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IDENTITY AS SELF-ASSERTION. THE AGE OF RIGHTS AND THE CHALLENGES OF POSTMODERNITY

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§ 1. – From the social role of the members of a social community to the rights of the persons

The theme of rights is so absolutely central to legal-philosophical reflection that when the term 'age of rights' is being used to refer to the period coinciding with the consolidation of contemporary democratic regimes, it means that 'human rights, democracy, and peace are three necessary moments of the same historical movement: without recognised and effectively protected human rights, there is no democracy; without democracy, there are no minimal conditions for the peaceful resolution of conflicts. In other words, democracy is the society of citizens, and subjects become citizens when certain basic rights are recognised; there will be stable peace – a peace to which the alternative is war – only when there are citizens who no longer belong only to this or that state, but to the world'.[1] This happened at the end of a process which started from the individual States, reached its apex in the post-World War II constitutions and was projected into the international dimension, beginning with the 1948 International Declaration of Human Rights thanks to which a cosmopolitan idea of the human person and their dignity – which should be protected even in the very confrontations of the political organisation they belonged to – took root. It is possible to trace back the origin of that process to the epochal passage of the French Revolution, and then identify within it different generations of rights in a historically determined succession. In particular, 'Chronologically speaking, first came the rights of liberty advocated by liberal thought, where liberty was understood in the negative sense', then came social rights, which 'in their broadest dimension entered the history of modern constitu-

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1. N. Bobbio, *L'età dei diritti* (Einaudi 1992) VII-VIII.

tionalism with the Weimar Constitution',[2] up to the new rights of the most recent stages, which largely refer to the 'threats to life, liberty and security coming from the growth of technological progress'[3] and are increasingly the object, in turn, of formal constitutionalising, as recently happened in Italy with regard to the right to the environment, which was explicitly recognised with the reform of Articles 9 and 41 Const. carried out through the Constitutional Law February 11, 2022, No. 1.

Guido Alpa's intellectual path is set against this backdrop and, in order to reconstruct it, it is convenient to start from the end, that is, from the last sentence of the book, where the author states that 'Identity is neither a photograph nor a point of arrival: identity is an instrument that from time to time can fulfil a liberating or persecutory function. The level of civilisation of a society is given by the extent to which it is able to guarantee to everyone the right to be themselves'.[4] This is how we express in icastic and synthetic form what can be considered as the key to reading a reflection that is conducted from a broad perspective but always through the lens of law, seen in its normative dimension so as to distinguish it from other social sciences – which are instead oriented towards grasping the reality of facts.

The first part of the investigation is a reconstruction of the development of the concept of 'person' over time. More specifically, it is observed that it used to be correlated to a specific social position in Roman law: 'father of the family, married woman, unmarried woman, adult child, minor child, slave, freedman, ie freed slave, citizen, foreigner, and so on'.[5] This structure continued throughout the Middle Ages and up to the *Ancien Régime*, acting as a vehicle for the privileges associated with the various statuses. And even when, after the French Revolution, the picture changed by virtue of the generalised recognition of the so-called 'human rights', privilege re-proposed itself in new forms, first and foremost on the basis of the centrality assumed by the right to property which, although abstractly guaranteed to everyone, 'differentiated individuals to the point of becoming one of the requisites for exercising the right to vote'.[6]

The decisive step came only with the approval of the 20th-century constitutions, in which the individual sphere was removed from the legislator's discretion and protected directly at the super-primary level of the hierarchy of normative sources. The consequence was that, 'In this context, the word "person" does not have the meaning used by the Romans, it acquires a more pregnant meaning. This is why it is usually said that with the post-World War II constitutions, the individual became a person, no longer an abstract concept, but a man or woman in the flesh, with his or her needs, aspirations, dignity and inviolable rights'.[7] In other words, whereas the idea in question was previously a tool to distinguish and value certain subjects, it now became a factor of equality, insofar as 'The role of law changed, and no longer consisted in consolidating differences to protect the privileged (…), but rather in guaranteeing inviolable (human or fundamental) rights to all, and recognising their identity'.[8]

