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The ordeal for humanity: LGBTI asylum seekers in Europe facing the limits of human rights

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Abstract

What's "human" in the human? What makes a living being a human being? In case of doubt, who decides whether a living being is a human being? A liberal political culture based on the value of *human* rights cannot avoid these questions. This article will use different interpretative frames (Thomas Hobbes, Michel Foucault, Leo Bersani, Giorgio Agamben, Judith Butler, Lee Edelman, Jasbir Puar) in order to give account of the permanence of a sovereign decision on the human in the biopolitical governance of the present. The condition of African lesbian, gay, bisexual, transgender, and intersex asylum seekers in Europe is exemplary of this. Persecuted in their countries for their sexual orientation or gender identity, in many cases they cross the Mediterranean on makeshift boats to land – twist of fate – on the same islands where Italian Fascism used to confine homosexual men. There they are "received" in camps for illegal immigrants where their full humanity, denied by their countries of origin, will be taken into exam by a commission. Only if recognized as authentic members of a sexual minority, they

will benefit the totality of human rights in Europe. Otherwise, they risk to be forced away from Europe – and from humanity. Far from being a voyage of hope from barbarity to modernity, their journey from Africa to Europe turns into an archaic ordeal.

Keywords: queer theory, homonationalism, Leo Bersani, Lee Edelman, Jasbir Puar.

> It is the duty of them that are in sovereign authority, to increase the people […]. And seeing this is to be done by ordinances concerning copulation: they are by the law of nature bound to make such ordinances concerning the same, as may tend to the increase of mankind. And hence it cometh, that in them who have sovereign authority: not to forbid such copulations as are against the use of nature […]. For though it be not evident, that a private man living under the law of natural reason only, doth break the same, by doing any of these things aforesaid; yet it is manifestly apparent, that being so prejudicial as they are to the improvement of mankind, that not to forbid the same, is against the law of natural reason, in him that hath taken into his hands any portion of mankind to improve.
>
> [Thomas Hobbes]

1. Sexual negativity and its scapegoats

In 76 countries in the World, consensual sexual intercourse between persons of the same sex is illegal. In seven of them,[1] the guilty party is punishable by death. In some cases only sex between men is criminalized, in some others homosexuality is not mentioned at all, and non-heterosexual and gender non-conforming people are persecuted by laws regarding "sexual acts against nature". On the other hand, from the 2000s onwards the United Nations High Commissioner for Refugees (UNHCR 2002, 2008, 2012) has started considering discrimination on the ground of sexual orientation and gender identity as a violation of human rights. Consequently, lesbian, gay, bisexual, transgender and intersex (LGBTI) people, when persecuted in their countries of origin, should be accepted as refugees in those countries which have ratified the Geneva Convention. So it happens that every year about ten thousands of LGBTI people leave their homeland and seek asylum in Europe, lured by a promise of human rights that is

[1] Iran, Northern States in Nigeria, Mauritania, Saudi Arabia, southern parts of Somalia, Sudan and Yemen.

rarely kept. Often their voyage of hope, a voyage during which they often risk their lives, ends in fact in disillusion and despair.

Pushed underground at home, often persecuted by their parents and relatives, in many cases, when they come from Africa, they are smuggled by traffickers as bootleg goods with other migrants to whom they remain in the closet. Crushed in containers as cattle they cross the deserts, squeezed in makeshift boats they sail off. Some of them die during the journey, of hardship, torture, or in shipwreck. The luckiest make landfall in detention centres for "illegal immigrants", camps where once again they are frequently confronted with discrimination, violence and abuse. Finally they are "examined" by commissions with little time to lose and not alien to stereotypes and prejudices, which often reject their claims. As a consequence, many of them are returned to countries where they may suffer violence or torture, be imprisoned or sentenced to death. Apparently, regarding LGBTI asylum seekers, the so-called "clash of civilizations" (Huntington 1996) often ends up being a harmony among civilizations.

