy, resembles, but is not what it resembles, and has scarce noetic value, because it tends toward illusion (*Republic*, 598c). It happens differently in Christianity: in Christian thought, hinging on the doctrine of the incarnation, according to which God himself becomes the visible image in the Son, this functional and analogical dimension transforms itself into an opportunity. The incarnation represents the fundamental theoretical system for a general justification of visibility as a place of grace, therefore as a place of presence and as a figure of the immanence of truth in its image, because the Son, in the moment in which he is *eikon tou Theou*, image of God (Colossians 1:15), he is also the only way given to man to see God, since in Him and only in Him the Father renders himself visible (John 14:9): “Whoever has seen me has seen the Father”.¹⁵ Instead of constructing an obstacle, in Christianity,

Marie José Mondzain”, *Sens public. Revue électronique internationale*, 1 (2008), available at <http://www.sens-public.org>.

¹⁴ *Ibid.*, p. 4.

¹⁵ Note that “Whoever has seen me has seen the Father” from John 14:9 is Christ’s answer to Philip’s request “Lord, show us the Father, that is all we need”. It should not be surprising, therefore, that the concept of the image would be thought of in early Christianity in relation to complex theological questions on the nature of intratrinitary relations, because it is in the particular relation-

the analogical nature of the image becomes the indispensable instrument for rendering visible and therefore experimentable that which is absent and invisible. In it the resemblance of the form does not simply install the *simulation*, but the space of a play of forces which hinges on the *symbolical exchange*. In such a perspective the difference between the image and its model does not represent a loss and a consummation of the original truth, but the horizon inside of which a return to what is outside of simple visibility is established.

This symbolical quality is an element that allows a Christian theory of images to confront, in a different way, the other two registers of suspicion which share a fear of the power of the image. From this point of view the emblematic moment in which they jettison the bases for a valorization of images is the iconoclastic crisis of the 8th and 9th century, where an encounter with the legitimacy of icons becomes an occasion to build a general theory of visible representation, valid not just for sacred images. The object of contention in such an iconoclastic encounter is the idolatrous risk that inhabits not only the cult use of images, but also their political use and their social relevance. The iconophiles win their battle because they are in a position to demonstrate that the image is not an impure object which magically incorporates the proper model, and in doing so produces a fusion with the spectator, but is a transitive space which refers outside of itself and therefore constructs a reserve of freedom offered to sight to negotiate a sense of the visible world. Only in this horizon, as many contemporary authors have highlighted,¹⁶ can one comprehend the fundamental role for all thought, following from the dialectic which is established between idol and icon. Idols do not allow one to distinguish between representation and that which is represented – whether it be God, or some sovereign power – for which outside of imagination there is nothing: the image is simply swallowed by the gaze, consumed, because it wholly coincides with its sense. Even in this case that which iconophile theologians call *eikon*, icon, is not first of all a particular type of religious image (a meaning that we today attribute to the word), but rather the particular transitive quality that every image must have in order not to produce idolatry. As we read in a passage of Basil of Caesarea, among the most cited in the iconoclastic encoun-

ship of identity in the difference between Father and Son that a positive idea of the iconic relationship matures. On this, cf. G. LADNER, "The Concept of the Image in the Greek Fathers and the Byzantine Iconoclastic Controversy", *DOP*, 7 (1953), pp. 1-34.

¹⁶ Other than the work of M.-J. MONDZAIN, *Image, Icon, Economy: the Byzantine origins of the contemporary Imaginary*, trans. Rico Franses (Stanford, Stanford University, 2005) to which we will return, the analysis of the idol/icon pair offered by J.-L. Marion is fundamental, *The idol and distance: five studies*, trans. Thomas A. Carlson (New York, Fordham University Press, 2001); ID., *God Without Being* (Chicago, University of Chicago Press, 1991).

ter: "The honor given to image rightly passes over to the prototype"¹⁷ that is, the analogical dimension of the image permits an analogical path that takes one from visible reality to the invisible reality of the represented.

That said, the question becomes how images can acquire this iconic quality? To say that an image capable of generating a difference – a margin between the representation and that which is represented – is iconic might not be enough to redeem it from the ancient testamentary prohibition, or to counter the suspicion with the opaque "materiality" of images. The economy opened by the incarnation of Christ requires negotiating an inseparable link between the visible and the invisible for which, once the difference has been given, must also describe their relation. For a Christian, thinking of incarnation means not being able any longer to conceive of the invisible as intelligible, as such, without passing through the mediation of corporal reality, nor simply condemning images made by the human hand as intrinsically idolatrous, or as simply produced from carnal fantasy. If God chose to render himself visible, then the visibility of bodies (in their materiality)¹⁸ is a space for the manifestation of truth, and artistic images are an instrument for rendering visible Christ, the Mother of God, and the Saints. It is not possible here to reconstruct how Christianity – Patristic first, then Byzantine – would have been able to apply the notion of *eikon* elaborated in the Christological and trinitarian debates, without a solution of continuity for artificial images. It should, however, be remembered that this passage has never signified a total triumph of visibility, but has generated an inseparable dialectic between the iconic dimension and the idolatrous dimension of sacred images and as a consequence of the images *tout court*. This dialectic makes it such that the image is never far from the risk of idolatry and that, rather, it needs a precise canon that regulates the production and individual and community use of it. To combat idolatry means to combat the simple submission to images and to make the symbolical exchange generate a difference not just between

¹⁷ BASIL OF CAESAREA, *De Spiritu Sancto*, 18, 45 (S. Ch. 17bis, p. 406). Note that Basil refers in this case to the image of the emperor and not to a sacred image.

¹⁸ See for example what John of Damascus says about the positivity of the material: "Is not the thrice-precious and thrice blessed wood of the cross, matter? Is not the holy and august mountain, the place of the skull, matter? Is not the life-giving and the life bearing rock, the holy tomb, the source of resurrection, matter? Is not the ink and the all-holy book of the Gospel, matter? [...] Either do away with reverence and veneration for all these or submit to the tradition of the Church and allow veneration of images of God and friends of God, sanctified by name and therefore overshadowed by the grace of the divine Spirit". See JOHN OF DAMASCUS, *Contra imaginum caluniatores orationes tres*, I, 16 (Berlin - New York, Ed. Kotter, De Gruyter, 1975, p. 90, eng. transl. by A. Louth, *Three Treatise on the Divine Images*, New York, Saint Vladimir Seminary Press, 2003).

what is seen and the invisible, but also between the spectator and the image. Only if man is not incorporated and seduced by the power of the image will he be able to cultivate a critical sensibility and not be a servant of vain idols. But to do this he must not only recognize this difference, but also govern it.

The most consistent legacy of this foundational moment for the theory of the image is this: the register with which one governs images and their role in society should not be one of simple prohibition, nor one of their ontological devaluing, nor one of puritanical condemnation. The aesthetic experience in its most full sense is a fundamental anthropological experience because it allows the elaboration of a relationship with itself and with others, on the condition that the images preserve a space for freedom in which it would be possible to construct a critical gaze. This is how one enters into the heart of the problem of the anthropological and social function of images which can justify the affirmation according to which a work of art like Lorenzetti's fresco of good government is in a position to say something that would remain otherwise unsayable. The suspicion of images is rooted in the incapacity to recognize and govern this difference between that which is present, and that which is absent, between the user and the image, and, more fully, between society and its symbolical foundation. A re-evaluation of the iconic in social knowledge comes from an awareness that this critical difference is the construction site of the relationship between the symbolical relation and additional sense, or, to use an expression from Pierre Legendre, the space of a construction of relation to Reference,¹⁹ from which not only individual life but also every social bond is established.

4. It is necessary, however, to make one further step. If so far in the discovery of the symbolical dimension, we still have not reached the heart of the institutional dimension of images, then we have not, actually, responded to the question from which we started, that is, to what Paolo Silvestri defines as the communicative-normative dimension of the image of Lorenzetti. We have simply said that the image constitutes something additional to what the word can not say, because it is an advocate of symbolical exchanges. To say it has a normative function means that we affirm that its addition does not just happen without any great effect on sense, but that it is constitutive of the same discourse that is used in economy and in politics. What I am saying

¹⁹ Legendre speaks both of the Reference and the Third symbolical to signify the unreachable place in relation to which "society is made". Cf. P. LEGENDRE, *Della società come testo* cit., pp. 133 ff. See what P. Heritier says in the introduction to the Italian edition cited, pp. 18 ff.

is that the mythological-symbolical function of the image does not serve only as an illustration of what the word cannot say, but that it is the basis of the institutional dimension, in a broad sense, a mechanism of imaginative construction of the foundations of society. To explain this I borrow an intuition of Marie-José Mondzain that I find particularly interesting, related to the bond that, during the iconoclastic period, the Byzantine iconophiles construct between the concept of *eikon* and the concept of *oikonomia*.²⁰ The point of departure is the idea that Mondzain summarises in this way: “Whoever rejects the icon rejects the economy”²¹ that is, he who refutes the icon, does not refute just the image, but the entire economy. With this I do not mean just that he who negates the image negates the incarnation, as a providential economy of God, but also that he finds himself incapable of comprehending the totality of human exchanges, “from the commerce and circulation of signs to the commerce of things and the circulation of goods”.²² To say that the image is the point upon which the economy rises or falls means therefore attributing to it a central role in the symbolical exchange that constitutes society, actually, more radically, to affirm that without the image one does not have full access to a symbolical condition of the human. As Nikephoros of Costantinople, one of the most profound Byzantine iconophile thinkers, says, “It is not Christ, but the entire universe that disappears if there is no more [...] icon”.²³

The term *oikonomia*, as others have noted, is not a Christian invention but is taken from classical Greek, and it is a notion largely utilized by Xenophon and Aristotle in *Economy* and *Politics*. In Christianity, however, it becomes a very full term that serves to explain both the intratrinitary relations and the intrahuman relations, whose plurisemanticity can be seen from the Latin translation of *oikonomia* which is rendered both as *dispositio* and *dispensatio*.²⁴ *Dispositio*, like the Greek word *systema*, means organization: from this point of view the great organizer is God, the orderer of the world through providence [*pronoia*], with organizer being whatever sovereign instantiation

²⁰ Cf. M.-J. MONDZAIN, *Image, Icon, Economy: The Byzantine Origins of the Contemporary Imaginary* cit. Further observations can be found in Id., *Le commerce des regards* cit., pp. 69-73.

²¹ *Ibid.* cit., p. 14.

²² M.-J. Mondzain in M. FISEROVA, *Image, sujet, pouvoir. Entretien avec Marie José Mondzain* cit., p. 9.

²³ NIKEPHOROS OF COSTANTINOPLE, *Antirrhethici*, I, 20 (PG 100, 244D).

²⁴ A reconstruction of the concept of *oikonomia* can be found in G. AGAMBEN, *The Kingdom and the Glory: For a Theological Genealogy of Economy and Government*, trans. by L. Chiesa (with M. Mandarini) (Stanford, Stanford University Press, 2011).

acts as God's deputy on earth. The *dispensato* instead is the trait of the patristic concept of *oikonomia* that is more properly Christian because it presupposes the idea that God spends something of himself, that he dispenses his own richness and invests the Son – that is, that which is most dear – in the world.²⁵ The *dispensatio* implies the complement and the historical unveiling of a divine plan. It therefore hinges on the idea of incarnation, that is, the idea that from the Christological event in advance, it is not possible to think of reality as an intramundane world, without understanding it as the place which God, the invisible, comes to inhabit (John 1:14). It is not the case therefore that the defense of images is founded directly on incarnation. The *dispensatio* is the crisis of the simple *dispositio*, it is therefore that instance of transcendence, that instance that challenges from the inside the reduction of the organization of the world as a simple intramundane order. The *dispensatio* is the motive for which, in organization, the power should be legitimized from an authority that is always an invisible principle. The *oikonomia* therefore becomes the good governing of the relationship between that which is seen with its functional rules and that which cannot be seen, but that even not being seen is manifested in that which is seen, in the way that the Son in flesh manifests the Father who no one has seen. We understand it this way because the image is necessary for the *oikonomia*, since the image is the place where the relationship between the visible and the invisible is not opposition, but the inhabiting of the one in the other. And one can see how far we have travelled down that road from the texts of Plato's *Republic* with respect to the *eikon*. Here the invisible is not the abstractly intelligible, but it is that which is articulated to visibility and which constitutes authority, the *exousia*. The form of this relationship is the *dispensatio* because there is no more separation between the invisible and the visible, but rather a correlation of one in the other, a reciprocal exchange. This entails spending; investment of the invisible in the visible.

The Byzantines realize that it is not possible to separate the iconic register from the historical register of management and the administration of the world, but doing this noticeably they enlarge the paradigm of management which is implicated in the concept of *oikonomia*, for which the image becomes an essential system, irreducible when one speaks of how a community constructs and governs the relations that characterize it. Byzantium tells us that one cannot live without images, because the making of images is at the heart

²⁵ M.-J. MONDZAIN, "Préface", in NICÉPHORE, *Discours contre les iconoclastes* (Paris, Klincksieck, 1989), p. 22.

of human existence, but at the same time, it recognizes that the image has its own economy, that is, it should be governed, it can transform itself into an idol, into falsity, into carnal temptation. This true and proper short circuit between *eikon* and *oikonomia* is revealed to be, thus, particularly fruitful with respect to the problem we are treating. The profound sense of the gesture of Einaudi can open us up in fact to a different consideration of the role of the aesthetic in human science and therefore also in economy. If the image is first of all a system with which man governs the sharing of sense, this is not only important for its content, but perhaps more profoundly for its operative dimension, for the fact that it is an essential element in the human force of giving sense to experience. According to iconophile theology, the iconoclast is he who precludes himself from the instruments used to understand the symbolical nature of exchanges, he who thinks of the exchange in terms of an equilibrium of calculations and who does not recognize that every exchange is an exchange of meanings in which what is gained is had only in as much as there is investment, when there is *dispensatio*, that is, there is an economy of excess. He who precludes himself from a relationship with images precludes himself from the comprehension of economy, that is, is not able to understand the same mechanism by which both the identity of the subject and the identity of a society are constituted in relational terms in the same act in which one identifies with the same culture that one has constructed. That is why the system for governing images cannot be one of prohibition, but one of difference, because that which the visible tells us, in as much as it is lived from the operative dimension of the image, is the demand of constantly negotiating the apparition of that which is not seen, that is, of the incommensurable overabundance of that which is unavailable to us. And only by maintaining this difference can there be a good government of exchanges, that is, a good government of the city.

5. The fact that precisely at the moment in which the images are at the origin of a conflict fought in blood – as was the iconoclastic Byzantine crisis – does the nexus between image and economy become central in the debate, and economy comes to signal how, when Western thought has made the nature of images subject, it has made them as full as they will be from an anthropological point of view. On the other hand, in the Christian thought of the first millenium the notion of the image was never thought of on the merely aesthetic-decorative level, but it always enters into play in crucial theological questions of the intratrinitary relation between the divine persons, Christology, and the set of relationships that tie the divine world and the cosmos. Particularly important, however, is that the stakes were not only theological or

generally epistemological, but their implications were immediately directed toward the political and social level. To say that the person who refutes images refutes *in toto* the *oikonomia* means to presuppose that the images enter into play in the process of social identification and in the constitution of the bonds and the symbolical exchanges to such an extent that it is important whether the images are accepted or refuted. As Marie-José Mondzain has shown in his works, the iconophiles of the 8th and 9th centuries, while defending the images from iconoclastic attack, do not defend just particular cult objects but the system that is at their back. The idea is that the image is fundamental to the construction of identity, at the same moment in which it generates a difference between that which is present and its sense, between the visible and the invisible that serves as its horizon. And in doing this they take into account the fundamental ambiguity of the experience of doing and of using images, for which the images can be the place where our relationship with the human is constituted with the originary furthering of sense. But it is also the place in which this relationship can be negated, can be made radically less, at the same moment in which a fusional relationship is established with the images and cancels the constitutive difference of sense. The encounter between the idol and the icon that makes the *cantus firmus* of the iconoclastic debate – but that in diverse forms crosses all of the Christian theology of images, even in modernity (one case above all being the debate on the legitimacy of the religious images of the Protestant Reformation) – is the nucleus around which is gathered the acknowledgment that every image contains, at the very core, some contradictory potentialities about the construction of identity.

An alternative route is an exploration of the suspicion by which the West has treated images and the dismissal which has excluded them from social knowledge. The particular nature of the iconic makes within them a place of essential reflection that sheds new light on a gesture, apparently marginal like that of Einaudi, but that is in reality extremely fertile in the sense that it can contribute to the notion of “good government”.

PAOLO HERTIER

USELESS NON-PREACHING?
THE CRITICAL POINT AND THE COMPLEX ANTHROPOLOGY OF
FREEDOM IN LUIGI EINAUDI*

1. A PHILOSOPHICAL-LEGAL VIEW OF EINAUDI'S ANTHROPOLOGY OF FREEDOM

The thinking of Luigi Einaudi is not easily systematised due to its very composition and form, divided up and articulated as it is among monographs and scientific articles, articles for popular readership, genuine political interventions regarding current topics, institutional notes, references to empirical questions, moral appeals presented as 'preaching',¹ and much more.

Perhaps what is lacking, and this is probably no coincidence, is a text that sums up and recapitulates the work as a whole, one capable of holding together in an overall way, from the point of view of theory, the various interests, the eclectic intuitions present in the multiplicity of contributions and typologies of the works, one that maintains a constant connection to the history of Italian economic and juridical institutions, from the Bank of Italy to the Presidency of the Republic.

In this sense, the result of Einaudi's theoretical itinerary is a thinking that is philosophically incomplete and open, as though suspended between theory and practice, between the ideal and the real, but, paradoxically, it may be precisely in this that his anthropological and theoretical relevance resides. This is what motivated my attempt at a partial re-reading, in light of the present economic-financial crisis, as we will see in what follows.

* Translated by Kim Williams.

¹ An attempt at providing a systematic picture, as far as this is possible, of Einaudi's thinking, has been made by the co-editor of this present volume, P. SILVESTRI, *Il liberalismo di Luigi Einaudi o del Buongoverno* (Soveria Mannelli, Rubbettino, 2008), with which I agree regarding the anthropological and juridical-aesthetic formulation, inspired by a notion of Enrico di Robilant's, concerning a theme that is central to the philosophy of law: the relationship between freedom and law. In particular, in what follows I share the explicit recourse to the Siena frescos of good and bad government by Lorenzetti as an explicative symbol for Einaudi's thinking.