From such a perspective, 'Identity is no longer constructed from each man's past, but looks at the present and the future, and becomes a choice and an opportunity',[9] being the

2. ibid 262-63.
3. ibid 267.
4. G. Alpa, *Il diritto di essere se stessi* (La nave di Teseo 2021) 298 (in the following text, this book will be referred to as *DES*).
5. ibid 12.
6. ibid 14.
7. ibid 15.
8. ibid.
9. ibid.

object, in turn, of a right to the full realisation and expression of one's way of being. Hence the problem is to unhinge discrimination, which 'concerns both the individual as an individual and the individual as a member of a community; but individual discrimination can also concern the individual within his or her own community',[10] also taking into account that the various discretionary criteria tend to combine, so that, for example, 'Sex is always combined with another criterion: with "race", skin colour, ethnic or social origin, genetic characteristics, and so on'.[11]

In that situation, the main element that brought about change was the enhancement and protection of fundamental legal situations. This was a phenomenon that evolved over a long period of time and one should bear in mind that 'The parable of rights crossed the nineteenth century and developed along with the cult of property rights, legitimising colonialism, which resorted, for a certain point of view, to the same arguments that Spanish jurists and theologians used in order to legitimise the conquest of the Indies'.[12] Moreover, the Enlightenment intellectuals themselves did not go so far as to prefigure the complete overcoming of the traditional order. Indeed, it is noted that Montesquieu did not fail to assign the nobility a fundamental function in the apparatus of government and that Voltaire downplayed the impact of the proclamation of the principle of equality, while Rousseau was more modern. The same approach is found – albeit with different nuances – in Filangieri and Bentham.

This cultural climate profoundly influenced the normative side, which borrowed its conceptual categories from it. In particular, 'In the two traditions, the French and the American, there was a succession of declaratory texts and texts organising society which had a "constitutional" value' and 'The revolutionary scope of these texts was given above all by the proclamation of rights'.[13] The first to come to light was the Declaration of Independence of the United States of America of 1776, followed by the Constitution of 1787, in which there was an articulate enumeration of fundamental rights, with the possibility of adding others by virtue of the Ninth Amendment. A few years later, the Declaration of Rights that marked the beginning of the French Revolution when it was adopted in 1789 was replaced first in 1793 by the Jacobin Constitution and then in 1795 by the Constitution that was approved after the period of the Terror. The Austrian system, in which rights were incorporated into the Civil Code, and common law, which is characterised by the lack of 'an organic framework to regulate the person',[14] followed a different path.

Conversely, constitutions approved as a result of the 1848 uprisings showed some regression compared to the results achieved in the 18th century. For example, in the Albertine Statute (1848) 'Human rights were ignored. There was no proclamation of human rights but only the declension of the rights and duties of the citizen',[15] although there was no shortage of cases in which a more modern approach emerged, starting with the French Constitution of 1848 and the Roman Constitution of 1849, where the privileges of birth or caste were explicitly rejected. Until, in keeping with the sequence outlined above, there was a decisive reversal of the trend in the contemporary constitutional charters, the paradigm of which, from this point of view, was the Universal Declaration of Human Rights of 1948 and the European Convention on Human Rights of 1950.

10. ibid 25.
11. ibid.
12. ibid 53.
13. ibid 63.
14. ibid 69.
15. ibid 72.

§ 2. – A History of discrimination. Sex and race

It has been said that Alpa identifies discrimination as the antithesis of the right to full self-realisation and, in fact, 'If we look at the individual underlying the abstract configuration, we realise that man exists, that is, comes into consideration, only if he is distinguished from other men; and that distinctions between individuals are related to two fundamental factors: the natural factor and the social factor. The former is based on the conception of nature translated into the world of law, the latter depends on birth and takes into consideration man's natural condition (…). This is therefore the path to understanding the different meanings of "person", the way in which law builds the image and role of the person, the way in which law can be discriminatory or protective'.[16]

With regard to discrimination based on nature, Alpa first of all examines discrimination based on sex, pointing out the minority position in which the religions of the Book place the female component, while observing that 'The opposition between man and woman is a constant in the history of humanity, at any latitude and at any historical moment'.[17] This was a contraposition which started to be overcome in the context of the Enlightenment – with some forefront intellectuals as high-flying as Louise-Félicité de Kéralio and Olympe de Gouges – and continued into the 19th century in Italy under the impetus of Cristina di Belgiojoso and Anna Maria Mozzoni among others.

