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Personal Identity in the
Human Rights Perspective

My question concerns personal identity from the point of view of the evolution of human rights today. I suggest that the development of human rights implies a different consideration of the identity of self.

In general the social or political identity of self is based on two traditional trends of thought: individualism and communitarian conceptions.

Individualism is the ideal background of human rights. Traditionally human rights belong to the individual without any consideration of his or her sex, religion, race, language and so on. If we note that these characteristics determine a community, we can appreciate the individualistic conception of rights. Today however there is in some way a return of the community in the philosophical sense as well as in the ethical and political sense. One speaks of a liberal community and of communitarian liberalism (*Taylor* 1989, pp. 159-182).

I. Individualism and Self

It is clear that it is not enough to pay attention only to the individual to be individualist. Individualism is only one of the ways of thinking of the individual and at the same time there are many versions of individualism (*Lukes* 1973; *Dumont* 1983).

To begin with we can affirm that by "individualism" we mean every conception that considers the individual, and not society, as the starting point of political and moral doctrine. But this definition is merely an approximate one; it is only a suggestion of an ideal framework.

Bobbio called the "great turn of the West" the process of replacing the primacy of duties with that of rights (*Bobbio* 1990, p. 57). Individualism is a conception that affirms the priority of rights over duties and the independence of the individual from society. Nevertheless there remains an open question of the criteria used to ascribe rights. If one maintains that the ascription of rights depends on the appreciation that some capacities or personal qualities receive from determined social contexts, then strictly rights cannot have primacy. But this pre-eminence belongs to the connections that individuals have with social life and with the models of common evaluation from which they derive the normative beliefs upon rights. Consequently a correct individualism has to uphold that the rights must be ascribed outwith a social context and that the individual is already a complete moral agent apart from the society (*Taylor* 1985, pp. 187-210). The ascription of rights out of consideration of society implies an underlining of those capacities which we share with all sensitive creatures (animal rights). On the contrary the communitarian point of view looks for what is specific of life *qua* human life.

The extreme version of individualism is that of Nozick when brilliantly he affirms that men are separate beings, each one with his own life to live. The individual is considered as unencumbered, spoiled of roles and socially enforced norms. Human rights belong to the individual independently from society.

In the light of human rights individualism has shown two faces: ontological individualism and deontological individualism. The difference consists of the consideration of human nature and of the relevance that human nature has for the constitution of personal identity.

For ontological individualism the natural qualities of self constitute personal identity. This is constituted of the desires and ends of individual. The self must rule its own world, that is its nature. It is like a king in his own reign. These qualities belong to the individual outwith and independently of the community. The ascription of rights does not depend on the social evaluation of personal qualities or merits. If they were dependent on them, human nature would be connected to human society. On the contrary according to individualism people are self-sufficient without any other. Human dignity takes its form outside society. However the difficulty of an objective determination concerning these natural qualities or capacities leads us to abandon this conception. Moreover, ontological individualism does not accept the priority of the right over the good, which is a principle strongly connected to a pluralistic conception of goodness and of human nature.

Deontological individualism is an individualism without human nature. The moral persons are not identified with any of their natural ends and must keep their transcendence in relation to the contingent world of nature and society. Besides this is a line of thought strictly connected to the ontological one. If the self is identified as moral agent in governing itself, i.e. in ruling over its own goods and its own body, then its own dignity is put totally in the values of autonomy and liberty rather than in the things in which the self turns to. The self is this same moral faculty of choice.

The core of deontological individualism is clearly presented in the following remarks: "society, being composed of a plurality of persons, each with his own aims, interests, and conceptions of good, is best arranged when it is governed by principles that do not *themselves* presuppose any particular conception of the good; what justifies these regulative principles above all is not that they maximize the social welfare or otherwise promote the good, but rather that they conform to the concept of *right*, a moral category given prior to the good and independent of it" (*Sandel* 1982, p. 1). Here the model is of course the thought of John Rawls.

According to Rawls the connection between the self and its qualities is not essential, but fortuitous. If I possess my qualities, I am at the same time connected to them and independent from them (*Rawls* 1971, pp. 127-129). A quality is "*mine* rather than *yours*", it is "*mine* rather than *me* " (*Sandel* 1982, p. 55). If qualities are contingent, it is possible to think of oneself without them (the *veil of ignorance*).

