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War, terrorism and torture.
Reframing an humanitarian theory of justice as a critique of violence¹

1. Introduction

Different forms of public and private violence have defined the last decade of the past century as well as the early years of the new millennium. Bodies of women and men have been pictured next to images of ruins, violations, and military occupation. Soldiers and civilians were similarly involved in civil wars, genocides, mass rapes, tortures, terrorist attacks, so that it was difficult to trace a distinction about their different roles. In this context, the interaction between public and private violence has become more and more evident. Yet are these images different from what we saw in the past? Indeed there are some differences due to the new “world order.” Moreover, on the one hand there is the transformation of the modalities of war and terrorism (where collective identities are determined by an “explosive” mixture of culture, politics and religion). On the other hand, there is the changing meaning of the international law and the role played by a global civil society and the mass media (in relation to controversial humanitarian interventions and the violation of human rights).

Using as a background these issues, the thesis that I would like to advance is that a new approach to the critique of violence is needed. Indeed, it was developed in public discourse as well as in political/ moral/ social philosophy, but not yet sufficiently in the debate on justice. I would like to argue that the idea of justice cannot be separated from a critique of violence and a reference to moral sentiments. My paper is thus aimed at reframing some aspects of the present debate on justice and human rights, throwing a new light on the critique of violence.

My argument shall consider whether and how social actors, civil societies and theorists have reacted to violent global events, employing new approaches to public discourse and conceptual issues. In particular, I will develop a normative and critical interaction between gender studies (which questioned the traditional boundaries between the private and the public space), a critical theory of communicative action (as developed

¹ Earlier versions of this paper were presented at the conference on “*The Capability Approach Enhancing Human Security*” (University of Pavia, 5-7 September 2004), and the XXII World Congress of Philosophy of Law and Social Philosophy on “*Law and Justice in a Global Society*” (University of Granada, 24-29 May 2005).

by Habermas in the last works on cosmopolitan law) and the capability approach (as conceptualised by Sen and Nussbaum).

Forms of violation and discrimination towards human beings deny their capabilities, so that genocides and rapes in armed conflicts are the “public” continuation of differentiated forms of a private subjection. What I would like to stress is that rights, i.e. formal justice, refer *de facto* to human relations and presuppose a concretely moral recognition among individuals, which connects the respect for the psychophysical integrity of the individual with the development of his/ her capabilities. The processes of “universalisation” of rights, the “humanitarian” constitution of norms and the achievement of claims of validity from bottom up always arise from the concrete contexts of the life-world and from struggles conducted by violated and excluded individuals/ social actors. A more complex approach to justice can contribute to a new basis to citizenship, democracy and cosmopolitanism.

2. The State: the dialectic between welfare and war

“Rationalising” the shift from the *mythos* to the *logos*, Aristotle pictured politics as a “natural” way of leaving for all human beings – from the family up to the city-State -, in the construction of a common well-being life and in the organisation of a political government, based on a fair constitution. Yet mythological narratives and tragedies give back to us imagines of violence, stories of bloody wars also among consanguineous and the brutality on which Greek “civilisation” and the city-States were build up.

This background, with dark colours, was revisited in the early modernity, recurring to the imagine of a “natural state”: here human beings were supposed to live without law and any political agreement. The figure of the social contract among consenting partners – thematised by Hobbes, Rousseau and Locke, although with different premises and finalities – tries to figure out the birth of politics and the legitimation of the (nation) State. Yet this issue brings also to the ambivalent dialectic of the State: on the one hand the State must protect citizens from violence and arbitrary acts, on the other hand it is the legitimate holder of force, the police control and security.

Indeed, in the last three centuries the State has been the principal actor of two diversified forms of political actions: it has become a welfare entity, involved in the well-being of all citizens, promoting social policies of inclusion, (Calloni, 2004 a; Young, 2000) and interested in peaceful and collaborative relations with other nation-states. But in some

cases, the state turned over an aggressive political institution within the domestic borders and in international affairs, due to its nationalistic, imperialistic and totalitarian purposes.

