PREFACE

This book presents two arguments against certain current expressions of so-called perfectionism. These will not sway intransigent perfectionists (such discussions do not end that way), but it will suffice to offer them food for thought.

Certain books written in favor of perfectionist positions are among the finest I have ever read, and this is because they have given me so much to think about. Liberal positions are not often so immediately appealing, in part because perfectionist thinkers -- and specifically certain of the communitarians -- tend to take the pars destruens, which is by far the more entertaining. The positions defended here will nonetheless be essentially liberal.

Someone who studies and teaches the philosophy of law cannot read only books from his/her own special field of interest and research. One inevitably reads the theoretical writings of contemporary philosophers or at least of those one considers most important. One inevitably develops preferences and opinions, ideas and arguments; a process which can -- if only occasionally and partially -- lead to elaboration, minimal perhaps but with a distinct line of argument. The pages that follow teem with the results of such readings and reflections, but naturally enough one's own special field of interest and research emerges from each line with predictable regularity.

Recent years have seen liberal positions come under fire from various perfectionist quarters: the neonatural-law perfectionism of Finnis and George, the communitarian perfectionism of MacIntyre, Sandel, etc.; and the liberal but non-individualistic perfectionism of Raz; as well as that sometimes implicit in feminist philosophy. The discussion has grown at an overwhelming rate, and it is extremely difficult to control the torrent of literature still being produced above all in the English-speaking countries. Here I have done no more than present my reactions to these readings.

The weak antiperfectionism here upheld is well-known, and may be summarized as follows: the promotion of an ideal of the good life should have no place in the decision-making process of the State. For those familiar with the classics, this brings into play the question of happiness (nowadays other terms are also used, such as the "well-being", the "flourishing" or the "prospering" of human beings). This sort of "eudaemonological"
orientation is often legible in perfectionist argumentation. At the same time, one can hypothesize a connection between these questions -- questions of law and of morality -- and the relationship we are disposed to establish between the political whole and its parts (individuals but also groups), that is with our notion of the political whole. This connection is vital to the arguments which are developed in the text, and whose goal will be antiperfectionist, traditionally antieudaemonic but critical specifically of those who see in the happy integration of the part within the whole, in harmonious assimilation, the only value worth defending.

I have tried to make the line of argument as clear as possible, avoiding the sort of impressionistic style that artfully makes criticism difficult. I have also tried to be as brief as possible, trying not even to sketch notions, discussions and problems that might be conceptually contiguous but are in any case not essential. The latter attempt has been particularly arduous and only partially successful.

In fact dealing with contemporary thought one always runs the risk of describing the stances of the various schools of thought and of the various authors -- and often usefully and with incisive critical observations but adding nothing which is strictly pertinent to the theoretical conclusions one intends to draw, and this can be tedious for the reader. I have kept to a middle path incorporating such “reconstructions” only where they are particularly important to the arguments in question. I have narrowed the subject of this inquiry to include only certain aspects of the dispute over perfectionism (there will therefore be no systematic treatment of the relationship between law and morality), and specifically those which exhibit an interesting connection with notions concerning the political whole and its “parts” (No attempt is therefore made at another reconstruction of the debate between liberals, communitarians, republicans, etc.). The two arguments are thus developed on the basis of this “interesting connection”.

My conclusions are not very optimistic. I share the idea of Martha Craven Nussbaum that the value of fundamental aspects of social life is inseparable from risk and conflict, but I believe that this makes irresolutely problematic any notion of a “good life” presented -- even in support of liberal ideas -- as a criterion to resolve definitively concrete, normative questions. Since, on the other hand, the path of neutrality is anything but problem-free, my two arguments exhibit an inherited complexity and “weakness” which is at times embarassing.

I should thank many people for their help and encouragement. Nicola Matteucci has played a very distinctive role: a liberal who eschews baroque complications and is wary
of organicist tendencies, he has nonetheless always been instinctively cautious in a deToquevillian manner when faced with the risks inherent in atomism, in radical anthropocentrism as Charles Taylor would say. His interest in Greek philosophy derives in part from this unusually broad intellectual spectrum. Since Professor Matteucci is a liberal, my own penchant for radical theses — which he of course cannot share — has always amused him, and so when the time came to write a paper for the Festschrift in his honor I could not resist calling it *Legal Liberalism: A Right to Unhappiness*; and those considerations formed the basis for a significant portion of this book. The rest came on its own with parts incorporating thoughts already expressed on other occasions but which formed useful links in the line of reasoning (which they themselves had helped generate).

The ideas presented here were aired in the preliminary form of a paper, *Against Legal Moralism: A Classical Rebuttal*, on the 24th of March, 1995, as part of the seminar *Etica ed ermeneutica* directed by Gianni Vattimo at the Department of Hermaeneutics of the University of Turin. The participants’ questions were extremely stimulating.

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This book is dedicated to the memory of a friend, Stefano Govoni, whose name must be added to the list of those I am morally obliged to thank.

Gf. Z.
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