However, in the Napoleon Code, the approach remained rigidly male chauvinistic, given that 'The secular, bourgeois family model (…) thus corresponded to a "strong command structure" that was functional in 19th-century capitalist society'.[18] The Italian Code of 1865 also adopted the same position, so much so that it was not until 1919 that women became *sui juris* due to the abolition of marital power. This allowed them to have access to the profession of lawyer, while 'For the other professions, the notary and the magistracy, as well as for political representation, they had to wait for another few decades, not only because their entering the world of law was still met with hostility, opposition, cultural delays and petty limitations, but also because exercising the functions of a notary or magistrate meant carrying out a role of a public nature'.[19]

In the same way, discrimination based on 'race' was linked to nature, insofar as 'It is always something inherent in nature considered in its physical consistency and appearance that racists believe (or claim) to find in individuals who are characterised as different'.[20] The juridical condition of the Indios is considered by Alpa to be emblematic of the ongoing debate on the relationship with the other, but it probably finds its most tragically emblematic expression in the centuries-long persecution of the Jews, of which he briefly reconstructs some of its essential passages.

More specifically, once the exclusive reference to the physical sphere has been overcome, 'In the process of internalising the image of the person, man is considered to be endowed with sensitivity and reason, but also to be a representative of his species (…). And it is precisely the unity of spirit and body that is at the basis of the theory of human races, which is described metaphorically in the distinction between night/day/dawn/dusk, in which the daytime peoples are the Caucasian ones – who express the pinnacle of humanity –, the

16. ibid 43.
17. ibid 83.
18. ibid 89.
19. ibid 93.
20. ibid 107.

human quality gradually degrading as skin colour becomes darker'[21] – unless further support is found in evolutionary theories, which are invoked to justify the superiority of the white peoples over other peoples. This discourse is declined in the book as well, with reference to the history of slavery in the United States and to that of Italian colonialism, of which a synthesis is proposed focusing above all on legal implications.

§ 3. – From the bond to the land to the subject of law and to the 'new' rights of the Republican Constitution. Human dignity as the founding value of the whole system

Developing his reasoning on the 'right to be oneself', Alpa then deals with the bond to the land, placing it at the origin of that personal status, which is ascribable to the current notion of citizenship, whereby 'The person, wherever he may be, carries with him the rules that identify him as a human being, and as the holder of the personality rights that his system recognises'.[22] But the connection to a specific territory, in addition to a more strictly legal value, also has implications at the level of language, traditions, history and culture and thus leads back to the broader sphere of the nation, to which a further component of a spiritual nature is added.

Continuing his study of the sphere of distinctive signs, the author also dwells on the progressive assertion – from the early Middle Ages onwards – of the name as a connotative element, starting from the consideration that 'The surname was the result of the re-characterisation of the individual: the individual was no longer an amorphous monad in an anonymous crowd, but had his own personality expressed in his name. The name is a sign of freedom: it is no coincidence that the Italian Constitution, like other constitutional texts, recognises in the name an essential feature of the person, and protects the name as a fundamental right together with legal capacity (Art. 22)'.[23]

Along this line of development, the author examines the nineteenth-century notion of the 'subject of law', clarifying that man is called a subject of law 'not based on his ethical-psychological characteristics nor on his social relations, "but only by virtue of formal recognition by the legal system". The subject of law is "the point of subjective legitimation of legal consequences", and personality and capacity for legitimation are not qualities of the subject but the form and presupposition of all the juridical qualities that can be conferred on the person'.[24] In other words, there is an artificial creation, in favour of which the right to physical integrity, the right to a name and a pseudonym, and the right to the image – which concerns the physical image as reproduced by the new techniques of photography and cinema (Articles 5-10) –, were codified in Italy at the end of 1938 as absolute subjective rights of the person.