Since the XIX century, next the fights for national liberation in Europe, there was the increasing of forms of imperialistic politics by nation states towards Asian and African countries. The state violence against “other” populations became manifest. The political idea, which supported these conquest wars, was the interest in manifesting the supremacy of one State over the others. The recognition of the political power of one or more over the others became the leading issue of international relations, while the idea of patriotism was absorbed by the nationalistic rhetoric: one’s had to die for the love of the country.

Starting from the XX century, the nation state was thus connected to diversified kinds of violence and power: on the one hand they were manifested towards citizens in form of control of their private life up to the dominion over their body (Foucault, 1976, 1984, 1984), and on the other hand they were acted against different states/ populations in form of aggressive politics. The critique of power started from the analysis of the political structure of the nation state, focussing the attention upon the necessity to deconstruct its ideological basis. Marx initiated thus the stream for a political-economic critique of the state, being the expression of the bourgeois dominion. The Marxist approach – in the Leninist revolutionary version - continued this line, radicalising the class struggle at the national and international level and approving violence as a mean for building up a communist society. The critique of the state was thus connected to both its nationalistic purposes and class dimension.

Yet this paradigm changed after the Russian revolution, when socialism became “real” through the power of a centralised party and the composition of a constellation of communist countries under the influence of the Soviet Union. Therefore, the two World Wars in the last century indicated new forms of power and political violence in the redefinition of the world order through terror and repression against both civilians and entire populations. As Freud argued, coming from the colonial time, European peoples did not expect wars between big “civilised” nations, governed by white people, who were the dominants of the world order. (Freud & Einstein, 1975).

In the last century science helped the development of political violence and therefore the effects of the World War II were more cruel than the first one. In her study on *The origins of totalitarianism*, Hannah Arendt traces the historical genealogy of contemporary political violence and the “extreme form of power” through the stages of anti-Semitism, imperialism and totalitarianism, connecting Soviet Communism and Nazism as examples of authoritarian societies. But the end of the World War Second did not coincide

with a time of reconciliation among world populations. Employing criteria of political judgement, as Arendt remembers In *On Violence*, “The Second War World was not followed by peace but by a cold war and the establishment of the military-industrial-labour complex (Arendt, 1969, 9). The Nineteenth century is thus pictured as a century of violence (Flores, 2005).

Indeed, the conventional physiognomy of the war was already changed since the beginning of the XX century, due to the interaction between imperialistic expansionism, the economic interests of national industrial sectors and the organisation of standing armies, which were skilled to use new kinds of weapons and means of mass extermination (like gas and poisons). From the '30s, this particular link between politics, economy and the improvement of technology became the basis for the establishment of totalitarian regimes and the practice of genocide. Later, the atomic bomb, exploded over Hiroshima, opened a new era of militarisation and political deterrence through the fabrication of more powerful weapons at the international level. A new kind of belligerency was inaugurated: the “cold war”, and producing a new disquieting sort of “competition” between human beings and the machines they produce. (Anders, 1956)

The war scenario of the new Millennium inherits the political tradition of the last century, even though specific features of war have been radicalised in a global perspective, due to the explosion of ethnic wars in post-communist and post-colonialist countries and the increasing of international terrorism. One of the newly emerged aspects related to the modification of war concerns the augmenting forms of violence against civilians and populations, fact that differs from the past conflicts. In fact, during previous armed conflicts, with the exception of genocides, the majority of killed people or violated persons was among soldiers and not among civilians. In the last wars, forms of both private and public violence, acted massively against local populations and individuals, have exponentially increased.

New reflections upon crimes of war (Gutman & Rieff, 2002), genocide (Power, 2002) and torture (Dworkin 2004) are thus urgently required. In fact, how could we face and co-exist with this both local and international scenario, where all citizens – mainly after September 11th - are potentially victims of acts of fundamentalist terrorisms? How can we coop as citizens and researchers with this new world situation? Could we continue to deny pain and atrocities (Cohen, 2001)? How could a global public sphere influence the modification of this trend against unfair decisions taken by dominant political powers (Kaldor, 2003)? What could be the legitimate role of international institutions?

