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Through identification: opportunity and trust

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1.

By now it is generally agreed that equal opportunity policies have been the instrument for opening the way to social attention to the European action. The term “equal opportunity” entered the European vocabulary in 1981 and if we had to write a glossary of the keywords of European history, this term would certainly have an important place and many other terms in the same glossary would refer back to it.

If the development of these policies has seen collaboration between law philosophy and political science and the contribution of knowledge of the social sciences that have explained and continue to explain the processes that lead to gender discrimination, in the meanwhile the panorama has become increasingly more complex, making it “compulsory” to accept Joan Scott’s invitation (1996) – that in the face of tables and percentages seems still to be a provocation – not to ask ourselves the why of things but to try and understand their meaning, not why but how some things happen.

Levels of reflection are different, intuitively connectable, but more difficult to keep together on a conceptual level without falling into the risk of a causal model that has often guided the construction of policies but has not, however, produced results or which, in the face of the relation between equality and difference, has produced “short circuiting”.

An example? Women do not make careers because they become mothers. A legal instrument has sanctioned the right – no longer derived but original – of parental leave for fathers. This decision ought to have led to greater equality and a more equal division of care work. But this has not happened. We do not wonder why. It might, instead, be more productive to investigate the meaning

attributed to career. Or rather, how the meaning of career can be explained in an innovative manner and, therefore, become inclusive of care work. This process of knowledge becomes a challenge in the face of a crucial theme which the construction of policies must also take into account, i.e. the issue that looks at identity construction (in this case the identity of gender, but also of generation. Many researches in fact underline how the young project the future – work and not – in a different way compared with their parents).

2.

The social sciences find themselves facing a path that feminist thought has already undertaken. Individualised society or the process of individualisation see one of the two processes of the “identity question” at the centre. In recent years, greater attention has been given to the concept of identity that, connected to the theme of justice and equality, has been developed in terms of recognition (Bauman 2001): «It is ... evident that individuals receive opportunities to realise themselves as individuals and no longer just as members of a group, a family, a church, an organisation» (Melucci 1996, pp. 51–52). In this sense there is an equalizing between identity and difference, even more so if one looks at the legal protection of the value of personal identity, because insisting on one’s own personal identity means not just insisting upon equality but also upon difference from all others, asking for its recognition (Gianformaggio 2005).

If feminist thought has always placed the accent upon women subjectivity, it is through the process of individualisation that the social sciences try to emphasise the irreducibility of the experience of women (and of each individual woman) to neutral (men) models and analyse the overcoming of traditional models of gender socialisation. This does not mean that such models have disappeared or that the ‘new’ do not provide for a unequal distribution of power between the two sexes that perhaps finds its justification in a univocal vision of the women identity.

Naturally we know that the question of identity also plays a role on the opposite front, i.e. on the front of the process of identification. Besides, as Amartya Sen (1999) says, identity can be a complicated question and in fact every individual considers some individuals equal and others, instead, different. We must not forget that to the fact that every individual defines himself as belonging to a group (or several groups), the function of the legitimate foundation of political-legal measures needs to be recognised (Gianformaggio 2005).

Reconciling these processes (the processes of identification and individualisation) with the need to create policies that provide a wide range of possibilities for women to act in society, at work, in creating the type of family they want, to have or not have children, to participate in the public sphere, is complex. If we look at the process of identification – whose extreme form is separatist

differentialism – the creation of policies also extends to other target groups. From an analytical perspective these groups are formed through successive passages: “being identical”, “sharing an identity” and “identifying oneself in a specific group” to which, therefore, a social identity is attributed that becomes a symbolic place of action that allows sharing values, actions and expectations. This process constructs groups that lead to the delimitation of different regulatory spaces, able to ask for differentiated legal treatment.

Precisely the recognition of identities has produced a version of differentialism that has turned out in absolutization of differences with the construction of boundaries between closed identities that sanction hierarchy even in entitlements, i.e. in social welfare, producing disparate impact, but also conflicts.

Even identity observed from the side of individualisation and not from the side of identification (in a group, an association, a culture) intertwines with difference because – as Maria Luisa Boccia (2002) underlines – singularity always exceeds identity. Attention to cultural identity, to groups, cannot therefore mean an uncritical legitimation of any aspect of collective identity, while we cannot consider universalism as the validation of one model (western): in both cases it would end in denying individual subjectivity.