Because of this lack of theoretical formulation, in the present article I would like to refer to a single text which, while not synthetic of the whole of Einaudi's vision, is at least emblematic of his entire anthropological conception. The *Lezioni di politica sociale*² are in fact lessons, in that they were conceived as a cross between a scientific essay, a predicated newspaper article and a university lecture, and discussed, in a tone that is colloquial and conversational, at a wholly particular moment in European history, the end of the second world war and the beginning of a new era.³ I will analyse the book,⁴ including its being created in an ideal historical non-epoch, in the ideal place, and in the atemporality of his exile in Switzerland (1944), and of the radical transformation of a society and way of living (up to 1949, the year in which the book was published). Almost as a sign that the topics taken into consideration by Einaudi in outlining a positive portrayal of his model for mankind, such as savings, sacrifice, the family, the land, and so forth, are far from irrelevant in containing a nostalgic view of idealised life in a agricultural, rural and even premodern society, is the fact that they can be read today from another point of view, one that is specifically epochal-anthropological. It is possible for the *anthropological and fundamental* nature of this work to emerge once again precisely during a new global crisis, the period having passed in which post-war social climate and economic development progressively consigned to oblivion those 'rural' yearnings, by now considered premodern, substituting them with a 'metropolitan' culture of consumption and appearance considered to be liberal and modern. Today, however, when it is also possible to discern the anthropological and social limits of that vision, the very incapacity to maintain the vitality of a society, state, and institutions such as the markets, Einaudi's 'premodern' criticisms take on a completely different meaning, with echoes that are even 'post-postmodern'.

Einaudi positions and the symbolism of the allusion to the fresco cycle by Ambrogio Lorenzetti (details of which the then President of the Republic in-

² L. EINAUDI, *Lezioni di politica sociale* (Torino, G. Einaudi, 1949).

³ Useful with regard to the political relevance of this period immediately following the exile in Switzerland are the collection of contributions that Einaudi made to the debates about the nascent Italian Republic; see ID., *Riflessioni di un liberale sulla democrazia 1943-47*, P. SODDU (ed.) (Firenze, Leo S. Olschki, 2001) see especially "Introduzione" by P. SODDU, pp. vii-xxviii, and the contributions "Il mito dello stato sovrano", "*Major et sanior pars*", ossia della tolleranza e dell'adesione politica", "Il mito delle corti costituzionali", "Della paura" and "Il mito della sovranità popolare".

⁴ This analysis will only touch on the anthropological question in a limited way, and with specific reference to the third part of the book, "Concetto e uguaglianza nei punti di partenza" (pp. 172-246), which is the most relevant one for our purposes here.

serted in the collection of essays entitled *Il buongoverno. Saggi di economia e di politica*, and which are discussed in various articles in the book) both contain, to my mind, an implicit *trans-historic* trait, a kind of anthropological and social judgment – though one necessarily only sketched out – of the habits of various epochs and on the rise and fall of civilisation: the fulcrum of this is critical point theory.

In some of the passages, Einaudi even seems to refer to arguments that bear the stamp of the doctrine of natural law, even if this *natural law* or *trans-historic trait* always appears to be tied to a profound sense of the mediation between the ideal and the historical aimed at (good) government of human beings, generating a fertile contradiction, a theoretical tension between the foundational requirements of the social bond (and their symbolic representation: consider the position that he takes regarding the role played by monarchy in the unity of the state) and the historical contingency, which can always be reduced to those requirements.

In the article “*Major et senior pars*”, in the course of analysing a theory of the *élites* and of the “restraints on the excessive power of the political class”, Einaudi comes to ask himself about the ‘aura of unimpeachability’ of different foundational principles, making it clear that the defence of tolerance implies “intolerance towards of any kind of power of a majority, even one that is extremely strong, that dares to touch the fundamental rights of the human person”, this – fundamental rights – being an area in which “not even the unanimity of all men living in a political society could justify the enactment of a coercive law that denies the fundamental freedom of the individual”.⁵ The economist then goes on here to refuse, by means of arguments that have overtones of natural law, the myth of the sovereignty of the majority in the face of responsibility towards the future: what was described could not even be called ‘unanimity’, “because men living today cannot negate the legacy of their fathers, which has the right to live on in children not yet born”.⁶

In other words, the reference to an ideal that has almost the character of natural law is integrated into a conceptual structure immersed in history and tied to the relationship between generations viewed in terms of moral responsibility. Thus, in Einaudi, the position of a ‘tradition’, of the realm of the ‘ideal’, is never separated from the concrete problem of the historical unfold-

⁵ L. EINAUDI, “*Major et sanior pars*”, pp. 93-94. I am citing here the version published in the collection of essays *Il Buongoverno* (1954) (Roma - Bari, Laterza, 2004). The translations of this and all quotations that follow are mine.

⁶ Id., “*Major et sanior pars*” cit., p. 94.

ing of that same 'tradition' and its projection towards the future. This is a feature that appears to imply the adoption of an evolutionistic concept of the human 'person', where liberalism has, to put it briefly, an anthropological destination and meaning that concerns the actual ways of exercising and possible forms of human freedom: it is the "doctrine of those who puts the betterment, the elevation of the human person before any other goal"; it is therefore a moral doctrine, "independent of the contingencies of time and place".⁷

Returning to the subject at hand, however, without indulging too much in the wandering among concepts and problems that are so very diverse and formulations that are sometimes even contradictory that the fertile eclecticism of Einaudi's work inspires the reader to do under the spell of his prose, it would seem opportune, as mentioned, to concentrate on the *Lezioni*, in order to grasp what appears to me to be the *central anthropological and theoretical point* of this thinking – always inexorably divided between theory and practice, between the contingent and the historic – that is, the contradiction between the mythical-foundational exigencies of a conception shared by the anthropologist (the free human person as the instituting basis of society) and the sometimes brutal contingency of the political and economic struggle between the forces that are expressed in society. The hypothesis which provides the starting point is that this unresolved contradiction expresses a vision of the human being that provides interesting points for reflection in our own times, in which the much studied and declaimed twentieth-century theme of the *decline of the West* appears to reach its historic fall, due, paradoxically, to the worldwide spread of that market, tied to globalisation, that Einaudi used to preach as being fundamental to human liberty.

Instead, according to Michele Salvati the defect of the *Lezioni* is that it talks about a 'small old world', nineteenth-century, one that has been idealised and perhaps never even existed, made up of small businesses and artisans, of agriculture and tenant farmers, one which never had anything to do with the world of Einaudi's day, expressive of an economic and social situation that was completely different that Einaudi himself didn't fully comprehend, lacking as he was in "the most powerful instruments for comprehending modernity".⁸

Now, some seventy years after the *Lezioni* were written, and in entirely different moral, social and economic conditions, and just a few years after Sal-

⁷ ID., "Liberalismo", in *Riflessioni di un liberale sulla democrazia 1943-47* cit., p. 65; see also P. SODDU, "Introduzione", *ibid.*, p. IX.

⁸ M. SALVATI, "Introduzione", in L. EINAUDI, *Lezioni di politica sociale* (Torino, G. Einaudi, 2003).

vati's judgment – years which, however, seem remote to us, as if the critical point of all critical points had been passed with the great economic crisis of the beginning of the millennium – what must be done is to understand whether that nineteenth-century world, those judgements on rural and family customs still appear as exclusively nostalgic yearnings, conservative or reactionary to a greater or lesser extent, for an ideal middle-class civilisation that never existed or a way of life that has by now either already disappeared or is on the way to extinction, or if it is something else, perhaps (at least a sketch of) a more precise judgment of the periods, the rise and decline of civilisation, which is capable of indicating, albeit only historically, *typical anthropological tendencies that identify human beings*.⁹

A concept of the person and of laws that is evolutionistic and not based on the doctrine of natural law was developed by the Torinese philosopher of law Enrico di Robilant, although without reference to Einaudi but rather to the pancritical view of rationalism of Bartley, Popper and Hayek, in which it is precisely the concept of the person that is the key that resolves, in evolutionistic and liberal terms and not those of natural law or the moral-religious, the conflict between the foundational exigencies of the social bond and the concreteness of the contingent.¹⁰

In Einaudi's *Lezioni*, the fecundity of the tension between anthropological-foundational requirements of a social philosophy and the frenetic evolutionistic exigencies of the contingencies of the market can be gleaned from the

⁹ For an exegetical conception of the notion of person, see E. DI ROBILANT, *Diritto, società e persona. Appunti per il corso di filosofia del diritto 1998-1999* (Torino, Giappichelli, 1999).

¹⁰ Although a discussion of this is beyond the scope of the present paper, Robilant shows himself to have fully grasped the point of the indirect relations between the doctrine of natural law and liberal evolutionism, which can already be seen as tension in Einaudi, when he makes it clear that, 'In addition to finding himself faced with a law determined by the highest authority or by a legislator, or by men themselves in their activities, however, the person can also be situated in the face of a law *not* determined by men. The law not determined by men, over the course of the centuries, has mostly been indicated in philosophical-juridical thinking by the term "natural law". In light of the development of critical metatheory, and by the need for reflection on laws, the denomination "natural law" does not appear to be necessary and can be misleading. It in fact reflects a certain conception of nature and of the order that, in the current context of scientific culture, appears reductive and generic, since it does not make it possible to take adequate account of the complex problems that the concept of law raises, or of its allusive potential', E. DI ROBILANT, *Diritto, società e persona* cit., p. 146 (my trans). The point cannot be investigated here, but the entire aperture of the sphere of the configuration of the aesthetic laid out by Robilant represents, in my opinion, an efficacious theoretical re-reading of 'aesthetic-figurative' intuitions that emerge in places, like splashes of colour, in the work of Einaudi. Finally, regarding Robilant's work, see P. HERITIER, *Società post-hitleriane? Materiali didattici di antropologia ed estetica giuridica 2.0* (Torino, Giappichelli, 2009²), especially pp. 34-75. See also *Problemi di libertà nella società complessa e nel Cristianesimo*, ID. (ed.) (Soveria Mannelli, Rubbettino, 2008).

long passages that constitute an *ethics of sacrifice*, dedicated to the central role for a society played by savings, by the existence of the family, of enterprise, of the collective; all economic issues that rest on arguments concerning freedom and situated in a global anthropological vision: are these nineteenth-century and anachronistic as well? The connection between the anthropologic and the economic also appears to have disappeared in our day, where there are daily discussions about the pre-announced and threatened default of the European nations because of an excess of public debt, without, however, ever inserting the economic analyses into a socially shared perspective “of the elevation of the person”, not even along general lines. Is this not of greater importance to the ‘nineteenth-century’ thinker than a return to an ‘agricultural’ society? Is all of this truly outdated?

This does not at all mean to say that it is necessary to return to looking backwards, as Einaudi certainly does, but that perhaps what lay ahead no longer appears so promising, and this may lead to a reformulation of the judgment on the third part of the *Lezioni* as well.

The theoretical problem that is posed in Einaudi in this regard is classically philosophical-legal: state how it is possible, without falling back on a substantialistic conception of the common good proper to an approach that is close to ‘natural law’, the ideal of a ‘good government’ situated *between public and private, between freedom and tradition, between responsibility of conscience and ethics of institutions* as a representation that, without denying the requirements of social evolution by relying on substantialistic objectivism, can produce cognitive statements, in a given historical situation, that are capable of orienting behaviour by means of the mobilisation of the individual consensus that is free and not only that threatened with punishment.

Isn’t this the central problem of law, a discipline that by definition already appears to be surpassed by competing disciplines that are more seductive and fashionable? This is the constitutive *anthropological* problem of law analysed starting from an *anthropology of freedom*, which had already been stated in terms of the contrast between law and liberty in the times of the epistle of Paul of Tarsus to the Romans, and of which liberalism, aimed at making sure that attention is kept on the theme of the freedom of the person, and not only on the question of the maximisation of profit, is fully invested.¹¹ In this present article it is certainly not possible to outline the topic, but simply to show

¹¹ Regarding this aspect, I refer to what I have written elsewhere; see P. HERITIER, “L’uomo del diritto. Il problema della conoscibilità del diritto naturale in San Paolo”, in *La vitalità del diritto naturale*, F. DI BLASI and P. HERITIER (eds.) (Palermo, Phronesis, 2008), pp. 117-158.

how in the depths of the anthropological vision expressed by the *Lezioni*, that question is already central, and how it has become a genuine 'anthropological emergency' in the face of the economic crisis of the West (and the political-institutional crisis of Europe) at the dawn of the third millennium. There is no solution in Einaudi, but the problem is identified precisely in the impossibility of solving it theoretically, perhaps in the midst of a vision that is naive and idealistic, but certainly not only in its systematic removal, which is very fashionable today.

2. THE RELEVANCE TODAY OF THE *LEZIONI DI POLITICA SOCIALE*

Taking these question and precautions as a starting point, consider then, in Einaudi, the way in which is conceived the distinction between the kind of man who is a 'saver' and the kind who is a 'squanderer', analysed in too detailed a fashion from the point of view of the conditions of life, even down to the details of the number of children as a sign of family prosperity and equilibrium, or to the creation of a system of taxation aimed at penalising non-productive and parasitic income in order to maintain the productivity of the economic system and avoid income that is merely financial. These are policies to which are connected an idea of welfare conceived on the basis of the family rather than that of state, and which are becoming current once again in the face of the state financial crisis.

On the other hand, the *Lezioni di politica sociale* contain an unquestionable criticism of collectivism in the name of freedom, referring to another great contemporary text, *The Road to Serfdom*,¹² written by Friedrich Hayek, also an economist, who is much more drastic than Einaudi in his judgment of the Beveridge plan, which had just been devised. However, Einaudi's text appears to me to go beyond that of Nobel Laureate Hayek precisely in the position that it gives to the central problems, which, far from being solved, are in any case clearly perceived and finely drawn within a perspective of the anthropology of freedom, an aspect which in Italy might have received less attention than it deserved, in part because of the contrasting labels that characterised Einaudi as a 'liberalist' against Croce the 'liberal'¹³ and Keynes the 'interventionist'.

¹² F.A. HAYEK, *The Road to Serfdom* (London, Routledge, 1944).

¹³ B. CROCE - L. EINAUDI, *Liberismo e liberalismo*, P. SOLARI (ed.) (Napoli, Ricciardi, 1957). Regarding this, see F. FORTE, "I liberalissimi di Einaudi e di Croce", in ID., *L'economia liberale di*

While for the economist writing the *Lezioni* the primary fundamental reason for state intervention in the economy is the fight against monopoly, the second aim of social economic legislation is aimed at adjusting the starting points of its citizens by means of *lowering the high points* and *raising the low points*, thus arriving at an approximation of that equality of opportunity which, in Western political philosophy, after Rawls, has been debated at length up to the present day.

The lowering of the high points, conceived, for example, by means of a significant recourse to taxes, in particular inheritance taxes, thus requires as a buttress, needless to say, a precise visibility in the use of those taxes, “a very elevated sense of civic duty and a use of the taxes that is genuinely of benefit to the collective”.¹⁴ This requisite is held to be indispensable for realising a great social harmony and a prosperity tied, not to destroying the profits deriving from competition, but to the contrary, to maintaining the incentive to produce them, avoiding the flourishing of advantages of position. However, the raising of the low points made possible by social legislation must never be confused with encouraging idleness: this risk, as Einaudi notes, is the restraint that must constantly be kept in mind in order to “avoid the danger of re-creating something like the *panem et circenses* that lead to the ruin of the Roman world”.¹⁵

It is interesting to note that these subjects were considered by Einaudi from the point of view of social legislation. That viewpoint, very traditional, must therefore be seen in reference to a perspective vision of man in which the objective of a minimum existence must not be conceived as a guaranteed point of arrival, but as a point of departure that allows everyone to act, “an insurance given to all men so that they can develop their aptitudes”.¹⁶

This basic idea is not without connections to an evolutionist conception of man, considered from the point of view of history and the judgment of society and the customs in various periods. In fact, very schematically, according to the author of the *Lezioni*,

Luigi Einaudi. *Saggi* (Firenze, Leo S. Olschki, 2009), who notes that the debate is nested in a misunderstanding to which Einaudi was also liable: “Croce did not deny that, from the point of view of ethics, it was from the liberal principle that the principle of free initiative descended” (p. 208; my trans.), which was even held to be the instrumental principle for the authoritarian regulation of human life; for his part, Einaudi “was irritated by being defined as a liberalist” (p. 211), identifying the crux of the matter in freedom of choice (which was, moreover, central for Croce as well).

¹⁴ L. EINAUDI, *Lezioni di politica sociale* cit., p. 52.

¹⁵ *Ibid.*, p. 55.

¹⁶ *Ibid.*

it wasn't the barbarians who caused the fall of the Roman empire; it was rather the empire itself that was rotten; and one of the causes of the internal decadence was that the Roman citizens disdained being soldiers, workers, because, maintained by the state, they preferred going to the forum to watch the spectacles, the wild animals chasing the Christians, etc., etc.¹⁷

Far from constructing a detailed historic analysis, this passage clearly shows that Einaudi intended to propose a *sacrificial* anthropological model as the basis for the social life of the market and the institutions: a presupposition based on ethics and values without which every society, in the long run, would have to face the problem of its own decadence, related to the decadence of its own customs and the family model that guarantees the prevalence of savings. Seen in this light, in these times of newly widespread *panem et circenses* and of heavy immigration flows, the analysis of the third part of the book – the observations about the family and customs – take on a very different meaning. These perhaps appear less naive and traditionalist now than they might have appeared in the early post-war years to a society in the midst of full economic development.

In fact, the idea of social legislation is classically intended to provide an objective that is not a point of arrival, but a point of departure that makes it possible for all, and for young people in particular, to develop their own aptitudes and better their own conditions, to the benefit of the collective as a whole.¹⁸ *Good government* is certainly, also, or above all, aimed at this, and is endowed with a *sacrificial* anthropological dimension, believed to derive from a religious concept, as shown by the final reference in the passage quoted by Einaudi to the expulsion of Adam and Eve from paradise, intended as a symbol of man's condition of fallibility as a result of original sin.

The *ideal* towards which civilisation should strive is thus to make possible the emanation of inventions created by scholars who, if employed so intensely as to absorb all their own energies and resources in order to survive, would not be able to give them concrete form. It should not, however, be forgotten that “if bread is to become abundant for all”, then there would last in perpetuity “the law by which men are forced to tear with toil from the avaricious

¹⁷ *Ibid.*

¹⁸ This does not appear so very different from the anthropological concept defended by Ronald Dworkin, independent of the ethical conclusions that the American philosopher of law draws from it, in his conception of human dignity as dictated by two principles: “that every human life is of intrinsic potential value, and that everyone has a responsibility for realising that value in his own life”; see R. DWORKIN, *Is Democracy Possible Here? Principles for a New Political Debate* (Princeton, Princeton University Press, 2006), p. 10.

ground the goods in which it is fertile":¹⁹ the possibility of elevating himself from a minimum standard of living is thus a situation of fact that can be improved by various means, but is never a guaranteed right, which would necessarily lead to a society that was collectivist, totalitarian and inhuman. If the king of the economic world in a free market is the consumer, then price is the 'faithful executor' of that world, counselling and punishing the entrepreneur who, if not careful in interpreting the present and future desires of the consumer, is sentenced to expulsion from the market because of the losses taken by his enterprise. Further, for Einaudi, the automatic and neutral mechanism of the market which is described by economists and is the fruit of the development of society as a whole, adapts itself to the most diverse kinds of societies, leaving unanswered the political question of what kind of distribution of income is best.

