

MUCH ADO ABOUT NOTHING? DDL ZAN, ETERNAL FASCISM AND THE GHOSTS OF SEXUALITY

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The black hole

From time immemorial, human civilizations have attempted to regulate the sexual through the family and reproduction, which give sex a meaning, many meanings, that it does not have in itself: the creation of stable relationships, material support, affectivity, the projection of life into the future. Therefore, claiming an integration that goes through the acquisition of marriage rights, lesbians and gays have not shown any originality, retracing the widely beaten path of a redemption of the sexual into a promise of love. In a heterocisexist imaginary that remains widely shared even where same-sex couples have obtained legal recognition, homosexual sex, sterile in itself, nevertheless remains a symbol of the sexual in its wild and senseless, unredeemed and unredeemable expression, as the gender expressions that do not conform to the binary standards of a male and a female defined by their mutual, exclusive, but not symmetrical, attraction.

In this regard, do not be misled. It is true that in Europe, as in the United States and other countries around the world, the repressive imperative of tradition has long since been overturned by the neo-liberal imperative of enjoyment, by which transgression is both provoked and profited. It is true that the internet saturates contemporary societies with pornography. It is also true that many consider prostitution as any other job, even in countries—like Italy—where legally speaking it is not. Finally, it is true that for

large sections of the population, the so-called “sex positive” thinking has become mainstream, and that the media report an increasingly sexually fluid Z generation. In short, we are told that “by us”—a not well defined us, which should circumscribe a modern and civilized world—sexuality has ceased to be a political issue. But this is an illusion: if the political is above all the creation of the social bond, this bond is still built at the expense of the sexual, which represents the obscene double of sociality even in a hyper-hedonistic society like ours, where the obscene has long been staged. Even “by us”, as Freud would say, the sexual has its responsibilities in the malaise of civilization (Freud, 1930).

To understand the scandal sexuality still represents, we can think of revenge porn¹, which in the Italian legal system among others, can lead to convictions for incitement to suicide. If the dissemination of films in which we are filmed while having sex is unbearable, it is because the eruption of the sexual leads each time to the symbolic suicide of the civilized ego. It is because it drags the subject, against their will, into a disturbing experience of loss of control that conflicts with the public image that the subject wants to give of themselves. So much for “sex positivity”. We live in complex societies, assemblages of heterogeneous planes of reality, which bear upon contradictory truths; and on one of these planes, the sexual remains a negative force, a black hole. And homosexuality, transgender, non-binary gender, such as the free sexuality of women, are considered representatives of its negativity. This explains, without justifying it in any way, why “faggot” and “whore” remain everywhere among the most offensive insults. This explains, without justifying it in any way, the episodes of misogyny and homophobia that continue to mark the chronicles of the planet—from discrimination, to insults, bullying (physical or cyber)—, assaults and even killings.

Futile motives

The law intervenes on this plane of reality, which is tragically real for both actual and potential victims. It can sanction, even fiercely, or on the contrary attempt to protect, those who are the object of homophobia and transphobic hatred. In 68 of the 196 countries in the world, homosexual acts are criminalized, in 11 they are punished with the death penalty, in 41 it is forbidden to found an organisation promoting LGBTQIA+ rights.

1. Penalized in Italy by the Law No. 69 of 19 July 2019.

Moreover, 67 countries do not allow gender reassignment in any way. On the other hand, 8 countries provide for the possibility of the so-called third gender in documents, 3 prohibit genital mutilation of intersex children, 27 provide for same-sex marriage, 31 for civil unions, 57 have explicit rules against violence and hate propaganda against sexual minorities.