To have a *legal* right to that which I merit, I need to possess qualities in an unarbitrary way and to have a powerful *moral* right to receive what I merit. Both these conditions are refused by Rawls, for whom the possession of qualities is not inherent in personal identity and the moral virtues do not come before the legal institutions. According to Rawls, we do not know what anyone merits until we have formulated the rules of justice. Consequently we cannot base our conception of justice and the

ascription of rights on the notion of desert, because the natural and social qualities are both arbitrary. Only after the determination of the rules of justice may we establish what everyone deserves. Actually the idea of merit can only survive in the context of a community in which the main link is a common conception of the good life and in which individuals determine their principal interests by looking at the community itself. But the opinion of Rawls is that this common conception of the good is in principle impossible and that, therefore, we cannot base the rules of justice on it.

The two conditions, that individual capacities are separate from the self and that they are arbitrary, lead to a thin consideration of self as an empty and neutral person.

This conception of individualism is stricter and more consistent. It defends the priority and pre-eminence of the right over the good. However we must note that here the importance of rights is on the decline. Strictly there is the priority of law rather than of rights. Human rights are assets and not rules. The ascription of rights follows the definition of the rules of justice.

We have said that individualism is a conception that defends the priority of rights over duties. Nevertheless the ethical individualism of Rawls, which is a strong form of individualism, defends the primacy of the rules, i.e. of the principles of justice, and only then do we have rights. For the existence and recognition of these rights it needs a society and social institutions (*Rawls* 1977, pp. 159-165). Anyway - according to Rawls - rights do not have any function for the identification of self. Even if rights should come before the social institutions, they would belong to those furnishings from which the self is detached. This is the core of Nozick's critique. Rawls considers rights being bound to the community and, therefore, belonging to what does not identify the self. Consequently the conception of Rawls (and of Kant as well) is not based on the primacy of rights and this is a further proof of ambiguity and elusiveness of individualism.

In one sense, for Rawls, there is a link between human rights and the community or "social unity". For this reason, both, rights and the community, are useless for the identification of self.

In conclusion, ontological and deontological individualism do not permit the use of rights for the identification of self. Ontological individualism interprets rights as natural qualities of people, but this consideration implies a strong conception of human nature. Ethical individualism excludes the relevance of rights for personal identification.

II. The Communitarian Conception and Self

Another solution - as we know - is the communitarian theory. The qualities or personal capacities are not elements of human nature, but they are a product of a community. "I am indebted in a complex variety of ways for the constitution of my identity - to parents, family, city, tribe, class, nation, culture, historical epoch, possibly God, Nature . . . " *(Sandel* 1982, p. 143). Therefore there is not an unencumbered self, but a social self. The citizens are identified by the attachments they discover with other members of the community.

This means that the others with whom I divide the fruits of my abilities must not be considered as separate from me, but as people that are part of me, i.e. that belong to the description of myself. My being is *a social self,* but this does not mean that I have no autonomy. "The self is a social result, but this result is an independent person" (*Selznick* 1987, p. 447). This is a "constitutive" conception of community. It describes its members not just on the basis of their relationships that they choose, but on the basis of the bounds that link them together and constitute their identity (*Sandel* 1982, p. 150).

To affirm that individuals need community not only in relation to culture and language, but above all in relation to their identity means to refuse a universal dimension of rights and to identify people only as members of a community, in which they are bound to interdependence, communication and responsibility. The communitarian morality does not emphasize a philosophy of liberation and emancipation. Its central value is not liberty or independence, but membership.

Here, I will not examine further this constitutive conception of community, but I observe only that here human rights are certainly not the constitutive element of self. The liberal tradition is abandoned and the central value is not independence and autonomy, but belonging to a community (*Selznick* 1987, p. 454).