To this end there are various models of social organisation, such as the collectivist and communist, which lead to a totalitarian society, and another liberal concept which is not, moreover, at all separated from precise ethical choices. If here the economist's intent is to criticise the collectivist model, as Hayek did in *The Road to Serfdom*, it is clear that the proposed solution is instead tied to an anthropological concept aimed at favouring innovation and production – and, consequently, the ideal of the *self-made man* that makes mobility possible in society – and does not perpetuate divisions into classes: not permitting the 'silly daddy's boy' to prosper in luxury and the 'misunderstood genius' to lead a miserable life. Exactly this need for 'equality of starting points' appears to be inevitably tied, in Einaudi's thinking, to the specific anthropology of sacrifice and savings mentioned above, which postulates that "the true social unit is not the isolated individual but the family".²⁰

In section 107, emblematically entitled "Gli uomini egoisti individuali e gli uomini costruttori. Il medioevo e il concetto dell'eterno" (Men who are individual egotists and men who are builders. The Middle Ages and the concept of eternity), Einaudi defines two typologies of man. The first is formed of "those who think about themselves and thus restrict their future intentions either to their own life or at most to that of their life's companion".²¹ For this typology of man, the maximum ideal result is having a pension for the rest of his life, not having any savings since this is destroyed each generation, but the result of this concept, when transposed to the level of the collective, is a

¹⁹ L. EINAUDI, *Lezioni di politica sociale* cit., p. 56.

²⁰ *Ibid.*, p. 190.

²¹ *Ibid.*

stationary society. It is correlated to *the squandering kind of man*, for whom “the existing capital decreases, the earth is subject to exhaustive farming and considered of no value since this man doesn’t look to the future”.²² He neglects the upkeep of his house, reducing both his abode and his life to a heap of rubble:

These do not create savings, but deplete the savings of others: they are the heirs or the exploiters, not the creators of fortunes, of existing capital. They convert existing instrumental goods into consumer goods; they do not give this up in order to construct new capital goods.²³

Along with this kind of squanderer are others who, although driven by a wide range of different feelings, have the instinct for *construction*. Einaudi’s description of this kind of man appears today to be as strongly out of date and anachronistic as it is perhaps useful, in its naive – for contemporary sensitivities – simplicity, for understanding the current economic decline of the West. Let’s follow this unusual ‘preachifying’ itinerary briefly, which will lead us straight from the private to the public, from a house kept in good order to the good government of a society, conceived as a line virtually without deviations: it is a historic-economic itinerary as well, which makes it clear that the idea of *good government* is born anthropologically in the ‘privatist’ environment of the family and is transferred by analogy to collective concepts such as enterprise or state, with the model of the “good father of the family” as precursor to ‘good government’.

A first stimulus for savings is thus provided by the desire to *found a family*:

The bachelor, the childless married couple can be content with a lifetime pension, which is paid up to the end of their lives; the father of a family saves as long as and if he believes himself to have founded something that is of support to the lives of his children and grandchildren. He enlarges the house so that it can host, at least for a few months of the year, the families of his children; he wants it to be capable of being divided up, so that each of the families that descend from him can stay there. He doesn’t conceive of the house as an entity in itself... If the saver who founds a family had no hope of allowing his descendants to enjoy the fruit of the capital he had accumulated, that accumulation would not have occurred and the collective would be that much poorer. Those houses, those factories, those stores, those improved lands would not exist.²⁴

²² *Ibid.*, p. 195.

²³ *Ibid.*, p. 200.

²⁴ *Ibid.*, p. 202.

The second anthropological stimulus for savings is provided by the need to found an enterprise, another human activity that is 'instinctive' in that it is endowed with a sense of the future: for this, retirement is

not a voluntary act, but imposed by the exorable legal norms regarding age limits [...]. For this kind of saver the motivation for action is instinct, the psychological necessity of making the most perfect enterprise, to which he dedicates his life. Usually these so-called rich people live modest lives sparing in food and material enjoyments: the first to arrive to the workplace and the last to leave. Those who observe them, think: why so much work and fatigue? why not taste, as would be possible and right for them, some of life's sweetness? why remain, sometimes, rough and undereducated, the object of the intellectuals' sardonic smiles? But let these speak of the enterprise they have created and they become as eloquent and inspired as priest and poet. Those who listen to them find themselves in front of men tested and wise, who have truly created something that without their work would not have existed.²⁵

The pride of the founders of families and enterprises is not only an ideal of the individual, but, according to Einaudi, passes to the *institutions* themselves through a *kind of contagion*:²⁶

The instinct to save of man as a physical person is soon propagated to those complexes of men that are called collective entities, anonymous societies, cooperative societies, semi-public entities. A notable part of new savings that are formed every day in modern societies is not individual savings, but rather collective.²⁷

The reader's impression is that the reference to the centrality of savings, in a period in which the market economy is often configured on the pre-eminence of consumption, is on one hand dependent on presumptions that do not at all appertain to economic theory alone, but rather show themselves to have a religious root, which can be traced to a conception of life as *sacrifice*; on the other hand, however, it unquestionably sounds like a radical criticism of a model of government capitalism that has produced the level of public

²⁵ *Ibid.*, p. 204. It should be noted in passing that the same ideal applies to university research: in universities as well there are squanderers and builders (of ideas) and as types they are very different: as Einaudi says, the same inner demon of the builders of enterprises and families "is obeyed by the scholar, who, well advanced in years, spends his days among books and grandchildren, while their visitors and families, amazed, wonder: why does he continue to study? what need has he to continue to read, tiring his mind, if he has already earned his degree and completed his career?" (p. 204).

²⁶ He conceives the centrality of the mechanism of contagion and of imitation as the fulcrum of mass dynamics, financial panic and the functioning of the market; see J.-P. DUPUY, *La panique* (Paris, Seuil, 2003).

²⁷ L. EINAUDI, *Lezioni di politica sociale* cit., p. 204.

debt that is found today in all Western nations. It would not be rash to state that the anthropological model that prevailed in the post-war is that of the generalised squanderer, which led to governments that forgot the fundamental principle of a balanced budget,²⁸ reducing free man to a slave of consumption. We will return to these two aspects further on.

Now it is possible to comprehend the reference to the 'sense of the future' and time that Einaudi transfers from the anthropological type of the builder to a genuine historical category of interpretation of various periods, once again in connection with a transcendent dimension: "Perhaps in no other historic period was the instinct for construction as evident as in the Middle Ages, when they built for eternity".²⁹ In this case as well the description given specifies, with highly imaginative concreteness, the ideal of liberty towards which the economist strives:

The castles were fortresses, with walls of cyclopean thickness, and the houses were towers that dared the centuries. There was no talk of money loans with interest, reimbursable and thus consumable within a few years, but of the constitution of perpetual earnings [...]. The deed of trust, the passing of estate to eldest son, contained the idea of perpetuity, of the continuation of generations. Those who had built the castle, the tower, the house, those who had cleared the unploughed or forested lands, wanted the castle, the house, the tower and farm to remain in the family forever.³⁰

This is not a question of exalting a specific historical period, nor of concealing the ambiguities and problems out of which modernity grew; the point here is to show the centrality of the *sense of time and the future* for the purposes of the economic edification of a 'non-decadent' society.

For Einaudi, the instinct of the builders reveals a conception of the equality of starting points that is more elevated than the one which prescribes that the competition begins anew with each generation: the ideal of the *garden city* gave concrete form to the embryo of the family as "something distinct and superior to the physical persons in whom it is concretised in the present generation".³¹ It is in fact tied to the 'spirit of construction' and is composed of

²⁸ L. EINAUDI, *Entrate pubbliche dello stato sabaudo nei bilanci e nei conti dei tesoriери durante la guerra di successione spagnuola* (Torino, Paravia, 1907; rpt. Milano, Vitale & Associati, 2011), containing comments on article 81 of the Italian constitution regarding the budget. See also ID., "Sull'interpretazione dell'art. 81 della Costituzione", in ID., *Lo scrittoio del Presidente* (Torino, G. Einaudi, 1956), pp. 201-207.

²⁹ ID., *Lezioni di politica sociale* cit., p. 191.

³⁰ *Ibid.*

³¹ *Ibid.*, p. 193.

the material things that represent a genuine extension of the person: these are “the furniture, the books, the treasured objects, the little garden where flowers are cultivated and the cat and small birds are raised, the keepsakes of the ancestors that say ‘you were born here, here you grew up, here you learned from the example of your elders’”.³² Thanks to the house, the one receiving a salary is progressively freed, no long simply a mere slave to a master, but drawing from it a sense of autonomy, which constitutes a step towards the establishment of a society that is free and endowed with a sense of the future.

These passages from the *Lezioni* inevitably appear today as a testimony to that idealised nineteenth-century rural time that no longer exists and can probably never exist again but which raises fertile questions, to my mind, concerning the relationship between the anthropological and the economical. Above all where we find that the ideal of the garden city, which is also the ‘privatist’ and theoretical origin of good government represented in the Lorenzetti fresco, is countered – in a vision that is almost Manicheistic that will have brought a smile to more than one of those intellectuals “who observe the world with the lens of the cinematographer, the fashionable beaches, the dance clubs and the places where idle or ambiguous people meet”³³ – by the model of the beehive city of naked men, believed to be the antechamber of collectivistic society:

The ideal of the garden city certainly goes beyond that of the beehive of the large city, where men don’t know each other, where all wear the same face, and to flee from the boredom of life in two rooms, a kitchen and a bath, they all run to the same cinema, listen to the same radio, read the same newspapers and enthuse about the same matches between men who either punch each other or play lawn tennis; but the sons pay, as soon as they are able, an added pension to their mothers, and with what is left over they make a stash for themselves, spending it on cigarettes and silk trousers; only to begin all over again, in unions either legal or open, in the usual cell of the urban beehive, that levels and flattens everything.³⁴

³² *Ibid.*

³³ *Ibid.*, p. 200.

³⁴ *Ibid.*, p. 193. A more complete description of the “life of naked men in the beehives” is found in section 135, “Le case alveari e la inesistenza della famiglia – Ivi è uguaglianza dei punti di partenza per uomini nudi” (The beehive houses and the nonexistence of the family – Therein is equality of the starting points for naked men), *ibid.*, pp. 226-228, which will be quoted almost in its entirety shortly below.

Here the Einaudian tone seems to evoke the inevitable detached irony of a world where the inhabitants of the city have become a majority, in the age of megalopoli and a capitalism ruled by the logic of speculation and consumption, and certainly not savings, a world where the customs have evolved to such an extent that it might only be possible to place the word 'Einaudian' next to a tiny frame of retro photographs which, in the house in the city, perhaps still show the grandparents and the parents. It is precisely the reference to the issue of public debt, however, that makes Einaudi's language less naive and more relevant today, the West having experienced, in its decline, the economic fruit of a capitalism that completely forgot about savings, forgot even its *sacrificial* anthropological matrix, and has grown accustomed to financial speculation.

Perhaps today the family intended in this way, just like the garden city, is an ideal that is nostalgic if not reactionary, one that can be smiled at, for the obvious schematic quality of the analysis. However, it takes on, in the light of the economic crisis, an entirely different significance.

For Einaudi the family is the pivotal institution on which society is based, but this observation is not so much dictated by a religious backdrop and Christian moral precepts to be defended ahistorically, as it is by the economic objective of maintaining a free society: the family is by no means possible in all kinds of societies, but only in some.

Thus, to my mind, what is constituted is a link between the sacrificial dimension of capitalism and the ideal anthropological bourgeois and *dogmatic sacrality* which the economist assumes.³⁵ This point has been taken up again today in recent literature that analyses economic phenomena starting with Girard's theory of the sacred.³⁶

The dualism between men of the squandering type and those of the builder type thus becomes the contrast between the model of the family and the 'naked men' of the collectivist society. Where there are families, Einaudi observes,

³⁵ Regarding this notion, I refer the reader to the works of P. LEGENDRE, *De la société comme texte. Linéaments d'une anthropologie dogmatique* (Paris, Fayard, 2001); *Ce que l'Occident ne voit pas de l'Occident, Conférences au Japon* (Paris, Fayard, 2004) and to my own works, *Società post-buleriane?* cit., and "Law and Image. Towards a Theory of Nomograms", in *Law, Culture and Visual Studies*, A. WAGNER and R.K. SHERWIN (eds.) (Heidelberg, Springer, forthcoming).

³⁶ Among the works that develop this line of reading, see for example, J.P. DUPUY and P. DUMOUCHEL, *L'enfer des choses. René Girard et la logique de l'économie* (Paris, Seuil, 1979); ID., *L'economia dell'invidia. Antropologia mimetica del capitalismo moderno* (Massa, Transeuropa, 2011).

there are also ranks, groups, neighbourhoods, friendships, communities, trades, professions, free and open associations and closed, exclusive bodies. There exists a society that is differentiated, articulated, elastic, mobile, aware; there exists a people, and there is born and raised a state.³⁷

In contrast, where instead

a man and a woman remain together for reasons of work and utility, there is neither house, nor neighbours, nor friends, nor bodies, but single individuals, classes composed of individuals grouped by objective features of salary, wages, patrimony or income. Classes and not ranks; individuals and not men; atoms and not souls.³⁸

The distinction could not be clearer and more evident. What are being contrasted, in the guise of polemical opposition, are two models, one seen in a positive light, the other negative. This is a feature that appears to be characteristic of the genre of liberalism, where almost all authors have identified a virtuous ideal in contrast to a pernicious one to be avoided. Consider the distinctions between true liberalism and false liberalism, between economic liberalism and political liberalism, between libertarianism and liberalism, and so forth.³⁹ In Einaudi, interest in this distinction lies in its anthropological destination, which is not belied by the atemporal nature of the descriptions that he devises regarding characteristics that are socially outdated, such as the division of patrimony among sons (which does not take women into account),⁴⁰ or the description of life in a city apartment. Here Einaudi's tone is certainly Manicheistic and might appear purposely out of time, and yet his analysis captures a development of the entire society which doesn't appear to have taken place as of yet, and which makes it possible to see clearly the economist's religious and sacrificial matrix (of a certain sacrificial concept of the sacred). It is worthwhile quoting this criticism of common living in its entirety – at least four points of it –, considering it as the textual equivalent of an image, the introduction of details from the Lorenzetti fresco of the effects of good government, to which Einaudi refers more than once in this book. For this reason

³⁷ L. EINAUDI, *Lezioni di politica sociale* cit., pp. 225-226.

³⁸ *Ibid.*, p. 226.

³⁹ It is impossible to provide a bibliography of this evaluative dichotomy: almost all authors, liberal, liberalist or libertarian, in economics or politics, have at a certain point in their lives and works, formulated this kind of distinction: it constitutes a genuine 'literary genre' of liberalism.

⁴⁰ "§ 130, *Le diseguaglianze ereditarie apparenti a danno delle femmine, dei sacerdoti e dei figli cittadini* – Come nasce la diseguaglianza tra figli ugualmente dotati dal padre; § 131, *La persistenza dei patrimoni nelle famiglie è dovuta a fattori morali; che soli possono sormontare l'ostacolo dell'imposta ereditaria avocatrice*", L. EINAUDI, *Lezioni di politica sociale* cit., pp. 218-223.

as well we will make ample use of the original passages, because these represent a 'verbal fresco', or better, a theoretical representation⁴¹ of a determined anthropological model: the long quotations that follow stand for, if you will, an ideal portrait of the garden city, representing a social modelling of customs that seems to me as though suspended between traditionalist conservatism and current anti-capitalist criticism of the standardisation and technicalisation of the society ruled by today's 'neurocapitalism' and of the society of the image, technology and custom.⁴²

1) Life in couples:

Here is the apartment house in the city. It is comfortable, well designed: the apartments are minimal, of one or two rooms, with a bath and kitchenette. Central heating; in the kitchenette, three or four square metres, there is an icebox, electric or gas range, cold and hot running water at all hours of the day and night. Radio, gramophone, telephone. On the ground floor are the centralised services [...]. In the kitchenette the lady of the house quickly prepares breakfast, with the milk that was delivered right on time from the centralised services on the ground floor. Then each goes to work: and the couple meets again at five, for tea at the house of friends, or in a tea room. They have lunched, standing up or eating quickly, in the restaurant annexed to the factory where they work. They may perhaps pass the evening together, if the lady of the house is not too tired from preparing dinner, mostly with canned goods [...]. The house is almost a hotel where the services function automatically.

2) Social relations:

It isn't necessary for the residents to know each other or spend time together. A nod of the head, a courteous gesture in the elevator and that's all.

3) Relations with children:

What does a child do in an apartment house? Where does he play, run and fall, where are his little friends of the same age? There are no brothers, or at most only one. It is too much trouble to nurse and raise a lot of children. There wouldn't be any peace and quiet in that small apartment. Is the woman supposed to give up

⁴¹ On the notion of figure in Robilant, see P. HERITIER, *Società post-hitleriane?* cit., pp. 51-61, 186-188 and E. ROBILANT, "Libertà e figure nella società complessa e nel Cristianesimo", in *Problemi di libertà nella società complessa e nel Cristianesimo*, P. HERITIER (ed.) (Soveria Mannelli, Rubbettino, 2008), pp. 163-191.

⁴² B. STIEGLER, *Economie de l'hypermatériel et psychopouvoir* (Paris, Mille et une nuits (Fayard), 2008).

her position and job, which make it possible to have conveniences, clothes, stockings, cinema and holidays? Sacrifice herself and for what? If a girl, at twenty years old she is destined to go, with a man, to live in another apartment, and they will only see her rarely and in a hurry. If a boy, work might take him to another city. A letter every now and then will remind them that they had a son, that he had become independent and probably considers his parents to be old-fashioned, with other tastes and no way of understanding him. Meanwhile, isn't there a nursery for infants, and a kindergarten for children? Aren't there nuns, lavishing love on the children of others, nurturers and educationalists in special institutes, who are ready to take care of the children of people busy doing nothing or forced to work to earn a living? For prosperous people there are intelligent philanthropists ready to take the place of parents with the help of Catholic nuns, or protestants or laymen; the middle class and the poor are provided for by the state, the city and the charitable institutes.

4) Scholastic education and the disappearance of the humanities:

Since all men are equal, there are some who keep watch to be sure that the same notions are offered equally to all, with a single kind of middle school lasting at least three years after elementary school. Then some are allowed, with much repugnance, to learn Latin and Greek and philosophy; it would be better if everyone, as suggested by parents and teachers who get right to the point, attended first of all to technical things, useful in everyday life, physics, chemistry, stenography, modern languages, accounting, drawing, mechanics, relegating to *horae subsicivae* [spare time] those activities that the old folks called humanities and made the foundations of culture. Thus, at twenty or twenty-two years of age the young man is ready to enter into the race of life like any other young man or woman, all equally trained physically and intellectually, all alike in their dress, shoes, and hairstyles. All destined to spend their working hours in the office or factory, public or private, where careers, given the equality of starting points, will vary in the diversity in the point of arrival on the basis of merit.⁴³

Today changes of a nature completely different from the description of life in the beehive-city have penetrated our culture, but it may be that the text has taken on a naive character, constituting a criticism of postmodernity itself, as if Einaudi's words had entered a metalevel constituting a 'strange loop'.⁴⁴ In our day criticism of humanistic culture appears to be the bureaucratic-nor-

⁴³ L. EINAUDI, *Lezioni di politica sociale* cit., pp. 226-228.