If we are to give an account of this failure of the Western culture of human rights, it is first of all necessary to understand that the "acts" in question, supposed to be against nature in 76 countries in the world, are not behaviours like any others, that one may master through one's will: what is targeted here is not something LGBTI people in fact *act out*, but rather the drives which *act upon* them – as the drives act upon every human being. As Lee Edelman (2004, Berlant and Edelman 2014) remarks, precisely for its escaping one's control, the sexual is considered in human societies an uncanny, disquieting force, which some categories of people more than others are called to personify. In other words, these acts are identities. Sexual minorities are not persecuted for what they do, but for what they are: the scapegoats of a negativity that belongs to everyone, the representatives of the "beastliness" of human sexuality, of an "against nature" which threatens human nature from the inside.

Following Jean Laplanche (1992) and Leo Bersani (1987, 1996), Edelman would say this depends on the structures of sexuality inscribed in a Symbolic order understood as "coming before" any culture. It is not my intention to endorse such a strong hypothesis. I will restrict myself to some remarks primarily deriving not from my readings of queer theories (Bernini 2013a, 2013b, 2014), but from my experience as a queer activist and

volunteer in Italian associations supporting LGBTI asylum seekers.[2] I will then start from what I feel is closer to me, from my experience as a gay citizen of Italy and Europe, in order to show that queer negativity is paradoxically present not only where LGBTI people are *persecuted* by law, but even where they are *protected* by law. My intention is not to deny the necessity of endorsing and improving the culture of human rights, but rather to denounce its insufficiency and invite more radical ways of thinking and acting.

2. Between enjoyment and tradition

As a consequence of the so-called "sexual revolution", the Western world has become a society of enjoyment (Žižek 2008). The time when modesty was considered a public virtue, especially for women, is actually not so distant; but if we watch a reality show or a talk show on TV, or simply the advertisements, and we compare what we see to the experience of our grandmothers and great-grandmothers, we have the feeling of having moved into a new geological era. In the 1970s Michel Foucault (1976) already pointed out that modernity has made sexuality not the object of a silence but the object of a discourse, and Jacques Lacan (1978) that late capitalism is not repressive but transgressive. Nowadays we *must* enjoy, otherwise we will be considered abnormal, even pathological.[3] «Enjoy!», the market tells the consumer. «Enjoy!», the psychiatrist tells the patient. «Enjoy!», even parents tell their children. We live nowadays in a society of enjoyment where sex, far from representing a taboo, is considered to be a right, or better a duty that men and women owe themselves.

[2] In Milan I took part in the project "Immigrazioni e Omosessualità" (Migrations and Homosexualities) (http://www.arcigaymilano.org/Web/?page_id=4451, last accessed 15 September 2014), and in Verona in the "Sportello migranti LGBT" (LGBT migrants help centre) (http://sportellomigrantilgbtverona.blogspot.it/, last accessed 15 September 2014).

[3] Since the 2000s, while claiming that for many people the lack of sexual attraction is a proper sexual orientation, the asexual movement has denounced how in postmodern Western culture sexuality is perceived not as the object of a prohibition but rather as the object of an obligation. The Asexual Visibility and Education Network (AVEN) was founded in 2001 in order to promote depathologization and public acceptance of asexuality and to facilitate the growth of an asexual community. On its website one reads: «An asexual is someone who does not experience sexual attraction. Unlike celibacy, which people choose, asexuality is an intrinsic part of who we are. Asexuality does not make our lives any worse or any better, we just face a different set of challenges than most sexual people» (http://www.asexuality.org/home/overview.html, last accessed 15 September 2014).

Nevertheless, "the sexual" remains a problem: if we keep on associating it to an imperative (no matter whether a prohibition or an obligation), it is because we try to exorcise the fact that it is a disturbing drive, whose power we cannot back out of. To this end, Bersani (1987, 1996) asserts that human beings enjoy sex, but do not *like* sex, because the sexual is a threat to the integrity of the ego, or better to the illusion that the essence of human egos consists of a rational mastery over impulses and desires. All of this does not change when the discipline of repression is overturned into the celebration of enjoyment: the sexual remains a disquieting, disgusting force that disturbs our sense of humanity, and we need scapegoats to represent its negativity: figures of an unbearable sin and champions of a thrilling transgression at the same time.