This seems to be a backward step in relation to the "great turn" of the West: the community would again have a priority over the individual and therefore duties over rights (*Moore* 1989, pp. 539-560). Burke has already criticized human rights in this way. Along with Bentham and Marx he considered it as a nonsense: it is better to speak of rights that a nation has, for instance the rights of the English, rather than of the inalienable rights of man. All rights we have derive from the legacy of our fathers and our ancestors rather than from our individuality. According to Burke individuals go away like a shadow, meanwhile state remains firm and steady. Is the going away shadow the individual or the state? (*Burke* 1906, p. 357).

III. The Concept of Community
Revisited from the Human Rights Perspective

After this brief exploration the conclusion should be the renouncement of every tentative at the identification of self through human rights. Nevertheless I am persuaded that human rights are not only arguments, but assets as well. They belong to the description of self. They are not something that individuals have, but really they are what individuals are. They concern the nature of individuals rather than their external attributes. This is the sense of what Bobbio called "the great turn of the West". How is a meaningful conception of self determined by human rights possible?

Therefore we must revisit our conception of the individual and the relationship between individual and community. The communitarian conception emphasizes what the ontological individualism neglects, i.e. the relevance of existing practices. This latter does not explain the practical and juridical reasonings which lead to the determinations of rights. If reason is detached from the vital contexts, practical reasoning is impossible, because each action is determined by circumstances (*Taylor* 1988, pp. 33-56; *Viola* 1990, p. 194). On the other hand ethical individualism, that affirms the priority of the right over the good, excludes the primacy of rights, because they belong

undoubtedly to the good of individual and to his personal plans in life. Rights, therefore, are the way of connection between right and good and the proof of their interdependence.

Thanks to their connection to good, rights are in some way linked to community. In the communitarian dimension, unlike that of society, there must be some integration, symbolic and shared experiences and actions, groups and institutions that are self-regulating (*Selznick* 1987, p. 449). From this point of view the rawlsanian conception of community is insufficient (*Nickel* 1990, p. 215-216), because it is not enough to share the political concept of justice ("*overlapping consensus"*) to make a community (*Rawls* 1986; *Baynes* 1990, pp. 61-81). There is a community only when this communication concerns the good, i.e. in some way the good life, and when the good life is not only a private affair. Only then the concept of community can enjoy great favour in political philosophy, i.e. when people identify their interests with that of their community and when justice is considered a part of goodness.

First we must consider the present evolution of human rights. The historical development of human rights reveals undoubtedly that the role of the community has always been very important. Citizenship has been a necessary condition for the recognition of rights. Only within the Greek polis and medieval cities is the liberty and autonomy of the individual discovered. The linkage between citizenship and rights is essentially tantamount to that between community and rights, because the citizen is defined in relation to a community. 'Commune' means that something is collected, joined together and shared.

Therefore western history shows that community precedes the discovery of individuality, its rights and liberties. In medieval times these values are discovered within communitarian contexts, in the communes, in the ecclesiastical and secular communities (*Bernam* 1988, p. 574).

Today there is a widespread evolution of cultural rights, which are rights with a content determined by the historical condition of social justice. For instance, the right to social development, to international peace, to a protected environment and so on.

The basis of these rights is no longer the natural individual outside the social context. Social rights are the rights of people according to their position within the social framework or according to their particular condition of life. The structure of the world of life (*Schutz* 1962, p. 208) determines the practice of rights, their discovery, their content and their application. Responsibility and solidarity belong essentially to the practice of human rights. From an anthropological point of view this means that individuals always live in social contexts, but at the same time they are not dissolved into a particular community.

Secondly we observe the evolution of the concept of community. Today, on one side, this concept becomes larger and richer in new forms and relations, but, on the other, it is clearer that community is no longer identified to the state or political society. Citizenship and its rights no longer clash with belonging to a state. Some rights of citizenship must ascribe in reason of determined conditions of life rather than of belonging to a state. For my insertion in some vital world I possess some rights that are a minimun requisite of civility. Community comes back in different forms except in a political one. Politics is no longer considered as the place of community and identification, but as an activity of protection and safeguard for a recognition of self that is

reached elsewhere or in different fields. Consequently only the local communities, on one side, and the international community, on the other, are emphasized.

IV. Identity and Difference

From the present situation of human rights I can derive some considerations on the relationship "individual-community" and on the problem of personal identity.