⁴⁴ A 'strange loop' is a figure that typifies complexity; see J.-P. DUPUY, *Ordres et desordres: Enquete sur un nouveau paradigme* (Paris, Seuil, 1982); consider also the reference to the works of Escher in the celebrated book by D.R. HOFSTADER, *Gödel, Escher, Bach: An Eternal Golden Braid* (New York, Basic Books, 1979).

mative agenda, on the way to being realised, in a society that is becoming hostage to 'techno-science-economics'⁴⁵ and 'neurocapitalism', to the controversial times of 'globalisation'. The fourth point, which discusses the elimination of humanistic learning and the survival of the "attention first of all to technical things" which is characteristic of 'naked men', seems to be drawn from the program of the 'modernisation' of knowledge. In Italy this took place precisely by means of going beyond the culture of the nineteenth century, such as the 'Einaudian' culture of his program for scholastic instruction, and this was hailed as progress. Regarding this, Salvati observed that Einaudi, given his very high cultural prestige and his highly active public involvement, exerted a restraining influence that was far from negligible on the development of economics and social sciences in Italy, exactly as Benedetto Croce did on the side of philosophy; as Salvati notes, it was no coincidence that Croce was Einaudi's "venerated maestro and friend. In short, the great moral and cultural authorities of our twentieth century were [...] men of the 1800s".⁴⁶

In any case, while all of these aspects clearly show the cultural distance that separates us from Einaudi's ideal of life in many respects (the role of women, the patriarchal and agricultural ideal of the family), reread today – at the beginning of the third millennium, a time that may be nearing a genuine *critical point* (see § 3) with regard to the survival of Western society – these appear as criticism of changes in lifestyle that seem to us to go back, as if by magic, in a single step, to the most radical moralistic criticisms of the capitalistic ideal, although in a direction opposite to liberal criticism. In this traditionalist Einaudi there appears to emerge in other words a radical criticism of the contemporary model of capitalism that is utilitarian and standardising. Naturally, the step is not ever taken, and Einaudi's tone always remains *predicatory*, but it is possible to sense in his texts a profound comprehension, completely relevant to the present, of the nexus between economics, the sacred, standardisation and violence as an issue that is central for understanding the sacral role of economics in today's society. There could be no clearer statement of the sacrificial nature of the discourse of the capitalist.

The relevance for today of the *Lezioni di politica sociale* of the 1940s might then consist, paradoxically, in this: it appears here that Einaudi is, more than reflecting conceptually, using words to paint frescoes and worlds that today

⁴⁵ P. LEGENDRE, *De la société come texte* cit., pp. 79 ff.

⁴⁶ M. SALVATI, "Introduzione" cit., p. XIII. From the philosopher Giovanni Gentile to the professor Luigi Berlinguer and the lawyer Gelmini. Today in Italy perhaps we might say that Croce and Einaudi as missed, as was understood a long time ago in other countries where this process of technicalisation of culture has occurred!

can be read as a radical criticism of contemporary capitalism. Here is captured in depth the theme of the *ambivalence of economics*, in the space that lies between the effects of *good and bad government*; this is the role, as we shall see, of critical point theory, *to introduce the ambivalence of social effects* into reflections on economics and law. Critical point theory places the effects of good government and bad government side by side, *in a register that is aesthetic and at the same time dogmatic*,⁴⁷ as in a ritual dance, creating an effect of estrangement: a little as if Lorenzetti's *Allegory of Good Government and its Effects on Town and Country* could, if you will, fall off the wall and instantly transform itself into its opposite, into a painting by Bosch, or into Brueghel's *Fight Between Carnival and Lent* passing by way of Beuys.⁴⁸ Thus we have the feeling that, from the aesthetic point of view, the space that distinguishes Einaudian criticism of modernity from criticisms of standardisation and the normalisation of a Foucault, a Deleuze a Žižek⁴⁹ is, paradoxically, smaller than we might have supposed (consider the reflection on rebellion and heresy); this is a road travelled by some in one direction, and by others in the the opposite direction. However, this does not appear to be the place to say anything regarding this point, and not in any case before having analysed critical point theory and its correlate: the ambiguity that typifies economics.

3. EINAUDIEN THEORY OF THE CRITICAL POINT AND THE FRESCO OF *THE EFFECTS OF GOOD AND BAD GOVERNMENT*: THE AMBIVALENCE OF THE POLITICAL AND THE ECONOMIC AND THE AESTHETIC-DOGMAIC ROLE OF FOUNDATION THEORY

After sacrifice and savings, now comes the preaching. Einaudi's nineteenth-century tone is not so much one of condemnation with regard to changes, as much as 'preachings', acknowledged by the author as 'useless' but nevertheless written down: this is evident in the spirit that comes out in the preface to the *Prediche*, a series of writings composed during the first world war and published in book form in 1920. The future president prefaced

⁴⁷ Regarding this connection between aesthetics and dogma and the history of institutions, I refer the reader to my works on historian of law Pierre Legendre and the monograph *Estetica giuridica*, in preparation.

⁴⁸ A painting by Beuys appears on the cover of F. MIGLIORINO, *Il corpo come testo. Storie del diritto* (Torino, Bollati Boringhieri, 2008).

⁴⁹ Among the many texts on this topic, see S. ŽIŽEK, *First as Tragedy, then as Farce* (London, Verso, 2009).

the work with these remarks (once again we will quote the passage almost in its entirety):

I am republishing [the *Prediche*] with no alterations, not even those, which would be forgivable, of changing the numbers used to illustrate the concept demonstrated in the text. Today when the public debt exceeds 100 billion, it might sound silly to speak of 5 billion as a terrifying loss for the national economy [...] talking about 'high' wages of 3 lire a day, when today wages of 10 and 15 lire are paid, may seem like an anachronism. However, I have not changed the numbers [...] above all because these [essays] of mine can rightly be called 'preachings' precisely because, as usually happens to the admonitions of the economist, they were not heeded [...]. Preaching is nevertheless a duty [...]. If the pages brought together here chance to have a meaning, it is perhaps the following: that the science of economics is subordinate to moral law and that there can be no conflict between what farsighted interest counsels men to do and what awareness of their duty to future generations orders them to do.⁵⁰

The *verbal frescoes* quoted in the previous section are more anachronistic in other places than they are with respect to the absolute numbers of the Italian public debt at the time (100 billion lire): if not the debt, but the customs are compared to those of today, the relationships between the periods would probably seem equally incommensurable. In other words, the mere comparison of two periods (Einaudi's 'cultural nineteenth century' with his own historic period) also implies another economic and moral judgment, between the twentieth century and the twenty-first, to be compared as in a proportion. Here we cross Einaudian conservatism with the criticisms of capitalism in decline and of gift economy, read, however, in a key that is liberal and not Marxist, no matter how paradoxical this might seem.

In a certain sense, the description of the ideal society of the *Lezioni* appears to be an analogy for Lorenzetti's fresco, which describes life in the city and life in the country: we are thus dealing with a scene painted with words with an abundance of details which aesthetically supports an anthropological intention that is characteristic of Einaudi, to portray different types of men, for a moral purpose.

It is analogous to a fresco that might appear in the nave of a medieval church intended to educate the masses by portraying vices and virtues, and intent on portraying negatively the anthropological type of 'naked men': that society, while an honest ideal for many men, is, for the economist, the image of society governed according to plan, "a program well devised, all of whose

⁵⁰ L. EINAUDI, *Prediche* (Bari, Laterza, 1920), pp. VII-VIII.

elements are well fitted together".⁵¹ Such a society may well be free, but only by historical accident, since "naked or normal men have the soul of the employee. They are born to obey",⁵² "they have uniform tastes, desire the goods and services that everyone desires; they are not ready to sacrifice themselves too much for future generations".⁵³ This type of man and society is contrasted with the ideal society in which variety and diversity prevail, composed of men with initiative "who give rather than receive orders, perform a job that no one has told them to do, create for themselves the task they want to complete".⁵⁴

Up to this point, Einaudi's discourse might appear as purely critical of collectivism, except for the fact already noted that it seems to weave together a contradictory braid of reactionary criticisms of modern life without value, and ecologicistic or Marxist criticisms of the mass techno-capitalism of globalisation.

It is precisely this coincidence that makes us reflect, however, and leads us to ulterior observations, though it isn't clear whether they refer to mass capitalism or collectivism, or to that mix of political collectivism and globalised mass capitalism that seems to loom over the world scene as a new, indispensable point of reference for world economic and political order, at seventy years from the end of the second world war, and with the affirmation of China as a new economic power (and moral? or emblematic of globalised capitalism of naked men? The future is still uncertain).

As 'nineteenth-century' Einaudi says:

The equality of starting points does not therefore mean to say equality of naked men who, having reached the age when they are economically productive, make a rush to acquire wealth, fame, honours, the best positions. A society in which the book of life must genuinely begin with a new generation, would be an inferno of men unleashed to fight against each other for the first place, or a phalanstery or monastery governed by Mandarins.⁵⁵

A society of bureaucrats, in which the criterion for the selection of young men is also based on competitions fixed by impersonal procedures, rules presumed to be objective and bureaucratic. Here it may seem like Einaudi had already read the recent findings of the Agency for the assessment of Italian

⁵¹ *Id.*, *Lezioni di politica sociale* cit., p. 228.

⁵² *Ibid.*, p. 230.

⁵³ *Ibid.*, p. 229.

⁵⁴ *Ibid.*, p. 230.

⁵⁵ *Ibid.*, p. 217.

university research,⁵⁶ when he characterises the collectivist society as that in which “the criterion for selection is that of the competitions of the Mandarins”, “in a society whose essence is advancement by examination”, in which the family is reduced to “a temporary hospice from which one departs for the examination”, and in which

the young naked man, equal to all other young men, cannot at his own risk and at his own initiative search for and try his own road [...] and must submit to continuous trials to obtain employment and advancement. At every step an examiner subjects him to tests of intelligence, strength, skill [...]. Let us contemplate the perfect society of the Mandarins, in which there is equality of the starting points and successive promotions depend on his mnemonic quickness in responding to questions, on an aptitude for guessing the answer that responds to the examiner’s ideas, on his capacity for obsequiousness and cunning in winning the favour of his superiors.⁵⁷

The obvious consequence is the creation of a society of bureaucrats without identities and without responsibilities, completely different from a society of free men, connected by bonds of place and family, and other forms of social bonds.

Once again, all these arguments seem to be only apparently so remote from our current day dominated by bureaucratic procedures (consider the elephantine functioning of the European Union) and from the reigning proceduralism, regulator of even the smallest detail in which the very idea of freedom is lost and comes to be substituted by a scientific materialism that conceives man as a machine,⁵⁸ perfect for living in a collectivistic society.⁵⁹ These might easily appear as nothing more than the fruit of politically reactionary, anti-emanicipative, even misogynous, thinking about class, if Einaudi did not make use, at the culmination of all these criticisms, of *critical point theory*.

It is precisely when he identifies the fact that in every society there is a place for ‘those who obey’ and for the ‘men of initiative’, for those who scru-

⁵⁶ The process of evaluation undertaken by the Agenzia di valutazione della ricerca universitaria italiana, or ANVUR, still ongoing at this writing, introduces a criterion of assessment aimed at correcting the past abuses and customs that were perpetrated in universities, communities which are far from idyllic. We can only hope that the indispensable innovations do not turn out to be worse than the previous situation, transforming itself into a rash inquisitorial and bureaucratic liquidation of humanistic learning, as some fear. I will not cite Einaudi’s numerous writings on this issue.

⁵⁷ L. EINAUDI, *Lezioni di politica sociale* cit., p. 218.

⁵⁸ J.-P. DUPUY, *On the origins of cognitive sciences. The mechanization of the mind* (Cambridge, MA, MIT Press, 2009).

⁵⁹ In which the appearance of freedom is guaranteed by a mass capitalism which has, paradoxically, itself become a source of a flattening of culture and conscience.

pulously carry out the responsibilities assigned to them and for those who – almost in terms like those of the famous oration by Pico della Mirandola in which God symbolically makes man responsible for *De dignitate hominis* – “perform a job that no one has assigned to them, create for themselves the task they wish to carry out”,⁶⁰ that he formulates critical point theory, which rescues him from the danger of ending up in a reactionary programizing constructivism.

The ideal society, for Einaudi the economist, is not composed of equals, but one in which the ideal is diversity and variety. However, he does not limit himself to this, but takes it a step further, a step which is methodologically very significant:

There is no theoretical rule which tells us when diversity degenerates into anarchy and when uniformity is a prodrome of tyranny. We only know that there exists a critical point such that, when it is passed, every way of life, every custom that had up to that point been a means of human elevation and refinement becomes an instrument of degeneration and decadence.⁶¹

Critical point theory is clearly an *epistemological theory of the limits of knowledge*, which set freedom opposite to the standardising use of plan and program. The defender of freedom knows well that following an abstract normative model is not what confers vitality on society; rather the concrete exercise of knowledge incorporated into concrete free choice is what constitutes the life blood of faith in the institutions.

In every society there is a *critical point* that determines whether the effects of the (individual) act, of the (collective) government are ‘good’ or ‘bad’, but where, in a given situation, this critical point lies, and who holds the knowledge of it, is not known at all in concrete terms.⁶² That ignorance itself represents knowledge, a limit on the theory of knowledge available, which Einaudi situates as the common epistemological basis for the philosophy of social sciences, politics, economics and law in a key that is *aesthetic and figurative* (as the frequent references to Lorenzetti’s frescos of good and bad government show). The kind of knowledge expressed by critical point theory is therefore, epistemologically, a ‘knowing what’ rather than a ‘knowing how’:

⁶⁰ L. EINAUDI, *Lezioni di politica sociale* cit., p. 230.

⁶¹ ID., *Lezioni di politica sociale* cit., p. 231.

⁶² This theory has points in common with Legendre’s notion of ‘founding reference’ and that of ‘World O’. It isn’t possible to go into a comparison here. For some remarks, see *Società post-bibile-riane?* cit., and P. HERITIER, “From text to image. The sacred foundation of Western institutional order. Legal-semiotic perspectives”, *International Journal for the Semiotics of Law*, forthcoming.

it simply indicates that *there is* a critical point, or threshold, but without making it possible to know exactly *where it lies or when it will be reached*.⁶³ This doctrine of the limits of knowledge (and the role of philosophical knowledge) is also present in the following lengthy quote, from an article by Einaudi that is considered his testament,⁶⁴ on the myth of *sovereign democracy*, which recapitulates and summarises the various aspects of the Einaudian discourse in a synthetic unitary representation: according to the economist, with accents that recall Legendre, the myth of sovereign democracy,

has lasted in England since 1689 and shows no signs of disappearing anytime soon. It lasted in Piedmont and then in Italy from 1848 to 1922 [...]. The myth resurrected in 1945 is still alive and will last as long as the Italians, having experienced its sad opposite, the sad contrary experience, are persuaded that no other myth can surpass that, although this is not rationally provable, of counting heads. In the past men believed that other myths were valid, and emperors and kings were obeyed then because "they were anointed by the Lord" or consecrated by the "grace of God". These too were myths, accepted by the peoples because they were backed by venerable beliefs, habits, customs, which amounted to the consensus of today's electoral body. But when it was seen that the sovereigns consecrated by the ancient myths no longer worked in a manner in line with the advantage and will of the majority, the new myth arose, that of the will expressed from time to time by living citizens, and the ancient myths fell.

The new myth has an enemy; and it is those who believe they have discovered the truth and maintain it their duty to carry it into effect. *La peste de l'homme, c'est l'opinion de sçavoir* [there is a plague on Man, the opinion that he knows something], wrote Montaigne [...]. And before him, in Genesis, it is written that in the list of the outcasts the first place was given to those who believed they knew: *Eritis sicut dii, scientes bonum et malum* [you will be like God, knowing good and evil] (Genesis 3:5).⁶⁵

This quotation presents an admirable synthesis of a theory of secularisation and of the symbolism of sovereignty, which was rediscovered successively in historiography (the rediscovery of the papal revolution of the eleventh cen-

⁶³ From an endless bibliography on this topic, see F.A. HAYEK, *Studies in Philosophy, Politics and Economics* (London, Routledge, 1967) where, in the articles in the first part, Hayek constructs his model of epistemological complexity.

⁶⁴ L. EINAUDI, "Discorso elementare sulle somiglianze e sulle dissimiglianze fra liberalismo e socialismo", in *Id.*, *Prediche inutili* (Torino, G. Einaudi, 1959), considered to be Einaudi's spiritual and theoretical testimony; see S. STEVE, "La lezione di Einaudi", in *Scritti vari* (Milano, Ciriec Franco Angeli, 1997), pp. 695-711.

⁶⁵ L. EINAUDI, "Discorso elementare sulle somiglianze e sulle dissimiglianze fra liberalismo e socialismo" cit., pp. 205-206.

tury and of the *aesthetic-legal* relationship between the *Corpus Iuris Civilis* and the *Corpus Iuris Canonici*, between the emperor and the pope), respectively by authors such as Berman, Prodi, Kantorowicz, Schmitt and Legendre (who I will not cite at length here),⁶⁶ and which finds confirmation in the economist's use of the notion of the myth (as in the quote given above).

Some years later, Hayek, basing his own works in economic theory and in methodology of social sciences that would earn him the Nobel Prize, would make clear, in an epistemological setting, the point of the limit of knowledge, in close correlation with Popperian falsification, in his own theory of complex phenomena. He does this by indicating the difference between knowledge of *mere principle*, characteristic of the complex phenomena of the social sciences and in particular areas of the natural sciences (similar to knowledge of the critical point), and *knowledge of detail*, characteristic of simple phenomena, which make possible a detailed prediction of future events in causal terms (similar to knowledge of the plan).⁶⁷ Following Hayek's complexity theory and the work of von Foerster, related to second-order cybernetics and the theory of complexity and self-transcendence, Jean-Pierre Dupuy would then reformulate the problem of complexity and the sacrificial sacrality of economics within the social sphere, developing a theory of the 'indigenous fixed point'. This can be synthesized thus: the fixed point is "a point of reference that everyone takes as an external, intangible datum, when everyone knows that it is the result of the synergy of each with the same datum".⁶⁸

Dupuy's theory ties together various aspects of the quotation given above regarding the myth of democracy: it has an exogenous mythological character, sovereign (from which derives its succession from other earlier myths of sovereignty, the king and the emperor), which however derives from an observable collective action that is mythicized (democracy, if you will, inherits the exogenous character, fundamental, of sovereignty).

The nature of this process, also following Girard's theory, is, according to Dupuy, sacred: Violence is capable of *self-exteriorising* itself in symbolic and institutional forms – the rites, the myths, the systems of prohibition and obligation that regulate violence, *containing it*, in both senses of the term: they act as barriers for it even though they are constituted of it.⁶⁹

⁶⁶ These questions were addressed in my *Società post-hitleriane?* cit., and other articles on this topic.

⁶⁷ In F.A. HAYEK, *Studies* cit., a text dedicated to Karl Popper.

⁶⁸ J.-P. DUPUY, "De l'oeil du cyclone au point fixe endogène", in *Dans l'oeil du cyclone. Colloque de Cerisy* (Paris, Carnet Nord, 2008), p. 313.

⁶⁹ Id., *Petite métaphysique des tsunamis* (Paris, Seuil, 2005), p. 98.