A complex relation emerges from these first affirmations between group belonging, gender (and/or cultural) differences, and individual subjectivity. Melucci (1996) reminds us that individual identity is not, however, understood as a purely personal and psychological dimension, but get always traces of the contextualization of the subject that holds it.

If we want to take this discourse to the level of the construction of equal opportunity policies, we need to rethink the legal instruments aimed at guaranteeing the principle of non-discrimination, starting from the consideration that gender discriminations are constructed with reference to work, while work is one of the components for discrimination upon a racial or ethnic basis (European directives that deal with discrimination are a proof of this difference). In the first case we are looking only at the public sphere, in the second also at the private sphere and this has important

implications compared to the gender relations within cultural groups, taking into account that rights in our society more often enter into conflict with the rules of cultural identity rather than with the rules of gender identity (Gottardi 2002). And if we look at discrimination on the basis of race and ethnicity, we cannot not consider that women of different cultural groups (as moreover women in the western legal tradition) are represented in the 'private' sphere and this is why the principle of equal treatment without distinction of race and ethnicity is applied in both the public and the private sectors (art. 3, legislative decree 251/2003).

3.

Alternative identities – Amartya Sen tells us - can compete with each other. Sen gives this example: “In considering London transport problems, the “loyalty” of a Londoner concerned to improve his city’s transport system can conflict with his conservative convictions in fiscal matters, concerned with maintaining public expenditure under strict control” (Sen 1999, p. 14). Because “subjects have different loyalties, they do not have a single identification, but are members of several systems and a part of their identity plays a role in each one of them” (Melucci 1996, p. 55)

Women’s thought has always crossed by these conflicts, above all when it has taken into account the production of law. Gottardi reminds us, however, that “it is in recent years that we began to reflect upon the concept of multiple forms of discrimination or crossed discrimination, indispensable for being able to gather the consequences of the combined action of several conditions of exposure to the risk of discrimination” (Gottardi 2002, p. 6).

Valorization of the critical approach to law (from one part of feminist thought) makes ways of redefining legal identity possible, according to which both the catalogue of rights and the contents of single rights can be revisited in the light of women experience. But the proliferation and the process of specification of rights increase the tension between the subjects of neutral, autonomous rights, and the gender subjectivity situated in relation.

The panorama becomes complicated and the theory of rights - that tend to universalise historical and social characteristics - begins to present unusual implications in the light of the intercultural dialogue that sees the emergence of requests for recognition of different identities, requests that remain within the culture of rights. The language of rights can, therefore, become a common code for cultures that have few elements of sharing. In addition, it would allow identifying the criteria for defining the threshold beyond which respect for cultural differences must surrender to the affirmation of individual rights. Nevertheless, in order for this operation not to fall into the pure and simple re-proposal of a legal universalism insensible to difference, we need to reconsider the theory and practice of rights in the light of a non-assimilation concept of intercultural dialogue. Not to take

differences into account, just as taking them into account, can lead to re-proposing them. But taking differences into account to reify them could lead to hiding those processes of power that have produced inequality not only among groups, but also within the groups themselves. We must not forget, in fact, that the rules of equality are prescriptive and not descriptive. In this sense, law, but above all the language of rights, have assumed the function of external guarantee of individual methods of constructing identity in parallel with the construction of personal needs for self-realisation (Melucci 1996).

In particular, equal opportunity policies originated around the question of work and the discrimination suffered by the “women’s group”. Notwithstanding that at the base of equal opportunity policies was the attempt to overcome the idea of protection, the targets of these policies, in the perspective of extension, are essentially groups (Cardinali 2006) that in fact ask for the protection of rights. But the idea of protecting law always concerns the group of the most marginal and fragile subjects. And this (if, for example, we look at the relation between the sexes) “reduces women to the most wretched conditions, denies visibility to their different choices as well as the real possibilities that they have to change reality in their favour, and in this way denying the existence of the female sex – only a “feminine condition” exists in which perhaps nobody really recognises themselves” (Libreria delle Donne di Milano, 1987, pp. 71-72). Martha Fineman (1994), with regard to this, emphasises what the differences between women are and how to recognise and accept them in the feminist discourse has always been a thorny theoretical problem: this has always been one of the most controversial arguments in the debate over difference.