In Italy, pressure from the European Union have spurred the increase of several reforms regarding the rights of sexual minorities in recent years. And yet, every reached achievement is somehow limited, reminding LGBTQI+ people of the stigma they bear. It is true that in 2015, both Court of Cassation and Constitutional Court ruled that gender reassignment, legal in the country since 1982², should not require compulsory genital surgery³. But the renewal of documents still requires a court decision on the base of psychological expertise, and the procedure remains time-consuming, expensive and emotionally trying. It is true that in 2016, following a condemnation by the European Court of Human Rights⁴ and a call from the European Parliament⁵, Parliament enacted a law recognising same-sex couples. However, this recognition—hardly achieved, due to a vote of confidence in both chambers—took the form of a civil union that not only denies the practice of assisted reproduction technology and adoption (even stepchild adoption) to contracting parties, but denies them the *status* of family, introducing a discrimination between heterosexual and homosexual couples⁶. Also in 2016, Italy was warned by the United Nations Committee on the Rights of Persons with Disabilities because non-consensual genital surgery, i.e.: genital mutilation, is performed on intersex children in its hospitals⁷. Finally, although Italy established in 2008 a protection against workplace discrimination, obtained in a quite un-straight way following an infringement procedure by the European Union⁸, it lacks a law to fight and prevent crimes against sexual minorities, despite the repeated recommendations of the European Parliament⁹. A law that would be necessary and urgent not only because of the structural

2. Law No. 164 of 14 April 1982.

3. Court of Cassation, Judgment No. 15138 of 20 July 2015; Constitutional Court, Judgment No. 221 of 5 november 2015.

4. European Court of Human Right, sez. IV, Judgment 7/21/2015.

5. European Parliament Resolution 8 September 2015 on the Situation of fundamental Rights in the EU (2013-2014), par. 85.

6. Law No. 76 of 20 May 2016, Art. 1 subparagraph 1: «La presente legge istituisce l'unione civile tra persone dello stesso sesso quale specifica formazione sociale», i.e., as a social formation different from those already recognised by the legal system, including families. Moreover, unlike marriage, civil partnership does not entail the obligation of fidelity.

7. United Nations - Convention on the Rights of Persons with Disabilities, Concluding Observations on the Initial Report of Italy, 6 October 2016. See Balocchi, 2019.

8. In 2003, Decree-Law No. 216 of 9 July 2003 transposed the European Directive No. 78 of 2000 with a paradoxical clause, establishing exceptions for armed forces, police and rescue services, introducing discrimination instead of counteracting it. The European Commission responded with an infringement procedure (2005, no. 2358), following which this clause was repealed (by Decree Law No. 59 of 8 April 2008).

9. The recommendation to combat homophobia and transphobia, already contained in the 2015 Resolution mentioned

nature of the violence that affects them in all societies, but also because in so-called ‘advanced’ societies (“by us”) such violence is exacerbated by the reaction against the visibility obtained by LGBTQI+ people and amplified by the sounding board of hatred the social networks are.

In the absence of this measure, crimes against sexual minorities—exclusively motivated by their being sexual minorities—are not considered liable to aggravation because they are detrimental to the principle of equality stated in Article 3 of the Italian Constitutional Charter: today, in the Italian courts, homosexual attacks are punished not as hate crimes, but as ‘futile motives’ motivated crimes. This is clearly discriminatory, because hate crimes and hate propaganda against other categories of people have long been recognized and punished by the Italian legal system, not only because of the principle of equality, but also because of the anti-fascist nature of the Italian Constitutional Charter, which is closely linked to this principle.

Abjections

It is important to remember that, if women’s movement began with the French Revolution, the movement for rights of sexual minorities was born in Berlin in the 1860s in opposition to the extension of the of the Prussian penal code’s paragraph against sexual acts “against nature” (Beachy, 2010) into North German Confederation. That paragraph—abolished in the Federal Republic of Germany only in 1994—was applied by the Nazi regime not only in order to outlaw this movement, but also to legitimize the deportation of nonheterocisexual people in extermination camps. It is likewise important to remember that the pre-existing penal code of the Kingdom of Sardinia, which punished non-procreative sexual acts, was extended to the Kingdom of Italy. And that however, the territories of the former Kingdom of the Two Sicilies were exempt from applying this legislation, due to the irredeemable dissolution attributed to southern populations. This legal anomaly was remedied in 1890: from then on, sodomy ceased to be a crime throughout the country. Not even Fascist Italy punished nonheterocisexual acts by law. However, during the twenty years of fascism, nonheterocisexual people were subjected to the administrative procedure of confinement (Benadusi, 2005; Goretti & Giartosio, 2006) which was imposed on trans people for years after the war (Marcasciano, 2010).