I come from Italy, one of the few countries in Western Europe that still does not recognize in any way gay and lesbian partnerships and does not defend sexual minorities from hate crimes through specific laws.[4] But even in those countries where gay and lesbian marriage and adoption have been approved and laws have been passed that protect sexual minorities, homophobia, transphobia and biphobia have not totally disappeared. In a sense, the widespread consensus that full legal recognition of homosexuality is equivalent to marriage, adoption and access to reproductive technologies for gays and lesbians proves that the sexual still needs to be redeemed by affectivity, love and parenthood in order to be fully accepted by society; that non-reproductive sexuality has to become reproductive for it to be cleansed from its negativity; or, yet in other words, that the sexual has to become something other than itself in order to be integrated into civilization. «Enjoy!», the market nowadays tells the consumer. «Enjoy!», the psychiatrist tells the patient. «Enjoy!», even parents tell their children. But this imperative is just the obscene double of a moral law, which remains rooted in tradition even in secular, liberal, postmodern Western societies.

3. Queercides

[4] In addition to that, Italy has a very restrictive legislation regulating sex change for trans people and does not protect intersex people from surgical mutilations (Lorenzetti 2014).

One of the reasons why we should not forget how contemporary liberal culture is linked to tradition (and thus conservative) is that the history of rights is not a linear progress. In Uganda, for instance, laws against "unnatural sexual acts" were not present before British colonialism in the 19th century (Human Rights Watch 2008), and the condition of LGBTI people has considerably got worse in the last five years, since some Christian evangelical preachers have launched a campaign for an anti-homosexuality bill intended to punish homosexual acts by death. The law was approved in December 2013, introducing the punishment of life in prison, instead of execution, and the ban of every organization working on LGBTI rights. The Ugandan constitutional court luckily abolished the law in August 2014, but the debate is still open, since the decision was motivated only by procedural irregularities in the parliamentary vote. Another example is Russia, where homosexuality has been decriminalized since 1993, although in January 2013, with Vladimir Putin's plaudits, a law has been issued against "homosexual propaganda".[5] We may think Uganda and Russia to be far from Western Europe and the allegedly civilized Western world, but we would make a mistake. Both the Ugandan and the Russian laws have been in fact supported by traditionalist organizations in the USA and Europe (Kaoma 2009, 2012), which campaign also in their homelands for the introduction of laws forbidding teachers to mention sexual discriminations at school to prevent bullying. In recent times, we have witnessed clear instances of this transnational movement in France and Italy; and we should not forget that in 1988 Thatcherite Britain prohibited local authorities from "promoting" homosexuality.[6]

On 26 January 2011, at the age of forty-six, David Kato Kinsule was assaulted in his home in Bakusa, Uganda, his head hit with a hammer to death: he was one the founders of the movement Sexual Minorities Uganda and he had just won a lawsuit against the tabloid Rolling Stones, which had made his name and face public calling for him to be hanged. But queercides are not a specific African concern. On 6 October 1998, in Wyoming, USA, twenty-two year old student Matthew Shepard was beaten, pistol-

[5] The new Russian law is against the circulation of any information about the existence of non-heterosexual and gender non-conforming subjectivities.
[6] Section 28 of the Local Government Act, promulgated in 1988. In the UK same-sex intercourse had been decriminalized in 1967.

whipped and tortured. He was found tied to a fence, in a coma, eighteen hours later. After six days he died in hospital. His fault was beeing gay. Kato's and Shepard's murders were both condemned by media and civil society organizations, but just a few people in the world react when a transgender person is killed: more than 1500 are the murders of this kind reported from January 2008 to March 2014,[7] 98 of them in North America and 87 in Europe – where Italy is ranked second[8] after Turkey.[9]