A first degree of guarantee was thus achieved, which was completed and enriched with the approval of the Italian Republican Constitution, which is rich 'in references to the per-

21. ibid 116.
22. ibid 127.
23. ibid 140.
24. ibid 151.

son as such (for which Articles 2, 3 and 22 apply) and in provisions that presuppose the "value of the person" and confirm the existence of a general principle aimed at protecting it (Articles 9, 13-27, 29-31, 33, 34, 35-40 and 41-54)'.[25] In particular, attention is focused on Article 2 of the Constitution, which offers a choice between a conception of the same which is a synthetic expression of all the subsequent provisions relating to individual constitutionally-sanctioned legal situations, and an open formula, which may lead on to the organisation of further values not explicitly referred to. Alpa adheres to an intermediate position, holding that 'Article 2 is an "open" text, interwoven with the values shared by the social conscience, intended to make the system "fluid", informed by a mild right and by the plurality of rights, which are subdivided into rights-claims and rights-opportunities'.[26]

Specifically, Articles 2 and 3 of the Constitution are identified as the matrix of the so-called 'new' rights, whereby 'Alongside legal capacity, physical identity and citizenship, have been created the right to privacy (…); the right to protection against the computerised collection of personal data; the right to personal identity (…); the right to sexual identity; the right to health (elaborated through the connection of these norms with Art. 32 of the Constitution) (…); the right to a healthy environment (developed by linking these norms to Articles 9 and 32 of the Constitution)'.[27] This is still work in progress, as it has recently also included the sphere of bioethics (reference is made to the right to preserve one's genetic heritage, the right to procreation, the right to the prevention of therapeutic measures). In all this complex universe of subjective legal situations, Alpa points to human dignity as the common denominator, recognising in it 'the essential element of the new conception of the person, a sort of "anthropology of the *homo dignus*", which connotes the way in which man must be considered as a bearer of values, protected therefore from threats to life, to health, and to freedom, and as an end, not as a means by other men'.[28] He adopts a functional conception of human dignity, understanding it in terms of a value which may be realised above all through the activity of the judicial bodies – which is briefly accounted for by tracing an outline of both the case law of the Court of Cassation and of the Constitutional Court, as well as that of the Strasbourg Court on the European Convention on Human Rights and of the Court of Justice of the European Union on the Nice Charter and the Lisbon Treaty.

§ 4. – The path of equality in differences

Against this theoretical backdrop, Alpa proceeds to a series of in-depth studies of some of the most controversial topics, starting with the protection of women – the evolution of which is rebuilt in the various spheres of social life, from work to the family – and the fight against discrimination in the sexual sphere – on which he conducts a wide-ranging reconnaissance that also includes the jurisprudence of the United States Supreme Court, since 'The United States is the country in which the rights of the different have been recognised as a priority' –[29] before providing a careful analysis of the regulations on civil unions that have been recently approved in Italy.

25. ibid 157.
26. ibid 158.
27. ibid 158-59.
28. ibid 165. See also S. Rodotà, *Il diritto di avere diritti* (Laterza 2013) *passim*.
29. Alpa, *DES* (n 4) 188.

Similarly, the issue of race is still a long way from finding a convincing solution, tackled in the book as it is above all from the perspective of hate speech, and with regard to which it is observed that 'In the Western world two extreme models of reaction can be briefly distinguished: the so-called European model, which is based on the balancing of fundamental rights and which therefore legitimises limitations on freedom of expression, and the so-called American model, which does not impose any limit on freedom of expression and considers that hate speech is legitimate precisely in the name of that freedom'.[30] This is confirmed by examining certain decisions of the Italian Supreme Court in which the right to express one's thoughts enshrined in Article 21 of the Italian Constitution – for example in the form of the right to criticism or satire or the right to inform – is balanced with religious sentiment or the right to honour, so that it is clear that 'In our system, freedom of expression cannot be considered at the top of a pyramid in which everything is permitted. In particular, the limit of the protection of personal values, which we could summarily define in terms of dignity, requires self-restraint'.[31] This is also reflected in the case law of the Strasbourg Court – although it has not defined hate speech – and of the Court of Justice.