above (footnote 5) was repeated in the European Parliament Resolution of 26 November 2020 on the situation of fundamental rights in the European Union (2018-2019), par. 15.

Following Umberto Eco, we could claim these continuities between the liberal, Mussolini's and republican eras—as in the analogous German case—demonstrate how the category of fascism can be applied not only as a specific label for early twentieth-century regimes, but also in a meta-historical sense, to indicate an 'eternal fascism' seen as a constellation of political “archetypes” that have always threatened the values of equality and freedom (Eco, 2017). According to Eco, among these archetypes, a prominent place is held by the “fear of difference” (Eco, 2017, p. 39)¹⁰, i.e.: by a set of apparatuses of dehumanisation and abjection of the other, as racism, machismo, homophobia. In these apparatuses, a fundamental role is played by the projection on the other of the negativity of the sexual. In these apparatuses, the projection of the negativity of the sexual onto the other plays a key role even when not immediately evident¹¹, as demonstrated by the given above example of discrimination against southern populations during the nineteenth-century. We could add the example of colonial rhetoric still used today against immigration, in which racialisation is accompanied by the representation of a violent, disgusting, monstrous sexuality¹².

There is therefore a profound rationality in the bill S. 2005, firstly proposed by Alessandro Zan as its first signatory. This bill, following the path already traced by previous proposals¹³, links the fight on hate crimes against sexual minorities not only to the fight on hate crimes against women and other minorities, not only to the defense of the principle of equality enshrined in Article 3 of the Italian Constitutional Charter, but also to the defense of democracy against fascism—to which the Article 3 of the Italian Constitutional Charter, as already mentioned, is closely linked.

10. Eco here also analyzes other fascist archetypes: the cult of tradition, the blood and land exaltation, the anti-intellectualism, the cry of middle-class frustration, the people seen as a monolithic entity able to assert a common will. (Eco, 2017, p. 39).

11. Judith Butler (2006) defines abjection as a double movement of expulsion and repulsion by which others «become shit». So, the abjection is linked with the projection on the other of an anal enjoyment, of which homosexuality is known to be an epitome.

12. See for example the myth of the well-endowed rapist black man (Fanon, 1952), the counterpart of which is the myth of the loose and usable black woman (Davis, 1981; Kilomba, 2008).

13. We are referring to the bill of 1996 with Niki Vendola as its first signatory, the one of 2002 with Franco Grillini as its first signatory, and the one of 2013 with Ivan Scalfarotto as its first signatory. The 2009 bill with Anna Paola Concia as its first signatory, is an exception. This one aimed to introduce a change in art. 62 of the Italian Criminal Code, providing among the aggravating circumstances of an assault, the fact that the offence was committed because of the victim's sexual orientation.

The anti-fascist minimum

All sorts of things have been said in parliamentary and public debate about the Zan bill. But in fact, the bill does not spread an inexistent “gender ideology” (Garbagnoli & Prearo, 2018; Prearo, 2020), and it does not introduce gestational surrogacy; it does not streamline the gender reassignment procedure, it does not abolish the sexual difference, it does not affect freedom of expression. Articles from 2 to 6 of this bill extend the protections already provided by the so-called Mancino law for those who are the object of hatred for racial, ethnic, religious or national reasons to those who are the object of hatred because of sex, gender, sexual orientation, gender identity and disability. Given the Italian situation of sexual minorities I have presented above, the Italian LGBTQI+ movements consider these protections “the bare minimum”. But they would be more accurately defined as “the democratic minimum”, “the anti-fascist minimum”. Indeed, the Mancino law¹⁴ refers to the first paragraph of the 12th transitory norm of the Constitutional Charter, according to which “è vietata la riorganizzazione, sotto qualsiasi forma, del disciolto partito fascista”. It also refers to the Scelba law, according to which a form of reorganization of the disbanded National Fascist Party is any attempt to pursue