As Habermas pointed out: “on the one hand the idea of an international community that eliminates the state of nature between nations by effectively penalizing wars of aggression, genocide, and crimes against humanity and punishing violations of human rights has taken shape in the UN and its branches. (...) On the other hand, the world organisation is often nothing more than a paper tiger. It is dependent on the willingness of the great powers to cooperate. (...) The discrepancy between what should and what can be done, between justice and power, sheds a negative light both on the credibility of the UN and on the practice of intervention unauthorized states that merely usurp a mandate – even for good reasons – and turn what would be justified as a police action into an act of war.” (Borradori, 2003)

Leaving under terror produces different kinds of sentiments, belonging, passions but also compassion, meant as “an emotion directed at another person’s suffering or lack of well-being” (Nussbaum C., 2003 a). Yet it becomes more and more evident the existing hiatus between aspirations towards a peaceful world and the reality of countries in war. Normativity and realism seems to become the two polarities on which the public discourse is presently focussed. For this reason, the development of a critique of violence is urgent, starting from the debate on social and global justice. In fact, as Walter Benjamin argued, political concepts are related to political violence. Therefore: “The critique of violence is the philosophy of its history.” (Benjamin, 1965, 63)

3. Political power, gender relations and justice

The arising of a debate on justice in Western countries was strongly influenced by the publication of the book by John Rawls on *A theory of justice* in 1981. The aim of this study was to indicate the possibility for liberal and pluralistic states to be fair and able to develop re-distributive policies, starting from neutral and universalistic principles, shared as such by all interested citizens. Principles of justice – difference and equal liberty – were the institutional basis for improving democratic governments. But in this case, the right had to be prior over the good. In fact, formal justice cannot imply contents of moral believe, because they would deny the possibility to find a common agreement on shared principles. Social justice was thus connected to the experiences of Western welfare states and the search of fairness, equity and equal opportunities for all citizens. De facto, Rawls referred to a legitimate state in time of peace, able of self-correction and capable to avoid violence. Due to different kinds of criticism mainly regarding the issue of the good, pluralism and

international relations, Rawls reconsiders his previous studies in *Political Liberalism* (Rawls, 1993) and *The Law of peoples* (Rawls, 1999).

Yet a point remains open: how can justice, as a “procedural” matter, be related to ethics, politics and the right in a globalised world and in the crisis of the traditional international law (Habermas, 1992; Ricoeur 1995)?

Amartya Sen stressed the limits of a purely formalistic and constructivist this approach on social justice and international relations, questioning the main idea of “equality” (Sen, 1980) and introducing the point of view of countries in development and the notion of the functioning of human capabilities. Human rights (Sen, 1997, 2004) are thus not only fixed in norms but develop in different contexts in form of freedom and opportunities. This concept contains a strong normative and counter-factual meaning, which permits to develop a social criticism, referring to moral sentiments. In this case, universalism is not an abstract reference, deduced by formal principles, because it is rooted in the context of daily life, starting from the family sphere (Moller Okin, 1989).

This issue was re-enforced from a gender perspective by Martha Nussbaum (Nussbaum 1995, 1999), who argues that the capability approach in the political sphere means that the development of specific human capabilities have moral contents and implications. In this case justice is normatively interconnected with morality, obligations (Korsgaard, 1996), the respect of human rights and the promotion of human development (Fukuda-Parr & Shiva, 2003). Freedom is “freedom from fear – of threats to personal security, from torture, arbitrary arrest and other violent acts.” (UNDP, 2000, 1)

The capability and development approach (Sen, 1999) is thus able to reframe a purely formal approach to justice, implicating moral sentiments and referring to the concrete life of people, starting from gender relations and the social inequalities they imply. Therefore, before being “public”, the critique of violence should be “private”, starting from the gender-based violence.

Starting from the '30 during the French and American exile, members of the Frankfurt School tried to identify a connection between gender domination in the family and the affirmation of the authoritarian personality and totalitarianism (Horkheimer et al. 1936, 1947, 1950). Yet this interdisciplinary approach was not employed in recent studies on violence. In fact, violence is analysed in both political and anthropological sense (Kean, 2004), trying to individuate its roots, the reasons of its revival in period of crisis and the motivations of its perpetuation over time. These books continue the theoretical and analytical tradition initiated by Hannah Arendt in *On Violence*, where she does consider the increase in violence due to wars, revolutions, and technological advances, but ignores

its “private and gender” meaning. Therefore, in many present books on political violence there is no mention to the idea of sexual/ domestic violence. There are then studies, which analyse the meaning of global justice (Pogge, 2001) from the institutional viewpoint, international relations, reframing the main Rawlsian concepts of justice, but without any reference to concrete experiences of daily life. In both cases violence and justice are not connected to gender issues. At the same time, many surveys in gender studies do refer only to practices conducted by women in facing domestic violence. On the contrary, I think that the critique of (political) violence should be always related to a normative idea of justice, which takes into account inequalities and deprivations arising from unfair private relations among human beings. The capability approach can contribute to integrate this gap in recent literature and studies.