Another issue that is dealt with is that of 'constitutionalised' personality rights, in the sense that, as far as Italy is concerned, in many cases they were first interpretatively derived from the Constitution – mainly from Article 2 –, unless they were subsequently recognised also in ordinary and European Union legislation. In such a scenario, the oldest is the right to privacy, which was born in the United States at the end of the 19th century with the doctrinal elaboration of Warren and Brandeis and was adopted in Europe in the second half of the 20th century, initially through case law, then through legislation, and ultimately through European Union regulation. However, the right to personal identity, which 'differs from privacy because the latter tends to protect the secrecy of private life, whereas the right to personal identity refers to the manifested aspects of personality' is more recent and differs from reputation, because the latter expresses a judgement and may concern true or false facts and data while the right to personal identity expresses the 'social projection of the personality',[32] linking it to the right to be forgotten, according to which the Court of Justice stated in the 2014 Google Spain judgment, 'The data subject is entitled to obtain the deletion of data found to be prejudicial, provided, however, that this does not sacrifice the public interest in information',[33] although for the time being there is no unambiguous orientation of the national courts on this point.

Nonetheless, the situations at the centre of the most heated debate are those relating to biological identity and sexual identity, which call into question values that are not infrequently conflicting, as is the case, for example, with assisted procreation and abortion or with transsexuality and gender questions, so much so that the same 'often plays an amphibious role, and the expression presents a semantic ambiguity'.[34] On this subject too, the book offers a succinct review of court cases which aims at understanding the most emblematic parts of a path that is still far from being completed.

Then, still on the same track, a chapter is devoted to digital identity which gives ample prominence to the work of Stefano Rodotà in his capacity as scholar, privacy guarantor, and legislator. In this regard, 'Three lines of development of personal data legislation progressively initiated by EU bodies are prefigured: i) one concerns the protection of data as an

30. ibid 204.
31. ibid 210.
32. ibid 228.
33. ibid 231.
34. ibid 239.

expression and image of the person, and therefore as a specification of the general right of personality, which was constructed in our model at the end of the 19th century on the basis of influences from French and German cultures; ii) another is about the construction of the data marketplace – data are an essential component of the digital market, from their circulation and hence the authorisation or consent of the person concerned, to their acquisition, processing and use – and also includes the ownership of databases set up by economic operators; iii) yet another relates to contracts having a digital content, among which data of a personal nature may be found'.[35] In particular, Alpa focuses mainly on the last line, illustrating the different orientations that can be found in the US experience – which is in any case marked by a conception favourable to the commercialisation of personal data by data controllers – and contrasts the latter with the European approach – in which the concern to protect the sphere of the individual is more prominent. 'It is possible for a complex of coordinated initiatives to take advantage of the proposals and rules already in force from the Union – the broad interpretation of Article 8 of the Charter of Fundamental Rights, the extensive qualification of the right to privacy, the enhancement of consent and withdrawal, and the strengthening of controls on the digital market – without arriving at the characterisation of the data-person relationship in terms of property'.[36]

Finally, after dwelling on the collective dimension of identity dynamics and related opportunities for discrimination – eg based on language, religion, political views, ethnicity, and more –, Alpa completes his overview with a digression on the concept of 'citizenship', ie on the determined element that defines the belonging to a specific State, which is currently at the centre of a heated debate on the management of large migratory phenomena that Italy and other countries are tackling in a not-always-straightforward way. In fact, there is an immigration law which is 'articulated on several levels and often inspired by logics that are not perfectly consistent with each other, which, depending on the sources involved and the historical context from which the measures in question originate, alternate the values of solidarity and respect for human dignity with the security paradigm of control and marginalisation of the "different"'.[37]

§ 5. – Some open questions

To put it in a nutshell, in Alpa's reconstruction, identity ceases to run to a hetero-attributed role to become a result at the disposal of the individual, who recognises himself as the holder of a *right to be himself*, a right that, on the one hand, implies the overcoming of any discrimination arising from identity criteria and, on the other, is realised thanks to the assertion of a series of prerogatives that can be traced back to the value of dignity. This results in a multiplication of subjective legal situations that are very often destined to collide with each other, as the book highlights in the case of the freedom of thought manifestation that becomes a vehicle for hate speech.