This is the reason why some feminist scholars have not welcomed equal opportunity policies that in their various forms seem to hide the contradictions in equality because they see men and women as two varieties of the same sex, to sustain or stop each other according to situations, on the basis of quantitative criteria (Jourdan 1993). On the other hand, precisely because they look at the group, these policies have been subject to criticism on the part of law that is based upon the individual.

The present aim of equal opportunity policies is the definition of the target groups that risk, on one hand, neutralising the “original” equal opportunity policies (gender is transversal to all the other

differences) and, on the other, triggering differentialism opposed to pluralism and therefore conflictual. What is, then, the reference paradigm? The individual and not the group? And, therefore, which of the processes linked to identity? And finally, what are the aims and what are the instruments?

The aim – if we refer to gender equality – is the full development of women subjectivity through instruments that use the women social identity, an identity that is the subject of discrimination due to sexual belonging and not as a subject. But the two things can also be added together.

Can we, therefore, turn the use of social identity upside down (from instrument of discrimination to instrument of promotion) in order to trigger a process of individualisation and, therefore, of differentiation that, however, leads in the direction of pluralism? And how can we reconcile this process with the definition of the target groups to which address equal opportunity policies? Groups that share values and expectations?

If affirmative action was conceived in the sphere of work and has moved from work towards areas of personal and familiar life, identifying different target groups, we find ourselves facing a panorama of a person's life that is increasingly more complex, escaping typification. This is why it is better to speak in terms of groups rather than associations or other sociological categories (Gallino 2004).

Speaking of identity in these terms means, therefore, speaking about many belongings, each of which unite many people. The more the belongings are taken into consideration –Amin Maalouf writes (1998) - the more the identities become specific and irreducible.

In the face of these various belongings and a fluid identity, how can we devise and create equal opportunity policies? Martha Fineman (1994) first of all invites us to adopt a positive policy towards the differences that define groups and classifications weakly, i.e. so that the identification of the group is recognised as politically necessary, but conceived as changeable, a reversible choice that includes the right to exit.

The first consideration is that the dimension of law based upon principles seems to be the most suitable for the survival of a pluralist society, whose condition is a continuous re-equilibration through value transactions (Zagrebelsky 1992).

The second consideration is that the value of equality is placed at the base of the construction of policies that over the years has also seen a change in the vocabulary. The term affirmative action has become concrete in the construction of a series of policies and an agency against the discrimination of women and minorities, above all in working organisations. Affirmative action is, therefore, a public policy aimed at favouring a disadvantaged social group. For some years now the term best practices has become widespread. With this term we view practices that present

innovative features rooted in public administrations and associations; practices that signal a difference, strictly connected to the differences of context in which they have been implemented. In recent years we are witnessing the spread of best practices among public boards and institutions with their equal opportunity commissions and associations that collaborate with these structures: they can be practices put into effect outside or inside the institutions but also implemented in an intermediate position, participating between outside and inside; formalized practices or not.

Affirmative action has an feature of “exceptionality” in the perspective of social change towards equality between the sexes in recognising their difference (Barbera 1999). Instead, best practices have a feature of “exemplarity” and produce processes of change and intervention upon the “daily” practices of an institution or an association, processes that over time should be established.

The chances opened up by the theme of best practices have originated a gender interpretation of the policies and the possibility of crossing boundaries often strenuously defended in the offices of the same public administration or the borders – that sometimes turn out into misunderstanding or competition – between the public nature of the institutions and the private nature of associations, promoting networking and looking at the procedural aspect of decision making.

In women praxis the organisational structure of the network is widespread – a non-hierarchical structure that includes the decentralising of decisional powers and responsibilities. The network, other than constructing links, makes subjectivity emerge, facing different possibilities of choice according, for example, to available resources that are material resources of knowledge but also resources of identity, of recognition in a group.