4. The Hobbesian Knot

As Jasbir Puar (2007) asserts, the USA and Europe should then not feel too comfortable in celebrating the secularism and liberalism of their societies and condemning the backwardness of Southern, Eastern and Islamic Countries. And their governments should not make use of the advancements in terms of LGBTI civil rights in Western countries as a pretext for justifying their imperialism and to gain support among the liberal public. Nevertheless – *pace* Puar and her critiques of homonationalism[10] and pinkwashing[11] – who belongs to this liberal public, me included, cannot but celebrate the fact that LGBTI people, when persecuted in their country of origin, may claim asylum in the countries that have ratified the Geneva Convention. This opens up, however, a further series of questions. How, to what extent, and at what price may the representatives of a force that disturbs our sense of humanity, as the sexual still remains, benefit from human rights?

From Jewish persecution under Nazism (Arendt 1958; Butler and Spivak 2007) to the recent debate on the anti-homosexuality bill in Uganda, historical evidence demonstrates that there is nothing "natural" in human rights, nothing in them proceeding directly from human nature. This is particularly clear in some passages of

[7] Source: Transgender Europe, Trans Murder Monitoring Project, April 2014. Update available at http://www.transrespect-transphobia.org/en_US/tvt-project/tmm-results/idahot-2014.htm, last accessed 15 September 2014.
[8] 27 reported murders.
[9] 35 reported murders.
[10] Homonationalism is the form of Western patriotism grounded on the idea of the exceptionality of the Western world in promoting the rights of sexual minorities.
[11] Pinkwashing is the strategy aiming at justifying Western imperialism with the excuse of liberating women and sexual minorities from the oppression they suffer in non-Western countries.

the 17th century British philosopher Thomas Hobbes (1640, 1642, 1651), who is universally considered the founder of modern political thought and whose work is fundamental for understanding the concept of biopolitics coined by Michel Foucault (1976, 1997, 2004a, 2004b) and developed by Giorgio Agamben (1995). According to Hobbes, being included in humanity depends on a decision, to which only sovereign power is entitled (Schmitt 1963). As a source of rights, for Hobbes human nature itself is a social convention, or better a political concept. In case of doubt, only the sovereign has the power to define this concept, deciding what is natural and what is unnatural for the human, who fully belongs to human nature and who has to be considered less than human, who deserves and who does not deserve the protection of human rights (Bernini 2013b).[12]

The 76 countries mentioned in the beginning have made the clear choice to exclude LGBTI people from their idea of humanity. Not so clear are, instead, the choices made by European countries, despite the recommendations of the United Nations High Commissioner for Refugees. Following the so-called Dublin Regulation concerning immigration, in each European country territorial commissions meant to examine asylum claims have in fact been instituted; but recent researches (Jansen and Spijkerboer 2011; Spijkerboer 2013) reveal that LGBTI people's applications are regularly rejected[13]. In several cases, commissions deem to be implausible that claimers

[12] Hobbes (1640, chapter XXVIII) states, for example, that the sovereign has the duty to increase and improve the people over which he governs, and hence forbid «copulations which are against the *use* of nature», although it is not evident that an individual in the state of nature would break any law of nature by engaging in such copulations. And he also asserts (Hobbes 1642, chapter XVII) that in case of doubt only law – that is, the sovereign's will – can ultimately decide whether a newborn «of unwonted shape» has to be considered a human, and then protected from homicide. For contemporary sensibility Hobbes sounds here quite cruel, and he is. But he maybe sounds less astonishing if one considers that in secular countries it is due to the Parliament, which is sovereign, to decide which sexual intercourses and from what age they should be considered legal, and under which conditions abortion and euthanasia should not be considered homicides.