Today economics, just like democracy, is a founding reference, exactly one of these places of constructed social sacrality that *contains* violence (in the dual sense that it both *has violence in it endogenously* and at the same time *limits it*), one of those sovereign and founding myths of social life that functions fictitiously, aesthetically, dogmatically (exogenously) because they are believed beforehand (and thus constructed endogenously).

Einaudi's critical point theory intuits this movement, at once historic, aesthetic and epistemological, making it possible to read the critical point as a *fixed, endogenous point, a locus where the theories of truth and freedom are articulated, because these are united by the fact that they cannot be the exclusive prerogative of knowledge of any kind, nor of any kind of positive power,*⁷⁰ *of any kind of religious, political, juridical, economic institution, or of any kind of knowledge, not even scientific knowledge.*

To my mind, this interpretation therefore permits Einaudi's discourse in the *Lezioni* to escape being criticised as simple reactionary thinking, and to instead consider his theory of the critical point – as an element that cannot be planned, programmed, knowable in deterministic terms – *fundamental*. “to science, both economic and political, of men living in society”.⁷¹

Precisely in the article mentioned earlier, regarding the existence of a critical point in the measurement of unemployment benefits, Einaudi clarifies how, by means of going beyond the critical point, “takes place the passage from social good to social evil”; what was virtue at first becomes vice, and vice virtue. By means of the theory, the ambivalence that is characteristic of economics, characteristic indeed of any founding myth of society, is introduced, in terms of evil understood as a principle for explaining social action.⁷²

Moving away from economic theory, and in particular from that of marginalism,⁷³ but extending himself, though briefly, to political sciences,⁷⁴ communication theory,⁷⁵ the area of family sociology,⁷⁶ to a reading of the history

⁷⁰ This is the theory of truth maintained by P.A. SEQUERI in *Il Dio affidabile. Saggio di teologia fondamentale* (Brescia, Queriniana, 1996), esp. pp. 366-370.

⁷¹ L. EINAUDI, *Lezioni di politica sociale* cit., p. 231.

⁷² On this point, see J.-P. DUPUY, *Avions-nous oublié le mal? Penser la politique après l'11 septembre* (Paris, Bayard, 2002).

⁷³ According to the theory of diminishing degrees of utility, L. EINAUDI, *Lezioni di politica sociale* cit., p. 231.

⁷⁴ *Ibid.*, pp. 231-232.

⁷⁵ Although in embryonic fashion, but very significant: regarding the extraordinary invention of the radio, Einaudi anticipates many later debates, up to the stand that Popper takes in *Cattiva maestra televisione*: “The man-demon invented what might become a most perfect instrument for turning men into imbeciles if it were to fall into the hands of one who used it for the purposes of pro-

of institutions and the criticism of collectivistic societies, 'nineteenth-century' Einaudi formulates, in other words, a theory that can be read in an anthropological sense, which, even though highly liable to criticism and difficult to accept because it is based on the centrality of sacrifice,⁷⁷ appears aimed at doing what to the twentieth century appears to be forbidden: holding the pieces of human knowledge together, while also showing the reasons for the inevitability and inexhaustibility of knowledge with regard to freedom as a foundation for the social and for institutions (legal, economic). Critical point theory plays a part in this fundamental epistemology of truth, reread in an aesthetic key (by means of a reference to a social scenario, a founding scene, such as that of the garden city): I know that, on the collective and historical plane of the succession of periods, there is a defining feature of the institutions, which is freedom, but I cannot know *precisely* where it is located, I cannot predict it and plan it, I cannot arrange it: this is the anthropological mystery of the nexus between law and freedom, both evoked by a representation of the truth that cannot be reduced to the factual, a perspective triggered by the Christian anthropology of freedom in comparison with the Pharisaism of the law.⁷⁸

According to Einaudi there is a critical point: a free society or institution degenerates or declines due to the exaggeration of one of its elements, and "soon becomes the victim of the tyrant or the *morta gora*⁷⁹ of employees and Mandarins, whose career proceeds by means of examinations and competitions, competitions and examinations, hierarchies of degrees, honours and salaries"⁸⁰ when free men give way to servants, but it is impossible to determine exactly what, in a given society, the threshold when this occurs is, and thus construct predictive knowledge of the moment of social decadence: only *ex ante* is it possible to 'predict' the contents of freedom, and only *ex post* is it possible to recognise that freedom is gone: "Freedom exists, if free men exist;

paganda [...]. The voice commands, orders to think in a certain way, insults the disobedient and the sceptical; and by means of repetition it obtains surprising effects of blind obedience, convinced persuasion to which no written work can arrive", L. EINAUDI, *Lezioni di politica sociale* cit., p. 232.

⁷⁶ Asking himself what the critical point for the family was with regard to the number of children, at the level of the single nucleus and the collective; see *ibid.*, pp. 232-233.

⁷⁷ It does not appear possible here to even touch on this theoretical profile, which falls entirely outside of the Einaudian discourse.

⁷⁸ Here it is certainly useful to recur to the catastrophe theory of René Thom. On this point, see also J. PETITOT, *Morphogenesis of Meaning* (Bern, Peter Lang, 2004).

⁷⁹ *Morta gora*, referring to a dead or stagnant channel, is a reference to Dante's *Inferno* (Canto VIII: 31).

⁸⁰ L. EINAUDI, *Lezioni di politica sociale* cit., p. 233.

it dies when men have the mind of servants".⁸¹ There is nothing mystical in all of this. In an even more explicit way, this impossibility of predictive knowledge, which is characteristic of the natural sciences and simple phenomena, expressed in the theory of the critical point in the development of a society, conveys, for Einaudi, the pre-eminence of the individual and of the moral over organisation and procedure where he notes that "when in a society there exists a sufficient number of men who are truly free, it makes no difference what its economic, social or political organisation is. The letter [of the law] can never kill the spirit".⁸²

Freedom entails the possible ambivalence of its effects: good and evil, good and bad government.

The critical point is also the place where the private and public, the individual and collective dimensions, are placed along the same line, as Bruno Leoni makes acutely clear, in a perspective that unifies *private and public, the cognitive and the operative*, from the point of view of the *finiteness* of man, of his acts, of the institutions that he constructs, of the theories that he develops, of the works of art that he creates. As Leoni notes,

In matters of government and state in general there exists a *critical point* to which, to tell the truth, can be traced all of the other 'critical points' that Einaudi considers in his analyses of institutions and structures, and thus that of the government and of the market. It is the *critical point* beyond which no mind of a single individual or a committee of single individuals can foresee – in any of his *plans* – the indirect or remote consequences that will reverberate, as in a genuine series of chain reactions on the entire life of a society, as a result of any possible decision made by the government. But this is not all: there is another aspect of the same critical point that always imposes itself, sooner or later, on the considerations of those who study these problems: *the limit inexorably encountered, along with the knowledge of the individual, by his own personal volition*, when he thinks that he can alter, at a stroke and in a brief space of time, of his own volition and that of a few friends – with his plan – the general course of things according to his desires.⁸³

Critical point theory thus reunites the private and the public, the individual and the social in the common moment of the impossibility to predict crisis, related to a fallibilistic concept of knowledge and action that is fundamental to the ideal of freedom and thus linked to the ambivalence of its effects (good and bad government).

⁸¹ *Ibid.*, p. 239.

⁸² *Ibid.*, p. 241.

⁸³ B. LEONI, "Luigi Einaudi e la scienza del governo", *Il Politico*, 1 (1964), pp. 69-86: 84-85.

It is therefore possible to make some conclusive observations on the whole of Einaudi's discourse on freedom, beginning with the particular collocation of critical point theory.

There is in the construction and exposition of this theory, even in the limited context of the *Lezioni*, an important historic element that was identified earlier with regard to the sense of time in the construction of the imposing works of the Middle Ages, endowed with a sense of eternity. Here the economist returns to a classic itinerary of liberal thought, the origins of collectivism beginning with monastic rules, conferring an entirely different meaning on them, that of a micro-treatise on the formation of the rules in an institution. The rule (of St. Benedict, or St. Francis) defines the spirit of the institution as being "founded on the spirit of renunciation of the individual, on devotion of individuals to the common good, on the abandonment of earthly goods for the conquest of eternal happiness":⁸⁴ this is the spirit of the institution which, as long as it was maintained, turned convents into 'shining lighthouses' amidst the shadows of the Middle Ages. Merciless as a true expert of economics, Einaudi analyses the decline in the long run ('Everywhere, at a distance of a hundred years from its foundation, more or less, we find the same things happening') and the diminishing of that spirit as the history of monasteries goes forward, deriving from the weakening of the spirit of renunciation, of a reduction of equality among the monks which follows the progressive introduction of corruption into the everyday life of the monastery, inevitably implied by the diminution of freedom in that institution.

A similar analysis is also carried out for the communist system in which all means of production have become public. That society is one where "if all men were born in obedience and if there existed a means of selection so that the best were placed in positions of command, that society could live, and while perhaps not becoming excellent, could render universal contentment".⁸⁵ Even collectivism, if supported by a spirit of renunciation and a shared social bond, would be viable if believed in by the society, because this is the essential element for a society's cohesion. But, in the long run, this too is subject to the law of decline, to the prevalence of conservatism and the refusal of the new. In the collectivist society it is science, and not religion or the market, that provides the criterion for authority, but Einaudi questions exactly which science that is:

⁸⁴ L. EINAUDI, *Lezioni di politica sociale* cit., p. 233.

⁸⁵ *Ibid.*, p. 235.

The theoretical science taught in the schools, accepted by scientists who are already famous; the science successfully applied by accredited technicians who have already proven themselves, or the science which now opposes the accepted principles, which presumes to shake the abstract foundations and the concrete applications?⁸⁶

In this rhetorical question begins to emerge the real reason for the decadence of a society, drawn from a particular analysis, but capable of being generalised: collectivism, a programmed society cannot pursue the new, but is rather entangled in the snares of what is known, proven, tried, because this authoritarian social structure does not consent to change and innovation, which are only possible when the ideal of freedom is put into practice. Here Einaudi becomes a radical critic of orthodoxy; it is even possible to hear Foucaultian overtones in these few passages that follow the argumentation logically, and extol criticism and the emergence of what is out of the ordinary and the normal: non-free societies discourage criticism, banishing heretics and ostracising those who rebel against the program. When criticism is eliminated, the sense of institution and society is lost: "In homage to reason, in obedience to science, the life that is the new, that is the unusual, that is variety, that is contrast, that is dissension, that is struggle, loses its very reason for being".⁸⁷

In using the parallel between the Middle Ages of the monasteries and communist societies (the USSR didn't even live to be a hundred years old), working out the theory of a critical point that is not known and cannot be known, but which is strongly connected to a moral ideal, a social bond that can only be ascertained in action but whose evolution cannot not be determined by laws, plans and programs, the reasoning that Einaudi elaborates is not at all spiritualistic, although the letter of his text might suggest this interpretation.⁸⁸ He is formulating a concrete anthropological argument which acknowledges the limits of abstract knowledge in comparison to practice and experience; he identifies a specific conception of man at the basis of a culture and a society as the essential element for its survival. When this fundamental vision, not necessarily expressed or formulated but present in shared sentiments (thus the importance of family, land and house), is weakened by the passing of time and diminution of sentiment, what inevitable follows is social decadence, due first of all to anthropological reasons concerning the lack of faith and values: this is the significance of the critical point, which, once passed (but without ever

⁸⁶ *Ibid.*, p. 236.

⁸⁷ *Ibid.*, p. 237.

⁸⁸ "Man must find in himself, in his soul, in the strength of his character the freedom he is seeking. Freedom is spirit and not matter", *ibid.*, p. 238.

knowing exactly where this point lies), inexorably leads “not to a society of living men, but to an aggregation of automatons manoeuvred by a centre, by a superior authority”; to a society formed by automatons who will make magnificent soldiers, “ready to obey the command that orders them to be killed”, but not one of men capable of replying to one who orders an act that goes against their conscience, “No, up to here commands Caesar, beyond that we only obey Christ and our conscience”.⁸⁹

The inner and spiritual dimension in Einaudi is thus only a condition for withdrawal into oneself, necessary when social conditions do not permit a free life, but it relates to a situation of public restraint, of totalitarian regime, and not that which is auspicious for the life of free men. Freedom has an primary dimension that is social, concrete and intersubjective, because it is based on relations of free men inserted into a familial and social context, not on rootless automatons that can be manipulated by science or religion. In this society a specific space is assigned to diversity and rebellion: “Where the orthodox are such by command from on high and the heretics are banished from water and fire; where it is impossible for anchorites to flee to the desert or forest, there is no freedom, except for saints and heroes”.⁹⁰

Along with the figures of the hero, the saint and the thinker, necessary in extreme cases, the ideal of good society rests on a more concrete and humble vision of freedom: there is the freedom of man as such, teacher, artist, journalist, farmer, saver, public administrator, common citizen, worker, that is intuited when he “attempts to summarise in a few words” what is meant by freedom, its pragmatic dimension, and the social and political implications:

Thus the man on the street, enemy of the tyrant and desirous of living freely as the common man likes to, desirous of peace and justice, is involuntarily, even though he knows nothing about the related theory, abhorred by the kinds of societies that are approaching the critical point; that is, equally abhorred by societies where wealth is concentrated in the hands of a few as by those in which the instrumental goods, the so-called instruments of production, are possessed by a mythical so-called collective.⁹¹

Thus for Einaudi the free man has no need of imposed sacrifice, but rather that which is voluntary or chosen. Freedom therefore is neither spiritual nor material, but radically anthropological; it can never be guaranteed

⁸⁹ *Ibid.*, p. 238.

⁹⁰ *Ibid.*, p. 242.

⁹¹ *Ibid.*, p. 244.

or presumed precisely because it does not depend on legal conditions or on types of structures for social living (capitalistic, rule of law), but on the concrete condition of men who live individually in a given society and collectively construct their own condition of being automatons or men, of servants or free men, believing individually and collectively in one of the sovereign myths of common living (which can always fall instead into the totalitarianism of the society of naked men and automatons). Freedom has a dimension which is originally anthropological, which derives from inside man himself, from the strength of his character and his spirit, and which is necessarily unfolded within a given social situation. This is the reason why Einaudi, who possesses a fortunate anthropological intuition that he never seems to master fully on a theoretical level, and with regards to freedom, is not always able to “speak of a utopia and analyse a fact”.⁹²

The anthropological relevance of Einaudi’s intuition as an economist and as a man lies precisely in the identification of the essentiality of that relation between utopia and reality in its concrete expression, never truly comprehended theoretically to the very bottom in his works, but intuited: a trait that makes it so that his words, even though historically outdated, remain, like those of great men, ever full and complete, even more so than those of the great thinkers, in their inevitable and inexorable incompleteness, offspring of the existential and epistemological finiteness of human freedom.

4. USELESS NON-PREACHING: A PERSPECTIVE ON THE ANTHROPOLOGY OF FREEDOM BEYOND EINAUDI?

The starting hypothesis of this present paper is that in Einaudi’s work is found a vision of economics, the moral and the legal, although only outlined and not worked out completely, one that is aesthetically informed but never conceptualised (as shown by the reference to Lorenzetti’s fresco and to the anthropological scenario recalled in the *Lezioni di politica sociale*), which, in the face of the radical contemporary economic crisis, a genuine ‘crisis of meaning’⁹³ of the Western lifestyle, makes it possible to see again the perti-

⁹² *Ibid.*, pp. 245-246.

⁹³ This is how Jean-Pierre Dupuy expressed it in an article that came out during the corrections of the galley for a book that was already almost finished, a position whose discussion is beyond the scope of this present paper. According to Dupuy, the current crisis has revealed the illusory falsehood of the contrivance of a system of prices in the market as the basis of social bonds capable of ‘containing the violence’: *Cette crise est une crise du sens* (This crisis is a crisis of meaning); see J.-P. DUPUY, *L’avenir de l’économie. Sortir de l’économystification* (Paris, Flammarion, 2012), p. 43.

nence of the questions raised by Einaudi, positing them far beyond mere relevance of the return to the principle of the 'constitutional balanced budget'. It is often in fact contemporary economists (and jurists) who reduce the moral, economic and legal significance, that is, the perspective of a critical social science, to detailed elements, such as the respect necessary for contemporary nations, the constitutionalisation of the principle of a balanced budget, drawing justification from the occasionality and apparent lack of theoretical coherence of the Einaudian vision.

The having elucidated precisely and specifically the anthropological background present in the statement of critical point theory in the *Lezioni di politica sociale* – going beyond a superficial and hasty reading that reveals only the obvious anachronistic elements in the face of a society in profound evolution – makes it possible to identify a program of research, which can certainly not be carried out here, aimed at reconfiguring Einaudi's text as a contribution that appears to be important in times of crisis for understanding what is happening today, more than six decades after its writing,⁹⁴ avoiding both a shallow eulogistic interpretation and a too rash dismissal due to a presumed anachronism of the opinions expressed with reference to an outdated society. If, as Hayek has written, the twentieth century has been an "age of superstition",⁹⁵ the perspective distance that makes it possible to see what those superstitions were is not yet sufficient, but at least the question regarding which criteria and lifestyles have become outdated appears to be completely reopened and thus it is difficult to understand exactly what is more anachronistic: Einaudi's pages, or the pages of those who criticised them. Pending the resolution of these doubts through the process of evolution, I feel it is important to indicate, among the many possibilities, three lines of perspective of authentic social philosophy and philosophy of law – the former intended in its noble sense concerning the concrete meaning of institutions and not simply

⁹⁴ It might be important to recall in these times, in which culture as well is in large part a culture of the new and ephemeral, the anecdote told by Einaudi's grandson regarding the principle of *avoiding first impressions*: "One day I brought him a book that had just been published that I had read in the course of my studies at Harvard but which he did not have. I don't remember if I offered it to him as a gift or to prove a point. I believed I had understood that for him books were the highest expression of civilisation and that, surrounded with books as he was, he would have appreciated it. He refused it. 'Why?', I asked, disconcerted. 'Before buying a book you need to know if it is worth it or not. I, if I can help it, never buy a book until 40 years after its publication. Only then can you know if it is worth something or not'. You can imagine my surprise. I was not yet 20 years old!", L.R. EINAUDI, "Le molteplici eredità. Un ricordo personale di Luigi Einaudi", in *Luigi Einaudi nella cultura, nella società e nella politica del Novecento*, R. MARCHIONATTI and P. SODDU (eds.) (Firenze, Leo S. Olschki, 2009), pp. 309-335: 324.