35. ibid 259-60.
36. ibid 266.
37. ibid 290.

Consequently, the problem is to ensure their orderly coexistence, and in this regard the most widely accepted answer to date points to balancing interests[38] as the tool to be used in priority over any alternative criterion – for example one aimed at finding some form of hierarchy between the different positions involved.[39] However, this opens the way to further questions, starting with the one about the rate of discretion inherent in such operations. In fact, the factors to be balanced not infrequently present a high degree of vagueness and this circumstance does not escape Alpa, who on several occasions points out the vagueness of some provisions and especially of the concept of 'dignity', which can sometimes be invoked in support of possibly conflicting objectives. This is particularly relevant in view of the driving function attributed to national and supranational courts as both the necessary interlocutors of parliaments and their substitutes when looking for a balance between the needs involved.

More generally, it is the logic underlying Alpa's entire argument – which sees the recognition and guarantee of rights as the core of contemporary legal experience – that has come under criticism from those who have spoken in this regard of a 'theology of rights'. This theology of rights would be 'fundamentally anti-democratic because it merely recognises a freedom from the State (reduced to nothing) and does not raise the issue of freedom of participation except rhetorically; indeed, participation is nullified as a problem the moment law is satisfied with its own being as such, a mere form considered as a reflection of its own sovereign absoluteness. Political rights as a prerequisite and condition of any other possible (civil, social, economic, etc.) discourse on rights disappear as they are absorbed by an individualistic and disruptive rhetoric taken to the extreme'.[40] So that 'Legislation is no longer relevant: there are, on the one hand, rights, which are greedy, expansive, multiplying at the planetary level, and, on the other, their authentic doctrinaires and interpreters, the judges, with their reference philosophers. In between is a so-called "executive" that is forced to govern by actually legislating, in a general confusion'.[41]

38. ibid 275, 290. See also on the topic of balancing, R. Bin, *Diritti e argomenti* (Giuffrè 1992); more recently, A. Morrone, *Il bilanciamento nello Stato costituzionale* (Giappichelli 2014); G. Pino, *Diritti e interpretazione* (il Mulino 2010), 173ff; R. Bin, 'Ragionevolezza e bilanciamento nella giurisprudenza costituzionale (con particolare attenzione alle più recenti sentenze in tema di licenziamento illegittimo)' (2022) 18 Lo Stato 257.
39. This refers to the position according to which 'The contrast between the interests involved in the new rights (so-called freedom rights) and the values inherent in freedom rights in the proper sense, on the one hand confirms the diversity between the two categories and the probable irreducibility of one to the other, and, on the other, poses the problem of identifying a general criterion that, at least as a guideline, allows the aforementioned contrast to be resolved in a given sense. I wonder whether the search for such a principle should or could take place following the implications of Bobbio's recent considerations. Bobbio first of all emphasises that "The liberal State is the presupposition – which is not only historical but also juridical – of the democratic State"; secondly, he specifies that the traditional rights of liberty, as the typical and essential nucleus of the liberal State, are in a certain sense superior and precedent to the same principles of the democratic State' (S. Fois, '"New" rights of liberty' in A. Vignudelli (ed), *Idem, La libertà di informazione* (Maggioli 1991) 451).
40. A. Carrino, *La costituzione come decisione* (Mimesis 2019) 293. Still with reference to the holding of the democratic principle but in a partially different perspective, cf F. Cortese, *L'identità furiosa e il diritto pubblico* (Mucchi 2023) 50 who observes that 'It is, more generally, a movement that, from above as well as from below, breaks the cords of "old-fashioned" citizenship, because it aspires to regulate the realisation of certain utilities according to ways that are not traceable to the traditionally centripetal core of political-representative circuits and the normative systems to which they give rise. In doing so, such a movement also casts doubt on the boundary as an institution capable of delimiting collective identity and, through it, also involving the formation of individual identity, untethered from the typical and fruitful hybridisation of democratic society'.
41. Carrino (n 40) 302.