[13] The Dublin Convention was signed in 1990, and in 2003 it was replaced by the Dublin II Regulation (No 343/2003). Recently, in 2013, the Dublin III Regulation (No 604/2013) entered into force, which introduced a fundamental innovation: no asylum seeker should now be transferred into a member State where they risk to be subject to inhuman or degrading treatments. Another important step in the reception of LGBTI asylum seekers is represented by the Directive 2013/32 *On Common Procedures for Granting and Withdrawing International Protection*. Article 24 establishes in fact that «Certain applicants may be in need of special procedural guarantees due, inter alia, to their age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of torture, rape or other serious forms of psychological, physical or sexual violence. Member States should endeavour to identify applicants in need of special procedural guarantees before a first instance decision is taken. Those

have engaged in acts so threatening to their lives. In other cases, the motivation is that who belongs to a sexual minority can avoid persecution "simply" by concealing their identity. So it happens that bisexuals, «lesbians who do not behave in a masculine way, non-effeminate gays», and applicants «who have been married or who have children» (Jansen and Spijkerboer 2011, 7) very seldom obtain asylum: apparently for the commissions these people should better remain in their homeland and stay in the closet, pretending to be heterosexual, rather than trying to escape persecution. Gay and lesbian people corresponding to stereotypes, that is to say, very "flamboyant" gays and very "butch" lesbians, shall therefore have more chances of obtaining international protection: but paradoxically trans and gender variant women whose condition is patent are often denied protection because commissioners ascribe the violence they suffer to prostitution rather than their gender identity.

5. The ordeal for humanity

Apparently, even in those countries where gays and lesbians have obtained full access to citizenship *as husbands, wives, fathers and mothers*, LGBTI asylum seekers have a hard time being recognized as deserving human rights protection *as LGBTI people*. Their urgency to live according to their feelings and desires is not generally considered a fundamental right deriving from human nature. European laws delegate to territorial commissions the sovereign power to decree the boundaries both of humanity and of "proper LGBTI subjectivities". Very seldom this power is used to acknowledge the disturbing force of the sexual as naturally human: still identified as the scapegoats of the negativity of the sexual, LGBTI asylum seekers are regularly returned to their homelands. As a consequence, far from being a voyage of hope from barbarity to modernity, their journey from Africa to Europe ends up being an archaic ordeal. Banned from humanity not for what they have done, but for what they are, they risk their life to reach Europe by land and sea. By a twist of fate, they land in the same islands where

applicants should be provided with adequate support, including sufficient time, in order to create the conditions necessary for their effective access to procedures and for presenting the elements needed to substantiate their application for international protection».

Italian Fascism used to confine homosexual men (Benadusi 2005; Goretti and Giartosio 2006; Bernini 2013c). Here they are arrested, placed in camps and subjected to their last trial: only if they manage to convince a sovereign commission of their right to be who they are, they will benefit the totality of human rights in Europe. Otherwise, they risk to be forced away from Europe – and from humanity, once again.

In the face of this tragedy, the liberal response every citizen of a democratic country should endorse is to demand human rights for LGBTI people as LGBTI people, their right to be universally and definitively received within the boundaries of humanity. This is what Judith Butler (2000, 2004), for example, claims for. But a different reaction, not necessarily in contradiction with the former, is possible and indeed is suggested by other queer theorists such as Edelman (2004) and Puar (2007). The fact that in the USA and Europe the full legal recognition of homosexuality has to pass through marriage and parenthood, proves that in our societies of enjoyment the sexual still has to be redeemed by love in order to be socially accepted. In twenty-first century Western countries human beings keep on enjoying sex, without *liking* sex (Bersani 1987, 1996), and law still appears not to be able to completely redeem those people who are made to embody the disquieting force of the sexual from their social negativity. Rather than claiming for this force to be acknowledged as properly human, a different queer reaction may be to find the courage to accept LGBTI people's extraneousness from humanity, in order not only to stake a claim for the rights of the non-human or the post-human (Braidotti 2013), but to trouble the biopolitical logic of sovereignty and rights altogether.

The Ugandan Parliament, Vladimir Putin and the transnational reactionary anti-LGBTI movements might then be right in being afraid of the possible effects of educational campaigns for the respect of sexual minorities. Some forms of "queer propaganda" might in fact end up being very dangerous (Edelman forthcoming). They could defy the power of sovereign authorities; and even undercut the Western idea of human civilization (Hocquenghem 1972).

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