⁹⁵ F. HAYEK, *Legge, legislazione e libertà*, vol. III, *Epilogo* (Milano, Il Saggiatore, 1986), p. 558.

reduced to a mere general theory of normativistic law – which appear to me to be present in Einaudi's social philosophy:

1) The philosophical-legal interest and the modernity of Einaudi's social philosophy reside, more than in the inevitably outdated historical-social analysis, *in the anthropological and non-theoretical character of his theory of knowledge*, anti-elitist and critical of the intellectualism of manner which had and still has a great following in Italian culture. The centre of society is human freedom assumed in concrete form and exposed to the vulnerability of its historicism, never guaranteed by knowledge or a theory of its rationality (not even economic rationality), but ever open to the dimensions of future and actions. Thus in his thinking, the theoretical knowledge and the rigour of the logical-conceptual considerations never diminish the concrete dimension of human freedom, which can never be reduced to a simple theory (much less an ethics): in this sense, the oscillation between the areas of theory and practice, both spheres which on their own are incapable of describing man in his complexity, is one factor of the great relevance, whose real anthropological significance, however, does not appear to have been understood as yet. Without taking refuge in the protection of a theory that is dogmatically assumed (not even that of human rights or some underlying natural law), Einaudi configures a theory of freedom in which the theoretic is not the a priori solving criterion for practice, without this causing him to fall into the irrational and into a conception that sees freedom reduced to a mere opinion. Free choice requires an act that can never be dissociated from conditions that can be concretely identified, which hinders the construction of a complete doctrinal system, and always defers to the responsible decision of the individual man, constitutive of an order that is open, fallible, historical and democratic.⁹⁶

2) This concrete vision of human freedom as a point of departure and fulcrum of the analysis is also the explanation of the *interdisciplinarianism* presumed by the analyses that he performs, on one hand aimed at denouncing the myths of constructivist rationalism and ideologies intended as objective theories of knowledge, and on the other aimed at capturing the concreteness

⁹⁶ As his grandson recalls, Einaudi did not forget to place man, in the concreteness of his own conditions of life, in the centre of this theory: "The intellectual and man of politics do not have the right to decide what is right for the farmer or factory worker. The only person who knows if the shoe fits is the one who wears it". This cutting phrase was part of many of our discussions. It reflects an extremely profound conviction of the individual value of the person and respect he is due beyond his social condition, and without political sectarianism", L.R. EINAUDI, "Le molteplici eredità. Un ricordo personale di Luigi Einaudi" cit., p. 322.

of free choice in the lens of the disciplines that study human actions, from economics to religion to politics, to science, all the way to ethics, in a unitary anthropological vision which always remains in the background but is never translated into abstract theory. Thus from his work there seems to emerge the intuition of a vision of man as a unitary phenomenon based on freedom of choice, even if he wasn't able to, nor probably ever wanted to develop in a coherent way this requirement, which remains confined, as we have seen, within the sphere of the aesthetic (Lorenzetti's fresco) or the social (in the anthropological scenarios contained in the historical-social analyses of the *Lezioni*, for example). The objective of one promising study would then be to seek to conjoin in a critical way the intuitions contained in places in his works with the philosophical anthropology of the twentieth century and the acquisitions of phenomenology, in the attempt to construct a representation of the human being that, in addition to being prescriptive (the 'preachings') would also be descriptive, or better, indicative, not limited to the historic analysis of lifestyles and customs; moreover, a human figure not thought of religiously in a vision based on the *sacrificial*. The issue of the relationship between *economics and the religious ethics of sacrifice* certainly would need to be examined in depth in this sense, an issue that Einaudi condenses into a theory of the economic need for savings, linking it, in an individual and social dimension, to the sphere of the ideal (the family, the institutions as entities that collocate man in a context beyond the individual). Such an analysis should be extended in depth to arrive at identification of the root of the present-day European crisis, a crisis of faith, of institutions and of economies. Einaudi, however, does not appear to perceive the necessity of formulating the problem in a philosophical key, choosing instead to maintain a historic register, which, however, defers to a philosophy of history (but also to the interruption of a philosophy of history as knowledge concerning the historian): this problem emerges clearly in the formulation of critical point theory.

3) The *critical point theory* that he outlines appears to be inserted in a representation of man's complexity, which seems to be compatible with recent analyses that can be worked out starting with the theories of catastrophe and complexity, but there seems to me to be a need, in order to be comprehended in a real sense, for a specifically *aesthetic-legal* approach as well. Once again, the existence of a critical point⁹⁷ in development beyond which the society moves towards decadence appears to be an open theoretical analysis.

⁹⁷ As Silvestri notes, the doctrine of the critical point "is at bottom a doctrine of limits"; see P. SILVESTRI, *Il liberalismo di Luigi Einaudi o del Buongoverno* cit., pp. 260, 278.

The existence of a historic point that defines a threshold is represented, but it cannot be predicted or programmed, nor even knowingly produced. In Hayekian epistemological terms, the doctrine of the Einaudian critical point is negative knowledge, which attests to the existence of a limit and at the same time the need to limit the importance of *predictive* knowledge regarding the limit: hence the need to limit the anthropological importance of knowledge itself to the real and to the intersubjective relationships in all historic periods. I know that there is a limit, a threshold, but I don't know where this limit lies: this is the structure of the doctrine of the critical point, which, however, Einaudi develops, in contrast to Hayek, not in an epistemological but in a historic-descriptive sense: an element that integrates and enriches the Hayekian-Popperian formulation, but which in its turn, precisely because it is primarily historical, is much more limited than that. It is precisely the impossibility of depicting this limit positively and devising predictive knowledge of it, characteristic of simple phenomena, that attests, to my mind, to the need for an approach to the problem that is not merely historic or epistemological, but that begins with a *legal aesthetic of the foundations*, aimed at holding together the historiographical aspect with the epistemological-cognitive aspect of the limit.⁹⁸ The role and prevalence of the lexicon of the *ideal*, express, in my opinion, in Einaudian theory, exactly the intuition of the problem and the impossibility of formulating it and addressing it in philosophical terms, except by means of a discourse perceived as aesthetic-predicatory (the reference to the ideal society, the 'ethical' need to make 'useless' preachings). The discourse cannot be specified here except as a problem, already present in Einaudi's work, which can be better comprehended today, in the face of an epochal crisis in the foundations of Western institutions and markets, in the face of the acknowledgment of the possible *non-usefulness of the useless preachings* of Einaudi for the purposes of configuring the social bond (and of the representation of the foundation as limit) on which democratic institutions rest, and the functioning of the markets. The problem of the changing register of the discourse, from useless preachings to a possible *usefulness of a non-preaching discourse* on the foundations and on the anthropological issues, takes us, through Einaudi, into a territory of research that

⁹⁸ I allow myself to refer once again in this regard to my monographic text, *Estetica giuridica*, in preparation, in which I attempt to conjoin the historic aspect (the historiographical problem of secularisation) with the epistemological and gnoseological one, and in relation to the notion (borrowed from Popper's three worlds theory) of World 0 and starting from the dogmatic aesthetic of Pierre Legendre.

lies beyond Einaudian theory (even though perceived in it) and into an anthropological territory that is little explored, situated at the centre of the contemporary institutional, political and economic, cultural crisis of Europe and of the Western world as a whole. This appears to be, however, another matter, properly anthropological.

PAOLO SILVESTRI

AFTER-WORD. INVISIBLE CITIES:
WHICH (GOOD-BAD) MAN? FOR WHICH (GOOD-BAD) POLITY?

If you choose to believe me, good. Now I will tell you how Octavia, the spider-web city, is made. There is a precipice between two steep mountains: the city is over the void, bound to the two crests with ropes and chains and catwalks. You walk on the little wooden ties, careful not to set your foot in the open spaces [...].

This is the foundation of the city: a net which serves as passage and support. [...] Suspended over the abyss, the life of Octavia's inhabitants is less uncertain than in other cities. They know the net cannot endure beyond a certain limit.¹

Now I shall tell of the city of Zenobia, which is wonderful in this fashion: though set on dry terrain it stands in high pilings [...].

No one remembers what need or command or desire drove Zenobia's founders to give their city this form, and so there is no telling whether it was satisfied by the city as we see it today, which has perhaps grown through successive superimpositions from the first, now undecipherable plan. But what is certain is that if you ask an inhabitant of Zenobia to describe his vision of a happy life, it is always a city like Zenobia that he imagines, with its pilings and its suspended stairways, a Zenobia perhaps quite different, a-flutter with banners and ribbons, but always derived by combining elements of that first model.

This said, it is pointless trying to decide whether Zenobia is to be classified among happy cities or among the unhappy. It makes no sense to divide cities into these two species, but rather into another two: those that through the years and the changes continue to give their form to desires, and those in which desires either erase the city or are erased by it.²

¹ I. CALVINO, *Le città invisibili* [1972], Engl. transl.: *Invisible cities*, transl. by W. Weaver [1974] (London, Vintage, 1997), p. 67. In this afterword I generally adhered to the above cited English translation of *Le città invisibili*, except in cases of certain words of the Italian text whose meaning, in my opinion, required a different translation, provided by myself with the help of Rachel Barritt Costa.

² I. CALVINO, *Invisible cities* cit., p. 30.

After this long journey one might ask: what conclusions can be drawn from this collection? Which routes should be followed for our future research? Here I would venture no further than a 'simple' sketch of a story, an account of our own ceaseless journey of research and the good or bad society that men form by being together. This endeavor will be pursued by giving shape to the manifold and complex impressions I have drawn from a reading of the essays gathered together in this collection, but also from those that came out between 2008 and 2011, on the occasion of the celebrations for the sixtieth anniversary of the election of Einaudi as President of the Republic (1948) and the fiftieth anniversary of his death (1961).³ It can hardly be a coincidence, I would suggest, that *in a time of crisis*, even those holding the highest institutional offices of the Italian state felt the need to return to the symbolic, moral, intellectual and institutional figure of Einaudi.⁴ Perusal of this set of contributions has prompted me to reflect once more on a few un-frequented paths of Einaudi's journey in search of a good society. I will follow his itinerary without any claim of exhaustiveness or systematic coherence: rather, I will adopt a narrative style (albeit eschewing any literary pretensions) with a sprinkling of elliptical and rhapsodic considerations whose allusive character will, hopefully, be of aid in relaunching the inquiry into the good polity and the relationship between man and society, individual and institutions. I trust that the reasons underlying this choice, which is not merely stylistic, will become clearer upon complete reading of this book: from the introduction to the contributions and up to the end of this afterword.

1. As a first step towards explaining this point, let me start from the title, which interweaves *allusions* and *analogies* that will develop the thread of my discourse.

The allusions refer to Italo Calvino's famous work, *Invisible cities*, as well as to the allusive use I propose to make of it. Thus in the perspective adopted

³ Among these see: R. EINAUDI (ed.), *L'eredità di Luigi Einaudi. La nascita dell'Italia repubblicana e la costruzione dell'Europa* (Milano, Skira, 2008); F. FORTE, *L'economia liberale di Luigi Einaudi. Saggi* (Firenze, Olschki, 2009); R. MARCHIONATTI – P. SODDU (eds.), *Luigi Einaudi nella cultura, nella società e nella politica del Novecento* (Firenze, Olschki, 2010); A. GIGLIOBIANCO (ed.), *Luigi Einaudi: libertà economica e coesione sociale* (Roma - Bari, Laterza, 2010); N. ACOCELLA (ed.), *Luigi Einaudi: studioso, statista, governatore* (Roma, Carocci, 2010); F. TOMATIS, *Verso la città divina. L'incantesimo della libertà in Luigi Einaudi* (Roma, Città Nuova, 2011); the n. 127 (September-October 2011) issue of the review *Reset* partly dedicated to Einaudi, pp. 29-56.

⁴ See: M. DRAGHI, *Prefazione*, in A. GIGLIOBIANCO (ed.), *Luigi Einaudi: libertà economica e coesione sociale* cit., pp. v-vii; G. NAPOLITANO, "Luigi Einaudi: un'eredità per il riformismo e per tutti", *Reset*, n. 128 (November-December 2011), pp. 5-10.

in this Afterword, *Invisible cities* is a presence from the realm of allusion, and I believe it should awaken no impulse to analyse or recall the specific literature on this work. Here I draw encouragement from Calvino himself who, spurred by the attempt of various commentators to pinpoint the “moral of the story” – which has often been found in its conclusion – suggested that *Invisible cities* is “a book built like a polyhedron, and as for conclusions, they are scattered everywhere, written all around its sharp corners, and it also has some that are no less epigrammatic or epigraphic” than its own conclusion.⁵ In this sense, I trust that an epigrammatic or epigraphic use of *Invisible cities* will not be taken as a forced interpretation, especially bearing in mind that it is my own personal and ingenuous re-reading. ‘Ingenuous’ at least in the sense that, ‘from the *incipit*’, *from the very beginning*, whenever we open a book, enter into a dialogue, a relationship or research group, or embark on an individual line of exploration, we always find ourselves hovering *between* ‘to believe’ and ‘not to believe’.

“If you choose to believe me, good”. At every new beginning we are constantly exposed to misunderstandings, face to face with the difficult interpretative-communicative situation such as that recurring throughout the dialogues between Marco Polo and Kublai Khan and narrated from the very *incipit* of the tale:

*It cannot be taken for granted that Kublai Khan believed everything Marco Polo said when describing the cities visited on his missions [...]. In the lives of emperors there is a moment which follows pride in the boundless extension of the territories we have conquered [...]. There is a sense of emptiness that comes over us at evening [...]. It is the desperate moment when we discover that this empire, which had seemed to us the sum of all wonders, is an endless, formless, ruin, that corruption's gangrene has spread too far to be healed by our sceptre [...]. Only in Marco Polo's accounts was Kublai Khan able to discern, through the walls and towers destined to crumble, the tracery of a pattern so subtle it could escape the termites' gnawing.*⁶

Furthermore, Calvino himself, faced with the question of the overall meaning of the story, wrote that “only the text itself, in its own form, can authorize or exclude this or that reading. As a reader among many, I can say that in chapter five, which at the very heart of the book develops a theme of *lightness* strangely associated with the city theme, there are some of the pieces I consider the best as visionary evidence, and perhaps these spidery fig-

⁵ I. CALVINO, “Italo Calvino on Invisible cities”, *Columbia*, n. 8 (1993), pp. 37-42, Ital. transl.: “Presentazione”, in *Le città invisibili* (Milano, Mondadori, 1993), p. x.

⁶ *Id.*, *Invisible cities cit.*, p. 5.

ures (“thin cities” or suchlike) are the lightest zone of the book”. But his conclusion was: “I would hardly know what more to say”.⁷ A conclusion Einaudi himself might well have come to if he had been prodded by his critics into being *explicit* about the overall meaning of his search for good government. Moreover, it should not be forgotten that the ‘story of good government’ is a message that always appeals to one’s own freedom and sensibility or to the response of a ‘you’ who reads, listens and re-interprets and re-writes or re-tells the story.

Kublai asks Marco: – When you return to the West, will you repeat to your people the same tales you tell me?

– I speak and speak, – Marco says, – but the listener retains only the words he is expecting. [...] It is not the voice that commands the story: it is the ear.

– At times I feel your voice is reaching me from far away, while I am prisoner of a gaudy and unlivable present, where all forms of human society have reached an extreme of their cycle and there is no imagining what new forms they may assume. And I hear, from your voice, the invisible reasons which make cities live, through which perhaps, once dead, they will come to life again.⁸

On the issue of analogies, one may find several family resemblances between *Invisible cities* and the research on good government: those I will develop later are just a few of the possible. But it is worth noting forthwith two fundamental analogies: one related to content, the other to form or style.

The content-related analogy concerns the relationship between traveling and researching. Marco Polo’s journeys are to the Einaudian quest for good government as they are to our own research. In other words, here I assume the paradigm of the traveler-researcher.

As regards form or style, perhaps it is time to do justice to Einaudi the preacher and storyteller, for his expository style is by no means a mere detail. Rather, it is the typical form in which the thoughts and sentiments that most deeply affected him took shape.⁹ To recall our starting point – the fertile duality of Einaudi’s thought, the individual and the institutional – this is true both for the Einaudi who reflects on the individual foundation of a good society – Einaudi the narrator of everyday stories of individual men, humble and falli-

⁷ *Id.*, *Presentazione* cit., p. XI (italics mine).

⁸ *Id.*, *Invisible cities* cit., pp. 123-124.

⁹ See V. DELLA VALLE, “La lingua di Luigi Einaudi fra classicismo e pathos”, in A. GIGLIOBIANCO (ed.), *Luigi Einaudi: libertà economica e coesione sociale* cit., pp. 138-154.

ble, who learn through experience by “trial and error” – and also for the Einaudi who reflects on the institutional foundations of the good society: indeed, the very portrayal of good government appeared to elude him save by casting it in the narrative-allusive mold.

Finally, Calvino’s mention of “lightness”, almost anticipating his spiritual testament, *Six memos for the next millennium*, might well sum up the sense of Einaudi’s style as well as my reference to literature and why I consider it just another way of looking at the world:

Whenever humanity seems condemned to heaviness, I think I should fly like Perseus into a different space. I don’t mean escaping into dreams or the irrational. I mean that I have to change my approach, look at the world from a different perspective, with a different logic and with fresh methods of cognition and verification.¹⁰

2. Having said this, Einaudi the narrator of stories of concrete men can be found from as early as his first book, *Un principe mercante* [A merchant prince] (1900),¹¹ where he relates the deeds of a self-made-man, an entrepreneur who, undaunted by difficulties and failures, built a business empire in South America. It was a work that earned Einaudi the following compliment from a colleague of his: “you have become a fine novelist economist, almost a Verne of political economy”. This is also the same Einaudi who, upon returning to his home town for the inauguration of a company, wrote the following dedication to its founders and their “vocation”:

Thousands, millions of individuals work, produce and save in spite of everything we can invent to put spokes in their wheels, to thwart them, discourage them. It is the natural vocation that spurs them, not merely the thirst for money. Enthusiasm, the pride in seeing one’s business grow and prosper, seeing it acquire reputation and inspire trust in an ever greater range of customers, expand the industrial plant, embellish the sites – all these aspects constitute a driving force of progress every bit as powerful as that of profit.¹²

Yet this is the Einaudi who, at the same time, was aware that economic activity and exchanges are not intrinsically self-founded (but what is?). In his *Lectures on social policy*, he introduces his students to the topic with the incipit:

¹⁰ I. CALVINO, “Lightness”, in ID., *Six memos for the next millennium*, P. Creagh transl. (London, Jonathon Cape, 1992), p. 7.

¹¹ L. EINAUDI, *Un Principe mercante. Studio sulla espansione coloniale italiana* (Torino, F.lli Bocca, 1900).

¹² ID., *Dedica all’impresa dei Fratelli Guerrino*, Dogliani, September 15, 1960.

Have you ever been in a country town on the day of a fair? [...] That fair is a market, that is to say a place where on a fixed day, hundreds of sellers [...] come together [...]. And from every direction, from the circle of villages and farmhouses around the large town [...] a multitude of buyers converge to acquire the things they lack. The crowd of buyers and sellers is especially large at the Easter and All Saint's Day fairs.¹³

This great narration of exchanges and human relationships is then followed by a colourful description of what lies in the background or “around the fair and affects it”, precisely because the “market” is not “something that stands by itself”: rather, it is also embedded and depends on legal, political, symbolic and moral institutions.¹⁴

Euphemia, where the merchants of seven nations gather at every solstice and equinox [...]. But what drives men to travel up rivers and cross deserts to come here is not only the exchange of wares [...]. You do not come to Euphemia only to buy and sell, but also because at night, by the fires all around the market, seated on sacks or barrels or stretched out on piles of carpets, at each word that one man says – such as ‘wolf’, ‘sister’, ‘hidden treasure’, ‘battle’, ‘scabies’, ‘lovers’ – the others tell, each one, his tale of wolves, sisters, treasures, scabies, lovers, battles. And you know that in the long journey ahead of you, when to keep awake against the camel's swaying or the junk's rocking, you start summoning up your memories one by one, your wolf will have become another wolf, your sister a different sister, your battle other battles, on your return from Euphemia, the city where memory is traded at every solstice and at every equinox.¹⁵

This is also the Einaudi who was aware that the market, the state as well as any policy or any (good) governance are founded on a certain sense of a limit, which he emblematically formulated in the doctrine of the “critical point”. Hence, in this context the Einaudian lesson can be interpreted as an *ethic of limit and finitude*,¹⁶ of which the ‘economic’ is an emblematic figure. And this is hardly a story that begins with the emergence of the market-economy in modernity: it is a far older story, which Einaudi himself dated back to

¹³ ID., *Lezioni di politica sociale* (1949), partially transl. in “Lectures on the market”, in ID., *Selected economic essays*, L. EINAUDI, R. FAUCCI and R. MARCHIONATTI (eds.) (NY, Palgrave Macmillan, 2006), pp. 39 ff.