But even without the challenge being of 'systemic' scope, it is observed that 'The language of rights is the idiolect through which to advance claims and demands in the public arena if one wants both to have any chance of being accepted. To paraphrase Jon Elster, one might regard the pervasive use of the language of rights as an emblematic case of that "civilising force of hypocrisy" that leads us to disguise our particular interests as universal reasons'.[42] In the face of the individualistic atomisation inherent in postmodernity, which entails, among other things, the deliquescence of the traditional concept of citizenship,[43] the recovery of a collective dimension of civil coexistence is considered, reflecting the conviction that 'The reassertion of an objective and widespread civic recognition is a central aspect in the transformations that the legal system has undergone in recent decades and is as heartfelt a need as that related to the proliferation of identities. The whole debate on the commons, horizontal subsidiarity and active citizenship as a resource for models of shared administration is a very eloquent and luminous indicator of this'.[44]

The outcome of such an order of remarks is to prefigure the 'end of the age of rights', and this expression is used 'in a deliberately neutral way, to indicate the end of one paradigm of organisation in favour of another, as well as the widespread awareness, in society, that this has happened and that going back is now quite difficult if not impossible'.[45] However, caution must be exercised lest this also meant the end of rights, which, according to Bobbio's scheme that was evoked at the beginning, are the basis of democracy – which in turn is considered a sine qua non condition of peace. In other words, care must be taken that the course correction with respect to the former, instead of freeing the political process from a distorted way of conceiving them, does not trigger dynamics divergent from the democratic idea delivered to us by the history of the last two centuries without putting in place alternatives that are equally structured and already immediately operational. This could also have possible consequences on the third side of the triangle as well, since, despite the fact that the rhetoric of rights has certainly not been particularly effective in opposing wars,[46] at times even providing justifications for them that are questionable to say the least – especially today, almost eighty years after the conclusion of World War II, in the presence of an

42. A. Schiavello, *Ripensare l'età dei diritti* (Mucchi 2016) 59.
43. In this sense, it is noted that 'The affirmation of certain freedoms (as are, in the European case, those of the internal market) and the entrenchment of economic globalisation (on an even larger scale) have largely cooperated for the fragmentation of the established and aggregating idea of legal identity in favor of overlapping and virtually disaggregating instances of identity. And it is equally true that, within this framework, not only businesses, but all subjects of law, activated in that competitive dynamic, have been placed in a regime of open competition and, for that reason, are set in turn as the antithesis of the public powers, territorial institutions and political communities that legitimise them' (Cortese (n 40) 53).
44. Cortese (n 40) 62-63. More specifically, as far as the Italian legal system is concerned, emphasis is placed on Articles 2, 3 and 5 of the Constitution, which 'from this perspective – with their very strong reminders of the personality that is also built in social formations, the equality that is realised in participation and the autonomy that is appreciated in the method of operation of all institutions – can still say a great deal about how Italian public law, which, although is in a state of transition (along with the many transformations of the present time), is able to face the very dangerous challenges of individual and collective identity fury' (ibid 64).
45. Schiavello (n 42) 62.
46. In this regard, it is noted that the abuse of the language of rights and their rhetoric 'offers a further exemplification – one that is perhaps dramatically more iconic – of both those who claim the international protection of rights as a justification not only for the war in Kosovo but also for the wars in Afghanistan and Iraq, and of those who, symmetrically, in order to deny the legitimacy of these wars, do not reject the plausibility of their "humanitarian" justification, but, paradoxically endorsing it, take the doctrine of fundamental rights and its alleged military implications as the target of their criticism' (T. Mazzarese, 'Minimalismo dei diritti: pragmatismo antiretorico o liberalismo individualista?' (2006) 1 Ragion pratica 186).

ongoing conflict within European borders – peacekeeping appears to be an absolute priority objective.

These are some of the knots to be unravelled that still underlie the reasoning outlined so far. The author of *The Right to Be One's Self* is obviously aware of them and overcomes them in the name of his confidence in the propulsive force of rights. The test of such an approach will be its ability to produce, over time, a positive-sum outcome in favour of citizens as a whole and consistent with the democratic matrix of our constitutional system, which remains, however, an inescapable fact.