Violence is a deprivation of capabilities, which limits the functioning of human beings and the access to a full citizenship. In fact, “the connection between physical security and citizenship is perhaps indirect. But in order to be citizens, people need a degree of independence and immunity from private and public violence. Otherwise they are entirely subject to the whim of others. Protection against sex-based public and private violence is therefore a precondition for the status of citizenship.” (Sunstein, 1995, 357)

Women’s movements and feminists as a global civil society (Anheier et al., 2003) have had the merit over decades and all over the world to have stressed the political significance of sexual violence and have promoted campaigns and civic mobilisation with the scope to let recognise that gender-based violence is a crime against human rights (Calloni, 2002). Moreover, some feminist scholars have pointed out that conventional cultures maintain forms of violence against women, as emerged in a debate about the limits of multiculturalism, which can be “bad for women” (Moller Okin, 1998; Cohen et al. 1999). One of the key issues of feminist theory has thus become the analysis of the possible relation between sexuality and the male violence/ domination (Kelly, 1988).

After many years of struggles and campaigns, the United Nations has finally deliberated a resolution against gender-based violence. Article 1 of the UN Declaration on the *Elimination of Violence against Women*, proclaimed by the UN General Assembly in its resolution 48/104 of 20 December 1993 (and included in the *Platform for Action*, signed in Beijing in 1995 during the Fourth World Conference) (UN, 1996), defines the term “violence against women” as: “Any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”

Three contexts of violence are then differentiated in Article 2: family, community and state:

1. Physical, sexual and psychological violence occurring in the family: wife-battering, sexual abuse of female children in the household, dowry-related violence, marital rape, and female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.

2. Physical, sexual and psychological violence occurring within the general community: rape, sexual abuse, sexual harassment and intimidation at work and education institutions, trafficking in women and forced prostitution.

3. Physical, sexual and psychological violence perpetrated or condoned by the state, wherever it occurs. (Committee on the Status of Women, 2004)

If we conceptualise a critique of violence starting from the private sphere, we can better understand its roots, its political reflexes and the reasons of its upholding. If we want to rethink the evil (Lara, 2001), we should also reconsider the meaning and impact of mythological imagines of violence and collective imaginary in the present. In fact, conquests and new political orders have been often built up over the rape of local women, but traditional imagines of these acts continue to survive in an often uncritical or even heroic way. At this regard we can think at the paintings of Europe raped by Zeus transformed into a bull, or at the pictures of the Sabines, women belonging to the autochthonous people of Sabin, who was won by the Roman tribe. The Sabines were kidnapped and raped in order to allow the birth of new citizens but with the Roman seed. The same story was cruelly repeated during the recent ethnic wars in the former Yugoslavia: rape had the double function of humiliating subjected women/ populations and initiating a new ethnicity through the seed of the winners.

Violence has symbolic roots (Mackinnon, 1989; Bourdieu, 1998), which permits to violence to be re-actualised in times of war, crisis and conflicts, as experiences in post-communist countries have put in evidence (Calloni, 2004 b). And in many case the private and sexual connotation of violence is evident.

For instance, private violence was used during recent genocides in both Rwanda and the former Yugoslavia as a mass extermination. Neighbours killed people they knew and worked with, people who lived very closed and were suddenly divided by a re-ethnicisation of their belonging and identity struggles. Bodies are at the centre of recent crimes of war and genocides. Political violence has here evident private roots and sexual connotations.