¹⁴ *Ibid.*, 57 ff.

¹⁵ I. CALVINO, *Invisible cities* cit., p. 31.

¹⁶ See P. SEQUERI, *L'umano alla prova. Soggetto, identità, limite* (Milano, Vita e Pensiero, 2002).

the great biblical narration of the Fall from Paradise. In a paragraph symptomatically entitled “The national minimum income. The limitedness of goods”, Einaudi sums up the main problem confronting a sound social policy in a sound *welfare state*: on the one hand he accepts and endorses the hypothesis of a “national minimum income”, with the aim that even those most severely afflicted by the contingencies of life “can develop their natural talents”, so that from within their ranks there will “come scholars and inventors who today have no chance of achievement. This is the ideal we must strive to attain”. Yet on the other hand he immediately warns:

Let us never forget that when God chased Adam and Eve out of the Garden of Eden he said to them: “By the sweat of your brow you shall eat your bread”. Certainly, bread should become more abundant for all men, and many other things must be made available to men free of charge. But the law compelling men to toil in order to scratch from the ungenerous earth the fruits with which it is so richly endowed will endure for all eternity.¹⁷

This Einaudian insistence on the sense of the limit, on the ethic of saving and sacrifice, by no means implies an attitude of mortification of *life* or of *desire* or, much less, of *liberty*. For Einaudi, economic action and initiative always arise in a context of limits and constraints, but he was equally aware that it is precisely through experience of the limit that the meaning of freedom can be appreciated and a window of opportunity for the emergence of novelty opens up. Accordingly, even when he emphasizes the fundamental economic principle of scarcity or “limitation of means”, Einaudi also underscores the anthropological dimension of “desire”:

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?¹⁸

Following along this path one thus encounters the same Einaudi who, in his *Prediche inutili* [Useless Preachings], composed the essay *In lode del pro-*

¹⁷ L. EINAUDI, *Lezioni di politica sociale* [1949] (Torino, G. Einaudi, 2004), pp. 55-56.

¹⁸ ID., *Scienza economica ed economisti nel momento presente* (Torino, Tip. Artigianelli, 1950), p. 23 (transl. mine); Engl. transl.: “Economic science and economists at the present days”, *International social science bulletin*, II, 2 (1950), pp. 160-171.

fitto [In Praise of Profit] as praise of the human faculty of initiative, the faculty of sparking a new beginning, the willingness to take on “risk”, to embrace the “new” and “unknown”.¹⁹

3. Now, further pursuing the game of analogies between the search for good government and the *Invisible cities*, and directing attention towards the ‘institutional-instituting’ level of Einaudi’s discourse – from good government of the *oikos* to good government of the ‘city’ – let me focus once more on those ideal-real places that were conventionally assumed in the introduction of this volume as the Alpha and Omega of Einaudi’s journey in search of good societies. The Alpha is Einaudi’s ethos-home, which was also fictionally assumed as a bridge allowing us to take our first step in our own research-journey. The Omega is the fresco by Lorenzetti, *The effects of good and bad government*, of which Einaudi interpolated a few details in his collection *Il buon governo* (1954), printed when he was President of the Republic.

Let us start again from Einaudi’s ethos-home, the place where it all began, the symbolic place of origin, but also the place which, through distance and lack, endows the Einaudian everlasting quest for good government with sense and significance. Einaudi’s Introduction to the writings of his uncle, whom he “worshiped like a father”, was composed partly in the wake of the devastating effects of World War I and during the ensuing social and economic crisis. It is an essay cast in the mold of a great autobiographical tale, almost epic and biblical at once, where there stands out, on the one side, the heroic figure of the mother who, “having been left a widow”, succeeded through “sacrifices” that verged on “the miraculous” in assuring a future for the children and in “transmitting the small endowment from our father”. On the other side stands the symbolic authority of the uncle who, after the father’s death, welcomed the young Einaudi into his home as if the boy were his own son. In later years, recalling the ethos of this family home and that of the local institutions, Einaudi embarked on his journey in search of good government.²⁰

Following on from this ‘first’ image of good government of the *oikos* (later also projected to the public sphere), the pages of this collection chart the many waystages of Einaudi’s long journey in quest of ideal or historical – but no less idealized – forms of good politics:

¹⁹ ID., “In lode del profitto” (1957), in ID., *Prediche inutili* (Torino, G. Einaudi, 1956-1959), pp. 171-193.

²⁰ ID., *Avvertenza del compilatore* [1922], in *Pagine doglianesi, 1893-1943*, ed. by the Municipality and the “Luigi Einaudi” Civic Library, Dogliani, 1988, pp. 13-38.

- the “*divine city*”, an ideal society where pluralism reigns under the rule of law – a city sketched in the very midst of the social unrest from which fascism drew its lifeblood;²¹
- the “*ideal city*”, emerging from discussions with his pupil Gobetti on Le Play’s thought (institutions are founded on a fragile “magic spell”, as it were, yet it is this fictional stage act, made up of symbols, myths or “taboos”, that enables societies to hold together) – a city glimpsed in Gobetti’s thought and recognized after his death;²²
- the “finance of *Periclean city*”, where “the leader chosen by the *valentior pars* of the citizens [...] intends to elevate the mortals of the earthly city to the divine city” – a finance counterposed to that of “tyrannical government”;²³
- the “*13th and 14th century city states*”, where Einaudi meets his friend and colleague Röpke, who was himself on a quest for a *Civitas humana*;²⁴
- the “*garden city*”, ideally counterposed to uniform mass societies – a concept Einaudi outlined when he was in exile;²⁵
- the “*liberal society*”, as an “ideal of society of free men”, to be rebuilt after twenty years of the “fascist bad government”, but also in a European perspective, after and beyond the “dogma of state sovereignty”;²⁶
- the “*beautiful city*” and the “*ugly city*”, which are such depending on the kind of tax on building sites adopted by the government;²⁷
- the images of *The effects of good and bad government in the city and the countryside...*

[*Khan:*] – *What is the use, then, of all your traveling? [...] You advance always with your head turned back? [...] Does your journey take place only in the past? [...].*

²¹ L. EINAUDI, “Verso la città divina” (1920), in ID., *Il buongoverno. Saggi di economia e politica (1897-1954)*, E. ROSSI (ed.) (Bari, Laterza, 1954), pp. 32-36.

²² L. EINAUDI, “Piero Gobetti nelle memorie e nelle impressioni dei suoi maestri”, *Il Baretto* (16 March 1926), p. 80.

²³ ID., *Miti e paradossi della giustizia tributaria* (1940, second edition revised and extended) (Torino, G. Einaudi, 1959), pp. 263 ff.

²⁴ ID., “Economia di concorrenza e capitalismo storico. La terza via fra i secoli XVIII e XIX”, *Rivista di storia economica* (June 1942), pp. 49-72: 72. Engl. transl.: “Economy of competition and historical capitalism”, *Scienza Nuova* (Oxford), I, 1954, n. 1, pp. 1-29: 28.

²⁵ ID., *Lezioni di politica sociale* cit., pp. 192 ff.

²⁶ ID., “Lineamenti di un programma liberale” (1944); “Commento al programma” (1944); “Gerarchia nel programma” (1944); in ID., *Riflessioni di un liberale sulla democrazia. 1943-1947*, P. SODDU (ed.) (Firenze, Olschki, 2001), pp. 42-59: 54.

²⁷ ID., “Dannosa nella città bella l’imposta sulle aree fabbricabili”, *Corriere della sera* (January 6, 1961), p. 1; ID., “Nella città brutta è il luogo dell’imposta sulle aree fabbricabili”, *Corriere della sera* (January 7, 1961), p. 1.

What [Polo] sought was always something lying ahead, and even if it was a matter of the past it was a past that changed gradually as he advanced on his journey, because the traveler's past changes according to the route he has followed: not the immediate past, that is, to which each day that goes by adds a day, but the more remote past. Arriving at each new city, the traveler finds again a past of his that he did not know he had: the foreignness of what you no longer are or no longer possess lies in wait for you in foreign, unpossessed places.

– Journeys to relive your past? – was the Khan's question at this point, a question which could also have been formulated: – Journeys to recover your future?

And Marco's answer was: – Elsewhere is a negative mirror. The traveler recognizes the little that is his, discovering the much he has not had and will never have.²⁸

Indeed, it is no coincidence that Einaudian reflection on good government took shape *post res perditas* and that its most important moments stem from the darkest periods and most tragic events of the twentieth century, and particularly of both Italian and his own personal history: the first World War, the ensuing economic and social crisis, fascism, the great depression of 1929, World War II.

Taken together, the above reflections should yield a first conclusion: *the quest for good government is spurred by the individual or collective experience of evil*,²⁹ of suffering, of crisis, of loss, of 'bad government'. As Calvino put it, in a later comment on his book:

I feel I have written something approaching a final love poem for cities, at this time when it is becoming more and more difficult to live one's life in them as cities. Perhaps we are moving close to a moment of crisis in city life, and the *Invisible Cities* are a dream that springs from the heart of unlivable cities.³⁰

This list representing the game of analogies between the Einaudian quest and the *Invisible cities* could easily be extended:

– In a time of crisis, Einaudi had set out to explore historical-ideal forms of good polities, inquiring into the moral reasons that enabled cities to experience eras of prosperity in which decadence was kept at bay. / "The heartfelt

²⁸ I. CALVINO, *Invisible cities* cit., pp. 23-25.

²⁹ The question of evil, often forgotten by the contemporary social sciences, would deserve examination in greater depth for a better understanding of the human; see: J.P. DUPUY, *Avions-nous oublié le mal? Penser la politique après le 11 septembre* (2002), Ital. transl.: *Avevamo dimenticato il male? Pensare la politica dopo l'11 settembre*, transl. by P. Heritier, E. Scattolini (Torino, Giappichelli, 2010); P. HERITIER, *L'antropologia giuridica e il problema del male. Dieci anni dopo l'11 settembre*, *ivi*, pp. 115-138.

³⁰ I. CALVINO, *Presentazione* cit., p. IX.

- wish my Marco Polo cherishes is to discover the secret reasons that have led men to live in cities, reasons that can hold true irrespective of all crises".³¹
- The Einaudian investigation is likewise a search for the invisible foundations that are the linchpin supporting a good society. / The first of the "thin cities" is introduced in the following manner: "Isaura, city of a thousand wells, is said to rise over a deep, subterranean lake. [...] an invisible landscape conditions the visible one".³²
 - The Einaudian search for the good society is not the quest for paradise on earth, nor a flight to Utopia, or the search for a perfect city. "Perfection" can only be conceived in terms of perfectibility, given man's unavoidable "original sin", and it "cannot be equated with uniformity, nor with unity: the essence resides in variety and contrast"³³ of actions and ideas. / The most infernal invisible cities, frightening and populated by monsters, are the "continuing cities" – immobile cities, without change or variation, without an "inside" and an "outside" –, cities in which all differences are eliminated.

Beyond these analogies, one could seek to draw a further conclusion in an attempt to render meaningful Einaudi's gesture of ideally returning to his ethos-home – a gesture made in a moment of distress – as well his writing of the *Introduction* mentioned at the outset of this volume, with which he testifies to his rootedness and his debt of gratitude to his father and mother. *The good society appears and begins to take shape through the free acknowledgment of a limit*: a lack, a dependence, a debt, a bond between individuals or even between generations, with a "thank you for the trust given to me". This is the Einaudian way of recognizing the importance of the institutional: variously portrayed by Einaudi in terms of "myths", "taboos", "formulas", "rituals", "traditions", "values", "customs", the institutional re-emerges in his speculation, like a *hidden or invisible* foundation, precisely at times when the institutions were under threat or crisis and when he felt the need to rebuild the liberal society on new foundations. Paraphrasing Einaudi, it could be stated that if, on the one hand, a good relationship or a good society develops from this recognition of a limit, on the other hand, the symbolic and institutional resources have the task of helping to reactivate, give shape and meaning to the trust on which good bonds are founded.

³¹ *Ibid.*

³² *Id.*, *Invisible cities* cit., p. 17.

³³ L. EINAUDI, "Verso la città divina" (1920), in *Id.*, *Il buongoverno* cit., pp. 32-33.

4. To gain additional insight into this point, we must take one step forward and one step back, following Einaudi a little further along the road of his unfinished search for the good society. We must walk beside him throughout his personal and institutional parable, while at the same time going back to the beginning of Einaudian anthropology and, at an even deeper level, to Christian anthropology: man as a flawed and fallible being, constitutively torn between good and evil, past and future, tradition and critical awareness, rules and life, institutions and freedom, Law and desire... Father and Son.

Symptomatic in this regard is the Einaudian essay on *The doctrine of original sin and the theory of the élite in Fredric Le Play* (1936). In the darker years of fascism Einaudi definitively turned away not only from the theories of the elites developed by Pareto and Mosca, inasmuch as such theories, guided by the category of *necessity*, inevitably ended up with the conclusion that "everything is power", but also from the corresponding theories of legitimacy, which maintained that power always obtains consensus through "formulas" and "myths" that prey on the (always irrational) emotions of the governed. This legitimization of the *fait accompli* had induced the additional consequence of loss of any criterion of distinction between good and bad government. Einaudi's conclusion, where he makes an appeal to men of good will, is symptomatic:

If a number of sound families survive ruin, then there exists no invincible fate that necessarily leads society to death. The political techniques employed by ruling classes not inspired by the moral law are not fatally destined to prevail. Their formulas for gaining and holding political power do not take account of the elite, the only class throughout the ages that has given mankind real guidance and direction. Let there be some survivors, actively operating and teaching, composed of a cluster of wise men, let some families and some social groups still draw inspiration for their action from the teachings of the wise men, and the eras of prosperity can return once more.³⁴

These conclusions testify to the faith and hope by virtue of which the Piedmontese liberal uttered his *no* to the evil (the evil of fascism) and, at the same time, asserted that a different world was still possible.

And even when he was vindicated by history and the good seemed to 'emerge triumphant', Einaudi in no way abandoned his quest, and never forsook the attempt to pinpoint the foundations of a good polity.

³⁴ ID., "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: 328 (transl. mine); Engl. transl.: "The doctrine of original sin and the theory of the élite in Fredric Le Play", in *Essay in European economic thought*, ed. and transl. by L. SOMMERS (Princeton, N.J., D. Van Nostrand Company Inc., 1960), pp. 162-217.

This was the period when Einaudi, as a protagonist of the economic reconstruction of Italy, was no less concerned with its institutional reconstruction. After the fall of fascism, almost anticipating the future institutional referendum in which the Italian people were faced with the choice between Monarchy and Republic, Einaudi explained, with a legal-philosophical argument implicitly evoking Saint Paul's epistle to the Romans, that it was necessary to save the "spirit" and not the "letter" of the constitutional monarchy, precisely in order to prevent that which had already happened during the fascist period with regard to the reduced royal prerogative to dismiss the prime minister: an excess of "strict observation of the rule" implied that "the letter had killed the spirit of the Constitution".³⁵ The "institutional referendum" was held in June 1946. Einaudi publicly declared he would vote for the Monarchy. Victory went to the Republic. From the very beginning Einaudi was perfectly aware of what was at stake not only in Italy but throughout Europe, where many constitutions were being rewritten: the *symbolic* and *invisible* resources of Legitimacy, now in need of a new founding reference.³⁶ The day after the referendum Einaudi wrote an essay with the title *Della paura* [Of Fear], recalling Guglielmo Ferrero's works on legitimacy and, implicitly, Ferrero's spiritual testament, *Pouvoir: Les génies invisibles de la cité*,³⁷ a work that endeavored to explain how, with the support of 'sound' legitimacy, societies overcame the fear that often threatened to undermine both their governors and the governed. In *Della paura* Einaudi explained:

[Stable] political societies are built on the rock-solid base of juridically indefinable myths, of some words whose meaning is probably impossible to define precisely, of words and myths which, however, embody the will of the past and the consensus of the living. [...] Political myths do not operate by virtue of written laws. They are states of mind, and woe betide us if no such states exist! Sooner or later, a country with a deficiency in this regard is doomed to ruin. It lacks the basis of legitimacy. To endow countries with stability it is by no means necessary for those words to be pro-

³⁵ L. EINAUDI, "A proposito della scelta in Italia tra Monarchia e Repubblica" (1943), in ID., *Riflessioni di un liberale sulla democrazia. 1943-1947* cit., pp. 23-36.

³⁶ On the notion of "founding reference" and its political, legal, aesthetic and anthropological implications see: P. LEGENDRE, *Della società come testo. Lineamenti di un'antropologia dogmatica* (2001), Ital. transl. P. HERITIER (ed.) (Torino, Giappichelli, 2005); ID., *L'occidente invisibile* (2004), Ital. transl. P. Heritier (Milano, Medusa, 2009); P. HERITIER, *Legendre e la fondazione antropologica dell'estetica giuridica*, *ivi*, pp. 89-118; ID., *Società post-hitleriane? Materiali didattici di antropologia ed estetica giuridica 2.0* (Torino, Giappichelli, 2009²).

³⁷ G. FERRERO, *Pouvoir. Les génies invisibles de la cité*, New York, N.Y., Brentano's, 1942 (Paris, Plon, 1943). In a certain sense, this is a theme that Ferrero faced, even though with a positivistic approach, from the moment of his first work in legal anthropology: *I simboli in rapporto alla storia e alla filosofia del diritto alla psicologia e alla sociologia* (Torino, F.lli Bocca, 1893).

claimed day by day and to be insistently emphasized [...] rather, what is far more important is for those words to become a formula that goes unnoticed, possibly not even written down, one that raises no objections. [This is how the institutions are accepted by the] future generations.³⁸

Perhaps it was not simply an irony of history that Einaudi became the first elected President of the Republic, destined to become a myth in his own right. He occupied the same symbolic place as the Monarchy, and was perfectly conscious that he should be a “reference figure” and a “*Third super partes*”.³⁹ Moreover, he acted as a bridge both synchronically and diachronically. Synchronically because, as stated in art. 87 of the Italian Constitution: “the President of the Republic is the head of State and represents national unity”; diachronically because he was a bridge between the past liberal system and the future republican regime. It is no coincidence that Einaudi was indeed celebrated as a moral and spiritual *founding father*.