finalità antidemocratiche proprie del partito fascista, esaltando, minacciando o usando la violenza quale metodo di lotta politica o propugnando la soppressione delle libertà garantite dalla Costituzione o denigrando la democrazia, le sue istituzioni e i valori della Resistenza o svolgendo propaganda razzista¹⁵

Among the objections raised against the Zan bill, the more relevant on a constitutional field is it may violate freedom of expression, protected by Article 21 of the Italian Constitutional Charter. In 1957 and 1958, the Constitutional Court ruled on two appeals lodged by members of the “Movimento Sociale Italiano” party against the Scelba law¹⁶, stating that the Italian legal system prohibited the reorganization of the fascist party, and therefore fascist propaganda, hate propaganda and incitement to violence, in order to guarantee freedom of thought. In other words, the Constitutional Court clarified that the Italian Constitutional Charter does not define the democratic republic as a regime in which anything can be said and the will of the majority is unleashed, but on

14. Law No. 205 of 25 June 1993 (first signatory Nicola Mancino).

15. Law No. 645 of 20 June 1952, Article 1 (first signatory Mario Scelba).

16. Constitutional Court, Judgment 16 January 1957, n° 1; Constitutional Court, judgment 25 November 1958, n° 74.

the contrary as a regime based on freedom and equality, placing those principles above the will of the majority and defending them from those who try to defy them. Therefore, in the Italian democratic republic, it is crucial to punish not only those who commit violence, but also those who spread hatred and incite violence, prohibiting the social existence of some people even before they can take the floor and express their opinions.

As regards the objections of “gender” indoctrination to Articles 7 to 10 of the Zan bill, as a matter of fact they propose the introduction of a national day against homophobia, lesbophobia, biphobia and transphobia and an institutional commitment in order to develop prevention strategies and a monitoring through statistical studies. It is clear how these articles propose just an extensive implementation of the already mentioned Article 3 of the Italian Constitutional Charter. Indeed, this Article states not only that “tutti i cittadini hanno pari dignità sociale e sono eguali davanti alla legge, senza distinzione di sesso, di razza, di lingua, di religione, di opinioni politiche, di condizioni personali e sociali”, but also that

è compito della Repubblica rimuovere gli ostacoli di ordine economico e sociale, che, limitando di fatto la libertà e l'eguaglianza dei cittadini, impediscono il pieno sviluppo della persona umana e l'effettiva partecipazione di tutti i lavoratori all'organizzazione politica, economica e sociale del Paese.

So, much ado about nothing? Not really. These objections to Zan bill, together with others that have no constitutional relevance or rationality—starting with the opposition to the definition of gender identity in Article 1¹⁷, which is a standard definition that has been long widely accepted—show how much the ghosts of the sexual still roam around in “our” hyper-edonistic societies, how much they still are tools of abjection apparatuses against the subjects shaped as representatives of the sexual. With Eco, we can argue that these objections are demonstrations of the permanence in Italy not only of a nostalgia for historical fascism, but also of archetypes of the eternal fascism, which is hard to eradicate for anti-discrimination legislation. And this is the very reason why such legislation is crucial in a country that still wants to call itself a democratic republic.

17. “Per identità di genere si intende l'identificazione percepita e manifestata di sé in relazione al genere, anche se non corrispondente al sesso, indipendentemente dall'aver concluso un percorso di transizione”.

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