The new rights contemplate the person according to the different spheres of human existence. A human being is considered in his different stages of life, as an unborn child, as a born child, as an old man, as a woman, as an ill person, as a dying person, as a workman and so on.

Consequently law does not presuppose one and only one anthropology; on the contrary there are many anthropologies in conformity with the particular stages of human existence. Human life is divided into existential categories, each of them has its particular equipment of rights. Therefore personal identity seems to be broken into many facets. But every identity requires a unity in some way. What identity may be possible in this situation? On what basis may it be found?

First we must realize the new consideration of the individual and individualism. The individual remains the starting point, because these spheres of human existence are those of private life. To be born, to grow, to die, to love, to work, to suffer, to procreate . . . above all are events and actions of the individual. We all share these fundamental questions of human life, even if each of us has a different plan of life.

Aristotle thinks of human life in the best kind of polis in terms of stages: childhood to puberty, puberty to twenty-four, the life of the adult in full vigour, and the life of the experienced older adult. In all of them he will especially need to learn both to understand the principle of just distribution and to be moved by the disposition to abide by it (*MacIntyre* 1988, p. 106). We think of a lifetime as a succession of definite stages and as a life cycle in which the human conventions and the natural state of affairs are confused (*Rescher* 1987, pp. 100-112).

We must note that these spheres of human existence are not separate in the social context. The rights belonging to each category are not a private question. Women or old people complain that society is indifferent to their rights. They think that their particular situation belongs to common good. Only through the recognition of their rights by the whole of society can they achieve their particular form of life. Each existential situation is the theme of a common discourse within a large social context. In this way the problems of the others are my problems, because their flourishing depends on me as well. Different beings can recognize themselves as equal through their diversity, and not in spite of this, only when they have something in common. Among beings that are different in nature there cannot be a common life and, therefore, reciprocity and recognition. The possibility of comprehension of whose who are in a different situation of life is based on this unity in common humanity. I know that I may find myself in the situation of the other man. The different forms of life are ways of the common humanity. So today the urgent task is to insert diversity into a description of life that is marked by the universality of human nature and by a moral ontology (*Taylor* 1989a, p. 9).

Here I must distinguish community from common situation. All women share a common situation, the female condition, but they are not a community. A community is composed of people in different situations and in different spheres of existence. A form of life in itself does not constitute a community. A community embraces a great variety of human situations. The other man must be different from me by his otherness. Only when a difference is recognised, protected and sustained, is there a community. Only when the good of every citizen is a common good, do we admit the presence of community. Personal identity is possible only in relation to diversity. This diversity is marked by the present development of human rights.

A community is constituted by different ways of life and existence and by the reciprocal recognition of people. The other man must be different from me to be truly *other* and in the meantime I can recognize myself as different from him. Therefore personal identity is possible only in a community. When people respect a difference, recognize it, protect it and help it, then there is a community, that must be intended as the communication of life among beings equal in nature and different in situation.

As has been said above the task of community is the enforcement of equality among beings different in their situation of life. For this reason common good can be defined as the complex of conditions that permits to the individual in a community the achievement of his own plan in such a way as to contribute to the well-being and good life of others as well. In this way the concept of common good constitutes an essential part of that of private good and the two notions are strictly linked (*Veatch* 1985, pp. 156-157).

Presuming that to achieve one's own plan means to live well, then one must admit that a flourishing life, that in the meantime helps other people in the achievement of their own plans, is undoubtedly better still. It is strictly the true good life (*Aquinas* I, q. 103, a.6). The concept of common good grounds this connection between our private good and the private good of others.. This linkage exists not only as regards the good, but also as regards the right. The good of the others belongs to my plan of life (*welfare liberalism*) and it is not only an external border (*liberty liberalism)* (*Lomasky* 1987, pp. 84-85).

I wish neither to put community in the place of the individual nor to consider common good as separate from the private one, but to show that in the search of our good we must contemplate the good of other people. Here there is a conception of the individual different from that of individualism. The partnership consists just in this *common good,* i.e. in this connection among the plans of life. On this basis we can evaluate the plans of life, preferring those that contribute in some way to the well-being of other people.