But even after becoming a *living institution* and reaching the position of “*Third super partes*”, of *guarantor of last resort*, committed to urging observance, through his own institutional behavior, of the fundamental moral commandment: “one has to set the good example”,⁴⁰ Einaudi constantly maintained a firm distinction between myth and idolatry, for he knew that his own word was not the last word.

By starting out from here we may perhaps reach the Omega of Einaudi’s journey: the images of *The effects of good and bad government*, a few details of which were interspersed by Einaudi in his collection *Il buon governo* (1954), printed when he was President of the Republic. What did Einaudi recognise in those images?

Dawn had broken when he [Polo] said: – Sire, now I have told you about all the cities I know.

– There is still one of which you never speak.

Marco Polo bowed his head.

– Venice – the Khan said.

Marco smiled. – What else do you believe I have been talking to you about?

³⁸ L. EINAUDI, “Della paura” [1946], in Id., *Riflessioni di un liberale sulla democrazia*. 1943-1947 cit., pp. 223-226.

³⁹ L.R. EINAUDI, “Le molteplici eredità. Un ricordo personale di Luigi Einaudi”, in R. MAR-CHIONATTI – P. SODDU (eds.), *Luigi Einaudi nella cultura, nella società e nella politica del Novecento* (Firenze, Olschki, 2010), pp. 319-320.

⁴⁰ *Ibid.*, p. 322.

The emperor did not turn a hair. – And yet I have never heard you mention that name.

And Polo said: – Every time I describe a city I am saying something about Venice.

– When I ask you about other cities, I want to hear about them. And about Venice, when I ask you about Venice.

– To distinguish the other cities' qualities, I must speak of a first city that remains implicit. For me it is Venice.

– You should then begin each tale of your travels from the departure, describing Venice as it is, all of it, not omitting anything you remember of it.

The lake's surface was barely wrinkled; the copper reflection of the ancient palace of the Sung was shattered into sparkling glints like floating leaves.

– Memory's images, once they are fixed in words, are erased, – Polo said. – Perhaps I am afraid of losing Venice all at once, if I speak of it. Or perhaps, speaking of other cities, I have already lost it, little by little.⁴¹

At a first superficial glance one might be tempted to say that the fresco of good government is perhaps the best known representation of the medieval experience of the *communes* or of the “communal model” (in that case with specific reference to Siena), which Italy successfully nurtured, dispersing its seeds throughout Europe: the *Europe of the cities*, with their *squares* – that emblematic public space – and the *communication* routes, the Europe of the peaceable yet belligerent meeting among civilizations, cultures, customs, people and goods. Moreover, in the final chapter of *Il buon governo* Einaudi inserted a few of his more far-sighted reflections on globalization processes, the crisis of the principle of sovereignty and the need for a new institutional architecture, identified as residing in the European Federation.⁴² The Federation, he believed, could help to solve what he felt to be the real problem of the future: how to find the “formula for mediation between small, spiritual homelands and the unity of the economic world”,⁴³ between local and global, di-

⁴¹ I. CALVINO, *Invisible cities* cit., pp. 77-78.

⁴² On this aspect of Einaudi's thought see: U. MORELLI, *Contro il mito dello stato sovrano. Luigi Einaudi e l'unità europea* (Milano, Franco Angeli, 1990); C. CRESSATI, *L'Europa necessaria. Il federalismo liberale di Luigi Einaudi*, intr. di R. FAUCCI (Torino, Giappichelli, 1992); A. QUADRO CURZIO – C. ROTONDI, “Luigi Einaudi: il disegno istituzionale ed economico per l'Europa”, in *Luigi Einaudi: Istituzioni, mercato e riforma sociale* (Roma, Bardi, 2005), pp. 163-194; F. FORTE, “Economia dei mercati globali e governo sovranazionale secondo Luigi Einaudi” (2007), in *Id.*, *L'economia liberale di Luigi Einaudi. Saggi* (Firenze, Leo Olschki, 2009), pp. 303-342.

⁴³ L. EINAUDI, “Why we need a European Economic Federation” (1943), in *Id.*, *Selected economic essays* cit., pp. 245-249. “Alongside the tenacity with which peoples, small and large, yearn to conserve and perfect their own spiritual, cultural and political autonomy, we have the opposite tendency of the economy towards unity, not merely of large areas, but of the entire world. Not just small states but larger ones too have become economically anachronistic and absurd” (*ibid.*, p. 245).

versity and unity.⁴⁴ In pursuit of this goal, what was necessary was to “recreate the medieval worldwide Christian community”: in other words, to redesign in a contemporary perspective that model of composite (or variable geometry) city-states, beyond the “dogma” or “the myth” of the sovereignty of the State. It is worth noting that from Einaudi’s point of view, the problem is not the “dogma” or “myth” as such, which, as we have seen, he characterized as symbolic resources of the institutional. The real problem, to quote the concluding words of *The myth of the sovereign state*, is when the myth becomes an “idol”⁴⁵ with claims of absoluteness and perfection, and, consequently, is no longer open to criticism.

In Einaudi’s view, this was true both for the social-political sphere and for that of scientific knowledge, because even Economic Science can become an “*idol devoid of soul*” when its claims to “scientific neutrality” go beyond a certain limit.⁴⁶ Therefore, in this discourse, in which the foundation (of the individual and the social) assumes an aesthetic character, it may not be surprising to discover James Buchanan attempting to re-vitalize *The soul of classical liberalism* and visualize that “soul” through an evocation of an ancient myth, the “*shining city on a hill*”: “I suggest invoking the soul of classical liberalism, an *aesthetic-ethical-ideological potential attractor*, one that stands independent of ordinary science, both below the latter’s rigor and above its anti-septic neutrality”.⁴⁷

But Lorenzetti’s fresco interpolated into Einaudi’s *Buongoverno* also raises further questions: what is the communicative-normative significance of this

⁴⁴ On the Einaudian tension between local and global, diversity and unity and his reflection on the symbolic structure of the future European institutions see: P. SILVESTRI – A. ODDENINO, “Autonomie locali e istituzioni sovranazionali. Il problema del buongoverno tra globalizzazione e localizzazione alla luce del pensiero einaudiano”, in S. SICARDI (ed.), *Le autonomie territoriali e funzionali nella provincia di Cuneo in prospettiva transfrontaliera (alla luce del principio di sussidiarietà)* (Napoli, ESI, 2011), pp. 97-132.

⁴⁵ L. EINAUDI, “Il mito dello Stato sovrano” (January 3, 1945), in Id., *Il buongoverno* cit., p. 630.

⁴⁶ Id., *On abstract and historical hypotheses and on value-judgments in economic sciences*, edited with an *Introduction* and an *Afterword* by Paolo Silvestri (London - New York, Routledge, Forthcoming: 2012).

⁴⁷ J.M. BUCHANAN, “The soul of classical liberalism”, *The Independent review*, V, n. 1 (Summer 2000), p. 114 (italics mine). Buchanan’s aesthetic-allusive conclusions deserve further attention: “If politics is allowed to become little more than a commons on which competing coalitions seek mutual exploitation, potential value is destroyed and liberty is lost just as surely as in the rigidities of misguided efforts at collective command. Who, indeed, can be expected to be motivated to support such “politics as competition for the commons”? Where is the dream? Perhaps resurrection of the soul of classical liberalism is beyond realistic hopes for the twenty-first century. But those of us who think that we have glimpsed the shining city have a moral obligation to proceed as if that society [...] can become reality” (*ibid.*, p. 119).

message from a President who “is the Head of State and represents national unity”? Why did Einaudi, a “reference figure” and “Third super partes”, feel the need to point to a further third and symbolic ‘place’, a kind of aesthetic foundation of the good society? At a distance of six centuries, Einaudi seems to repeat the same gesture as the rulers of Siena, who chose to have Lorenzetti’s frescoes *visible* on the walls of the Palazzo *pubblico* [Civic Building], as a founding reference of their government. Reviving the contents of this ancient myth, the then President of the Republic seems to have called attention to it as, in a sense, a founding reference for a future European and, possibly, global society.

Yet these questions elicit more and yet more queries... Perhaps because the images depicted in Lorenzetti’s frescoes continue to tell us something of the complexity of the human:

- as a Founding Reference situated in a third and separate place, they testify to the circumstance that civilizations cannot conceivably be lacking in an organizational form that centers around reference points;
- in their representation of the multiple activities of mankind, from labor to trade to consumption, all the way to man’s architectural organization of space and to legal-political institutions, they speak (to us) of the infinite communicative-expressive registers of the human;
- in displaying the (visible) *effects* and not the (invisible) causes of good and bad government, they speak to us of the mystery of its (our) foundation;
- in their visible form, these images cannot but be made “in the image of” that Foundation and, mirror-like, they ceaselessly reflect the question back towards it...

Perhaps because cities are like dreams, and dreams are by no means the reign of the irrational.

[Polo: –] *from the number of imaginary cities we must exclude those whose elements are assembled without a connecting thread, an inner rule, a discourse. With cities, it is as with dreams: everything imaginable can be dreamed, but even the most unexpected dream is a rebus that conceals a desire or, its reverse, its fear. Cities, like dreams, are made of desires and fears, even if the thread of their discourse is secret, their rules are absurd, their perspectives deceitful, and everything conceals something else.*

– I have neither desires nor fears, – the Khan declared – and my dreams are composed either by my mind or by chance.

– Cities also believe they are the work of the mind or of chance, but neither the one nor the other suffices to hold up their walls. You take delight not in a city’s seven or seventy wonders, but in the answer it gives to a question of yours.

– Or the question it asks you, forcing you to answer, like Thebes through the mouth of the Sphinx.⁴⁸

Finally, Lorenzetti's depictions, appearing in their horizontal structure, elongated and dual – such that a path must be followed to pass from darkness to light, from bad government to good government – speak to us of our experience as fragile and *free* beings, everlastingly poised between good and evil...

5. ...This is the end of the story. Or at least so I thought. Yet, just when *Il buongoverno* was about to go to press, at the very last moment Einaudi inserted at the end of the first chapter, which likewise bore the title *Il buongoverno*, an article directing his (and our) attention again to the foundational issue, once more in a narrative perspective.

There was a post-war Italy that was called upon to rouse itself to action and reawaken to *new life*, get to its feet and start walking on its own two legs. This was the Italy that needed to heal not only the wounds inflicted by the war, but also those resulting from the Resistenza and the 'civil war'. In his capacity as President of the Republic, Einaudi held up to the Italian people the image of a symbolic resource in the story "*The Cervi brothers' father*" (1954). During the commemorations held on 17th January 1954, in which the nation celebrated the memory of the seven Cervi brothers put to death by the fascist firing squad in Reggio Emilia in December 1943, the President received the aged father of the Cervi family at the Presidential Building, immediately entering into warm conversation with him and establishing a sort of bond of affinity, almost a form of kinship; this friendly exchange of talk and feelings continued for quite some time.

Initially, in the story Einaudi seems to identify with the description of the sons as portrayed by the Cervi father, who tells of the experiments and innovations they introduced in crop management practices and land irrigation. Indeed, Einaudi himself was a great innovator who introduced a number of novel experimental methods on his estate.

Yet Einaudi also seems to hint, delicately, that despite the terrible tragedy and grief that has befallen the family with the death of the seven sons, something seems to *rise to new life* upon the entry of a new figure into the family circle, a "nephew". This was the son of the Cervi father's brother, and he had come to give a helping hand to the widowed daughters-in-law. Einaudi,

⁴⁸ I. CALVINO, *Invisible cities* cit., pp. 37-38.

prompted by curiosity, asks whether the nephew now forms part of the family and whether he has a share in the family's "assets" (the question concerned the nephew's financial status within the family and whether he was recognized as a "relative"). The "nephew", answered the Cervi father, "*is not a son of this family but it's as if he were*".

We perceive here the replay of a story that harks back to the past, the same story from which we started out. This analogy has to date never been noticed: Einaudi had worshiped his uncle "like a father", and here there is an uncle – the father of the Cervi brothers – who welcomes a nephew into his home "as if he were a son". Einaudi seems to be spellbound by the story about how the father rearranged the question of the family inheritance after the death of his sons, granting this new son a "place" in the family and bequeathing him a share in the family's property and possessions.

The president [and the others present at the scene] listened to the father with astonishment [...]. Was he a rustic countryman from our parts, a Homeric hero or a patriarch from the Bible? [...] As they gazed at the father, they saw in him the patriarch who, in the shade of the sycamore, was dictating the inheritance rules for his family. They were witnessing the formation of the law, almost as if the Civil Code had not yet been written.⁴⁹

"*Almost as if the Civil Code had not yet been written*". This pre-judicial and pre-political, but also pre-economic dimension of human relations embodies the 'sense' of the foundation of the good society imagined and narrated by Einaudi. The 'heritage' that is handed down from generation to generation is not (indeed, is never) only 'genetic', nor is it (ever) merely economic but rather, as this story testifies, highly symbolic. In the remarkable story of a father and a family that *withstands* evil, of a father who welcomes a nephew into the family home as if he were a son, of a nephew who leaves his own home to go to the help of an uncle-father, Einaudi testifies-tells-transmits the rebirth of life, the transcendence of life over death.

Once again: what, then, are the conclusions that can be drawn from this research-journey? Which route should we follow?

The Great Khan's atlas contains also the maps of the promised lands visited in thought but not yet discovered or founded: New Atlantis, Utopia, the City of the Sun, Oceana, Tamoé, New Harmony, New Lanark, Icaria. Kublai asked Marco: – You,

⁴⁹ L. EINAUDI, "Il padre dei fratelli Cervi", *Il Mondo* (March, 16 1954), in *Id.*, *Il buongoverno* cit., pp. 140-144: 144.

who go about exploring and who see signs, can tell me toward which of these futures the favoring winds are driving us.

– For these ports I could not draw a route on the map or set a date for the landing. At times all I need is a brief glimpse, an opening in the midst of an incongruous landscape, a glint of light in the fog, the dialogue of two passersby meeting in the crowd, and I think that, setting out from there, I will put together, piece by piece, the perfect city, made of fragments mixed with the rest, of instants separated by intervals, of signals one sends out, not knowing who receives them. If I tell you that the city toward which my journey tends is discontinuous in space and time, now scattered, now more condensed, you must not believe the search for it can stop. Perhaps while we speak, it is rising, scattered, within the confines of your empire; you can hunt for it, but only in the way I have said.

Already the Great Khan was leafing through his atlas, over the maps of the cities that menace in nightmares and maledictions: Enoch, Babylong, Yahoooland, Butua, Brave New World.

He said: – It is all useless, if the last landing place can only be the infernal city, and it is there that, in ever-narrowing circles, the current is drawing us.

And Polo said: – The inferno of the living is not something that will be; if there is one, it is what is already here, the inferno where we live every day, that we form by being together. There are two ways to escape suffering it. The first is easy for many: accept the inferno and become such a part of it that you can no longer see it. The second is risky and demands constant vigilance and apprehension: seek and learn to recognize who and what, in the midst of the inferno, are not inferno, then make them endure, give them space.⁵⁰

Whether and which ones of the many characters, images or experiences recounted in these few pages will strike a chord with the authors and readers of this book, I cannot say. Yet I cherish the hope that with this book – even though none of us has been able to “draw a route on the map or set a date for the landing” – we will all have shared in this mission and will continue, beyond this book, “to put together piece by piece... fragments... instants... signals...”. And “you must not believe the search for it can stop”.

⁵⁰ I. CALVINO, *Invisible cities* cit., pp. 147-148.

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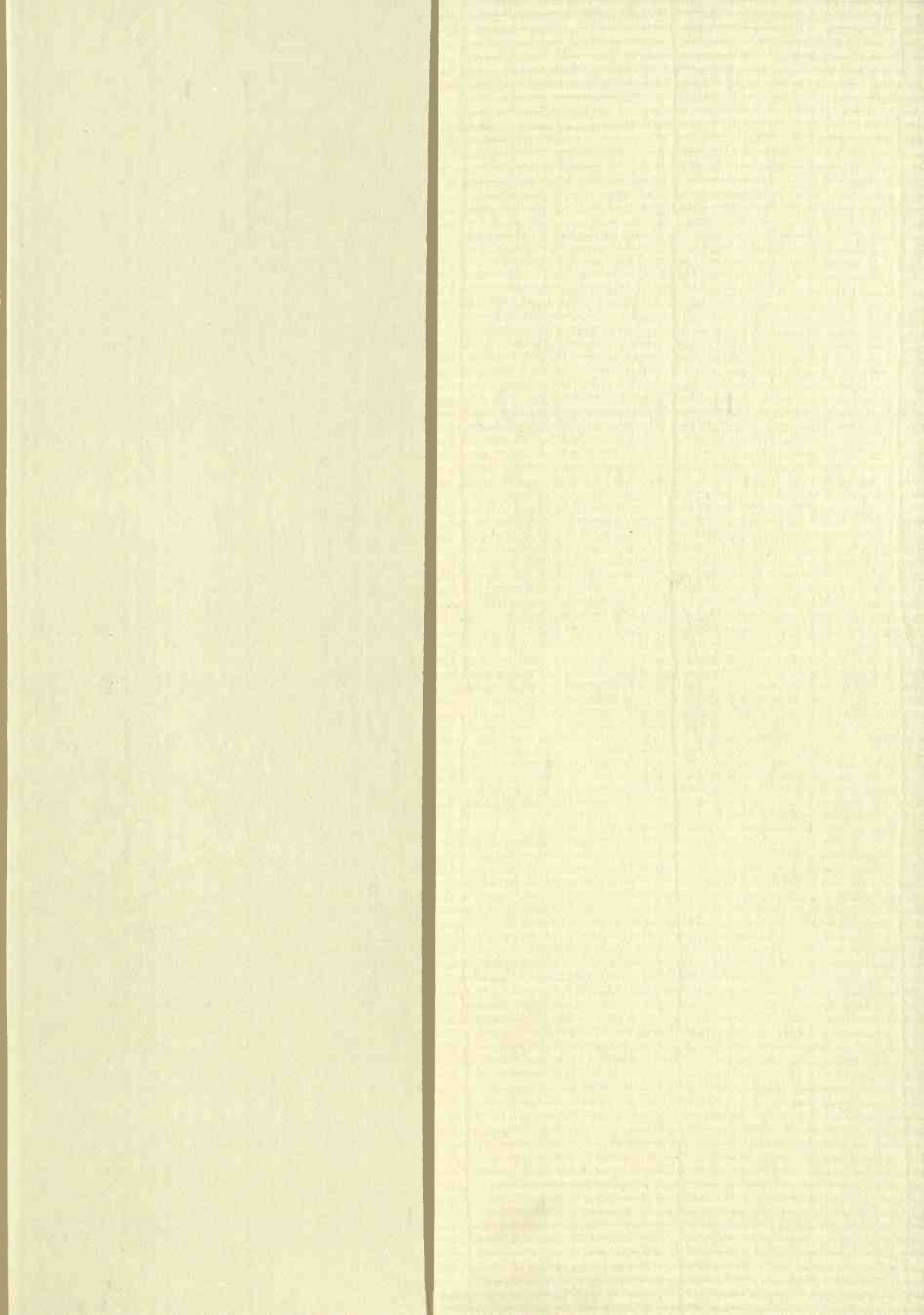
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