Personal identity is increasingly more a process of negotiation taking place in the public sphere because it seeks recognition and the response to the needs it expresses in the public sphere, differentiated on the basis of culture, gender, class, religion and sexual orientation. The request for individualised practices that also take into account differences that, however, are ascribable to the group, can spark off conflicts for accessing to increasingly scarce resources or to the already quoted separatism. For example, in exploring migratory phenomena, I investigated the implementation of services for migrants and according to some of my interviewees it can be important to begin by constructing an ‘ad hoc’ service ‘close’ to migrants for promoting inclusion. But often ‘close’ can mean close in a spatial sense, i.e. in the neighbourhoods where only migrants live. Consequently the services are only for migrants, attended only by them and, therefore, creating separate spaces that can be more at risk if cuts in the social budget are decided.

This happens if we look at the recognition of difference in contrast to alterity (and not at recognising difference that opens a pluralist space). On the other hand, refusal to create policies

‘sensitive’ to cultural difference – therefore universal – leads to the risk of exclusion from access to the services even if they are guaranteed to everyone “on paper”.

4.

If we look at equal opportunity policies addressed to gender, women are involved in changing the rules to preserve relations, convinced that if the parties speak directly to each other they could appreciate the importance of mutual needs better, so that two positions apparently in conflict can be both simultaneously legitimised, without the need of a single ‘victor’. The present risk is that of privatizing and de-politicizing aspects that have been carried into the private sphere. This backlash is, according to me, particularly evident in the labour market.

In addition, the experience of social research tells us that when local policies do not correspond to an increase in women representation in positions of responsibility in the public administration and where their application does not rest upon an associative fabric of feminist orientation, they often remain a “dead letter”.

By now we know that ‘Us women’ is a political myth that covers an extremely vast range of variations. This does not diminish its importance but confirms it on the condition of connecting it strictly to the recognition of multiple differences among which to construct ties of trust. This ‘social experience of women’ can be useful in constructing policies for other target groups that have become the object of equal opportunity policies because, if in the meantime feminist thought has unveiled the aspects of oppression inherent in legal construction and in the language of rights, rights and anti-discriminatory instruments are taken seriously precisely by the weakest subjects and have become part of the struggle to claim a better living situation.

Negotiating principles is possible when differences are neither denied nor made extreme. Relations are constructed and trust produced through negotiation that allows similarities in experiences to emerge. We return, then, to the consideration that law based upon principles seem to be the most suitable for the survival of a pluralist society so that the way is the recognition of equal opportunity as a constitutional principle.

The constitutional reference can create a link of equality and trust in the face of the fragmentation of policies and their potential conflicting. Tamar Pitch writes that “constitutional principles are seen as the result of a confrontation in which absoluteness is renounced and together, like a framework for difference projects, compete and can compete in virtue of their openness and ‘weakness’: where, however, the value of coexistence is instead absolute and unavoidable”.

But the problem of trust does not cross only cultural differences. Very differentiated systems, in order to be able to function, must count upon high identification with the system itself to check the

risk of particularism in the demands addressed to the State, keeping account of the intense development of demands and needs that concentrate upon the creation of both individual and social identity (Melucci 1996). Constitutional recognition responds to the need of recognition within a framework of shared principles. We must, however, not neglect the fact that it is at local level that inequalities concerning citizenship develop at the material level (Del Re 2004). Having a framework of common principles allows, therefore, the construction of policies that respond to the needs of the context and their management, starting from the diversity of single individuals and small groups. Ruling a principle leaves the possibility of choosing a belonging in the face of discrimination or to gain access to social benefits. For example, in Italy, in the face of discrimination, foreign women are guided to the protection deriving from the anti-discriminatory instruments based upon gender (maybe because of a presumption of their major consolidation) rather than protection deriving from anti-discriminatory instruments based upon ethnicity (Gottardi 2002). This is possible if both the recognition and the identity construction allow ‘commuting’ between the various belongings and the construction of groups builds communicating regulatory spaces. Spaces that allow single individuals to identify themselves in a group and ask for the recognition of a right or an area of freedom for that group and, at the same time, to choose one belonging rather than another, so that subjectivity is irreducible compared to other subjectivities. The rules of the game (the constitutional principle of equal opportunity) are valid, therefore, for all the groups and individuals, guaranteeing (substantial) equality, remembering that ‘equal’ does not mean ‘identical’ because equality is a relationship that can be set only between two different entities (Gianformaggio 2005).

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