For human beings a good life means achieving their own plan of life. Strong individualism affirms that there is an equality between the different plans of life. The question of goodness is subjective and therefore indisputable. However we must admit that a fulfilled life that implies co-operation with others is better than a selfish life. The plan of life of Mother Theresa of Calcutta is better than that of the Marquis de Sade. This means that we have a criterion of objective distinction between different plans of life. This criterion is based on the common good, i.e. taking into consideration the well-being of others in the determination of our own well-being.

For the ontological and ethical individualism is out of question that the private plans of life are unobjectionable, because they are the result of autonomy and free choice. Each of us has his own life to live and, therefore, he must not be prevented forging it as he likes, of course within determinate bounds. For this reason the right has a priority over the good. The right implies a communication of individuals, meanwhile the good concerns strictly the private world. However now we introduce the possibility of distinguishing the personal plans of life that are individualistic from those that are communitarian. In this way we have an objective criterion of evaluation and judgement for the personal plans of life. I mean that a rational or argumentative discourse about our private choices is possible in some way.

Dworkin has distinguished the volitional interests and the critical interests. He underlines that a good life must also include things that we have to wish for and not only that we like. A community is constituted by critical interests. The volitional well-being of the individual grows whenever he or she obtains what he or she likes. However his or her critical well-being improves only when he or she attains what he or she would wish for (*Dworkin* 1989, pp. 479-504).

Indeed the evaluation of our critical interests is not easy. The way of determining them - I think - is their reference to human rights as the contextual rights of the human condition. We must wish for the achievement of social justice as an essential part of our plan of life. We cannot be happy in an unjust society. We cannot be good if we are not just. I note here the difference between the problem of justice for a society and that for a person, i.e. the difference between the justice of legal and political institutions and justice as a virtue. I do not find this distinction in Dworkin's thought, but I suppose that the presence of critical interests requires it to be necessary.

This line of thought is verified by the present evolution of human rights. Certainly today there is confirmation of the pre-eminence of subjectivity and of its autonomy and liberty, but the diffusion of cultural rights and of their relative character underlines the relevance of the objective interests, i.e. critical interests. This trend extends to such a degree that rights are ascribed in absence of subjectivity as well.

This is the right point to underline that communitarian interests belong to the category of critical interests of whose who are members of a community (*Williams* 1989, pp. 515-520). One might wish for the achievement of social justice as an essential part of his or her plan of life. I not only mean that political and social institutions must be just, so that our life can be good, but also that we must strive to improve them, i.e. we must look for justice as a virtue.

If justice is a character of our moral personality, then it concerns the good life and belongs to personal good. Notwithstanding this virtue conduces a subjectivity outside its own world towards a consideration of other people. Nobody can live without the others and their consideration. We are not separate existences, but beings that reach their achievement only through cooperation and mutual help (*Nagel* 1970, chaps. XI-XII). We must work together not only in order to forge social and political institutions that permit the largest variety of personal choices, but also in order to create forms of common life. The individualistic thesis that each of us has a *separate* existence does not agree with the social dimension of a good life and implies a refutation of justice as a virtue.

V. Personal Identity and Human Rights as Social Practice

At last I have arrived at the initial theme of this paper, i.e. the question of personal identity. We have shown that the core of conflict between the individualistic and communitarian conceptions is the identity of self and that from this point of view both are insufficient: one excludes the communitarian dimension from personal identity and the other abandons the relevance of individuality and jeopardizes rights and their universality (*Mosher* 1991). Am I an individual separated from roles and historical contexts and abstractly identified by rights or am I a citizen of a determinate state, a member of this professional corporation, of this clan, of this tribe, of this nation? We must escape this unacceptable dilemma. I think that what is said above gives us a way out of this question towards a new direction, i.e. a new conception of the individual and his or her identity.

We have shown that the examined conceptions look for personal identity in relation to qualities and capacities. But now we must think that this point of view does not produce good results and that the consideration of the existential stages of life is more useful to this end. The situations of human life identify ourself more than our personal capacities and qualities. We reach our common humanity only through our specific way of existence. We are human beings as we are children, adults, workmen, citizens, old men, ill, dying … The ethical and political relationships (race, class, party, nation, culture) have a constitutive relevance for our identity only when they affect in some way those fundamental characteristics of our existence.