In recent wars – like in Bosnia – men were also raped. But differently from women, who often talk about their experiences and attend psycho-therapeutic practices, men do not traditionally use to mention the sexual abuse they have suffered: while torture is often

remembered by the victims as a sign of heroism, rape is a hidden trauma, lived as a matter of shame. Another case: tortures against Iraqi civilians and soldiers were based on sexual abuses – conducted also by a woman soldier - and referred to a Western pornographic imaginary with the aim at humiliating the prisoners (Sontag, 2004). This violation was done despite the “traditional finality” of torture, whose international definition is: “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession.” (UN, 1984).

4. Towards a new approach to citizenship and humanitarianism

Justice, ethics and politics should be rethought in the light of a reformulated critique of violence, a new approach to humanitarianism and broader notion of citizenship. In many cases, violence, humanitarianism and action have been connected.

The idea of humanitarianism was elaborated within the debate on *jus in bello* and developed in relations to the Geneva conventions. Yet in the last decades the praxis of humanitarian interventions has challenged the traditional approaches to the sovereignty of a nation states and international law. In fact, humanitarianism has been discussed in the last decades at least in two different ways: as “intervention” because of natural catastrophes or famines and “intervention” due to war events. In particular, five different typologies of humanitarian interventions and aids have emerged: 1. Natural catastrophes; 2. Famines and struggles against poverty; 3. War events; 4. Aid for populations in war; 5. Assistance to refugees.

These different meanings of “humanitarianism interventions” have caused contrapositions between governments and peoples and fractures between the international community and the “political power” of hegemonic nation States. These issues concern also the role of the international community (such as super-national institutions, the UN, NGOs, global public sphere, social movements) in defence of human rights and the transformation of the traditional international law, following a cosmopolitan perspective (as in the cases of the international penal courts where individual responsibilities for genocides and crimes of war are judged). At this regard, the main question concerns whether human rights can be guaranteed only within the borders of nation states and juridical contexts, whether they are legitimate by ethical fundamentals and political institutions, or whether they have a global legitimation, so that a cosmopolitan law can be expected.

Have recent humanitarian interventions become purely instrumental and violent war actions, or do they indicate the constitution of a global public sphere with cosmopolitan interests? Indeed, they have shown a specific dialectic between struggles against violence and production of violence not only against involved soldiers but in general civilians.

Criticising violence I want to refer to the normative idea of the respect of the psychophysical integrity of a non-humiliated (Margalit, 1996) individual and to support the concept of a reciprocal recognition among human beings (Fraser & Honneth, 2003). This should be also valid in international contexts and relations.

If we start from normative principles, we can also critically comprehend contexts in which they are denied and to individuate pragmatic proposals in order to face them. But we can also start ex-negativo, defining the meaning of miss-recognition, which can be meant as: "Every attempt, whatever the purpose or intention may be, of exerting control over the body of another person against that person's will constitutes a certain degree of humiliation that will, more than any other form of contempt, harm the relationship that this person has with him/herself. It is not only the physical pain that distinguishes similar forms of physical offence - e.g. torture or rape - but rather the combining of the pain with the emotional offence of being exposed without protection to the will of another (to the extreme of being deprived of the experience of reality). The physical abuse of another person is such a powerful affront that it cripples the victim's capacity to independently co-ordinate his/her own body; resulting also in a kind of social shame, in a loss of trust and faith in the Self and in the external environment to the point of adversely affecting the physical level of relationships with other people." (Honneth, 1993, 20)

An abused and violated person is crippled not only with respect to his/ her self-esteem. This human being is also deprived of a life worthy of being lived. Primo Levi mentions this feeling in *The Truce*, defining it as the "incurable nature" of the offence, so that

"no thing could ever come to pass that would be so good or pure enough to erase our past. The signs of the offence we suffered would be in us forever and in the memory of those who witnessed, and in the places where the atrocities were enacted, and in our recounting of the events. Because, and this is the great and horrible privilege of our generation and of my people, no one more than ourselves could better understand the incurability of the offence that spreads like a plague (...), it is an inexhaustible fountain of evil; it cripples the bodies and souls of those who are drowning in it, it extinguishes them and makes them ignoble; it goes back to the oppressors in the form of infamy; it is perpetuated in the form of hatred in the survivors, and teems in thousands of ways,

against the will of every person, like a thirst for revenge, a moral collapse, refusal, exhaustion, a renunciation.” (Levi, 1997 a, vol. 1, 206)

Primo Levi returns to the topic of the “memory of the offence” in *The Drowned and The Saved*.