The social practice of human rights induces us to seek in this direction the identity of self, that goes through different stages of life and becomes conscious of his or her individuality within the different vital forms of life. Now the accent is given to what men are, i. e. the particular ways of their existence that constitute their identity, rather than to those qualities that they have by nature.

These existential spheres have a universality that lacks particular cultures and, in the meantime, they prevent considering man as an abstract individual without qualities. The individual conceives his or her plan of life within these particular situations of life rather than in a condition of isolation or behind a veil of ignorance. All those who share the same vital form of life are joined by the same needs and values and perceive a strong solidarity. On the basis of the rights that correspond to the particular situations the individual claims the recognition of his or her identity from the whole of society, i.e. from the different people, but knows that for his or her part he or she must recognize the otherness and its rights, waiving the absoluteness and one-sidedness of his or her claims.

In conclusion, the practice of human rights induces us to seek personal identity in the different conditions of life that the individual goes through. The individual is not marked by his or her qualities or capacities, but he or she is determined by the different ways of existence. These stages have a universality that communitarian thought lacks. However at the same time they prevent us from considering man as an individual without qualities and so merely empty and neutral. They contextualize human existence and permit us to find in our relationship with others the communication between different ways of life and, therefore, the unity of personal identity.

References

Aquinas, Summa theologiae.

Baynes, K. (1990), The Liberal/Communitarian Controversy and Communicative Ethics, in: D.Rasmussen (ed.), Universalism vs. Communitarism, Boston.

Berman, H. (1988), Individualistic and Communitarian Theories of Justice: An Historical Approach, in: Davis Law Review, Vol. 21.

Bobbio, N. (1990), L'eta dei diritti, Torino.

Burke, E. (1906), Speech on the Economic Reform (1780), in: Works, London.

Dumont, J. (1983), Essais sur l'individualisme: Une perspective anthropologique sur l'ideologie moderne, Paris.

Dworkin, R. (1989), Liberal Community, in: California Law Review, Vol. 77.

Lomasky, L.E. (1987), Persons, Rights, and the Moral Community, Oxford, 1973.

Lukes, S. (1973), Individualism, Oxford.

MacIntyre, A. (1988), Whose Justice? Which Rationality?, London.

Moore, M.S. (1989), Sandelian Antiliberalism, in: California Law Review, Vol. 77.

Mosher, M.A. (1991), Boundary Revisions: the Deconstrucion of Moral Personality in Rawls, Nozick, Sandel and Parfit, in: Political Studies, Vol. 39.

Nagel, T. (1970), The Possibility of Altruism, Oxford.

Nickel, J.W. (1990), Rawls on Political Community and Principles of Justice, in: Law and Philosophy, Vol. 9.

Rawls, J. (1971), A Theory of Justice, Oxford.

— (1977), The Basic Structure as Subject, in: American Philosophical Quarterly, Vol. 14.

— (1986), The Idea of an Overlapping Consensus, in: Oxford Journal of Legal Studies, Vol. 7.

Rescher, N. (1987), Forbidden Knowledge and Other Essays on the Philosophy of Cognition, Dordrecht.

Sandel, M.J. (1982), Liberalism and the Limits of Justice, Cambridge.

Schutz, A. (1962), Collected Papers 1, The Hague.

Selznick, Ph. (1987), The Idea of a Communitarian Morality, in: California Law Review, Vol. 75.

Taylor, Ch. (1985), Atomism, in: Philosophy and the Human Sciences. Philosophical Papers 2, Cambridge.

— (1988), Le juste et le bien, in: Revue de métaphysique et de morale, Vol.93.

— (1989), Cross-Purposes: the Liberal-Communitarian Debate, in: N.Rosenblum (ed.), Liberalism and the Moral Life, Cambridge (Mass.).

— (1989a), Sources of the Self.The Making of the Modern Identity, Cambridge.

Veatch, H.B. (1985), Human Rights.Fact or Fancy?, Baton Rouge.

Viola, F. (1990), II diritto come pratica sociale, Milano.

Williams, B. (1989), Dworkin on Community and Critical Interests, in: California Law Review, Vol. 77.