“Once again it must be recognised that, with a sense of mourning, the offence may never be cured: it goes forward in time, and the Erinnyes, in whom we must believe, do not only harass the torturer (if they do harass him, aided or not by human punishment), but perpetuate his work by denying peace to the tortured (...) A drift in memory may be observed even in the larger sphere of the victims, but in this case, obviously, there is no malice. Who is treated unjustly or with offence does not need to make up lies in order to rid him/herself of the guilt for a sin (s) he did not commit (even if by some paradoxical mechanism (s) he may feel shame); but this does not mean that even his/her memories may not be altered.” (Levi, 1997 b, vol. 2, 1007)

Levi’s tragic testimony acquires a certain meta-temporal value that sheds a different light specifically on ancient Greek civilisation (through the Erinnyes) and on modern society (through reference to the Holocaust) and, in general, on the process of Western civilisation. History, politics and the life of individuals are here interconnected. Levi’s words help to give a more complex answer to the feeling of guilt and violence that connotes the daily life of many people. They refer constantly to specific acts of violence they experienced and their bodies and souls indirectly or directly carry out the indelible signs of the crimes committed against them. As Primo Levi himself states, the fact of having been subjected to violence does not “mean that his memories have not been altered.” An indelible trace remains in the shape of a legacy and reminder that such violence should never again be perpetrated.

Therefore, the meaning of citizenship should be reframed in a broader sense, because in an age of globalisation it cannot be any longer related only to the holding of political rights but to the cosmopolitan perspective (Held, 2004), where the rights of the “others” are included (Benhabib, 2004). The concept of citizenship should imply, beside the idea of the respect of all individuals, also the aim to empower human capabilities and the free will of social actors, associated in different groups and communities. It is therefore necessary to abandon the idea of citizenship as based on the *jus sanguinis*, which lied at the basis of nationalism.

Therefore, a purely distributive model of justice based solely on the fair distribution of “common goods” or on the relationships among sovereign nation states is no longer sufficient. The notion of a humanitarian justice cannot be deprived of its ethical

foundations. No political or social innovation may be considered satisfactory or as having achieved its redistributive goals if individuals are first violated, segregated, excluded, discriminated or humiliated, starting from what happens in their own home. "The quality of life" (Nussbaum & Sen, 1993) does not consist only in the elimination of poverty, but in the possibility for each individual to develop and let functioning his/ her own capabilities. Gender inequalities are the key examples used to show the limits of the traditional theories of justice: utilitarianism, rationalism, liberalism. The struggle against (economic) misery becomes both a critique of (moral) injustices, in relation to possible normative (legal) and pragmatic (political) solutions. Social policies should be thus being founded on diversified interventions and forms of a "well-tempered universalism", founded on a sort of "inclusive selectivity." (Pennacchi, 1999). Universalism can be "contingent", originated by concrete and contextual experiences. It is not only "positive", but also "reiterative" or "negative" (Walzer, 1990), of which individuals bear the marks.

A re-formulation of the critique of violence, the conceptualisation of an idea of humanitarian justice and a re-founding of a (cosmopolitan) citizenship should start from concrete interpersonal relations up to the State and international organisms. The moral principles of a reciprocal recognition and respect of the dignity of all human beings should be supported also by the ideas of freedom from domination, oppression and dependency, in the critique of violent patriarchal cultures and gender domination. These ideas are not merely theoretical or normative, because their content should refer to pragmatic strategies for ending violence (UN 2004). Yet in this case the Universal Declaration should also be reframed, in the sense of a cosmopolitan law in order to build up a global society and to prevent the moralisation of politics.

On the reconstructive and interpretative train of thought, I have tried to argue in this paper that gender-based violence in particular as well as psychological, military and state violence in general are determinant aspects of politics, from which we must take leave. It is true, however, that in order to take leave of violence we must also completely rethink and revise the meaning of "social bond", recovering the value of our emotional ties in a different light, as it is the inescapable normative aspect on which our daily life and the respect for groups and individuals are founded.

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