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HOW TO ACT TOGETHER  
KAKO DELOVATI ZAJEDNO

Edited by Jelena Vasiljević





## Introductory note

'How to act together?' is simultaneously one of the most pressing questions of today and arguably one of the most banal we could formulate in general. The urgency of the question comes from the present-day dire need for convincing arguments that would claim that collective action can indeed make a change, that *right* ways of mobilizing and organizing can and do make impact and carry with them potentials to change the state of the affairs in a *desirable* way. There is something almost irrationally encouraging and promising in 'acting together', as if only emancipatory and positive change occur when *we* take a collective action. The banality, on the other hand, stems from the fact that we cannot but act together, as action (*for something, against someone* and so on) is an inherently social endeavour, implying some kind of togetherness, be it constructive or destructive. However, it is this open question of the nature of *possible* togetherness and collective endeavours that intrigues us to unpack the notions of action, agency, and ways of being together.

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This critical unpacking, and intense deliberation on many diverse aspects of collective action, were central activities during the three November days of 2015 – when the Institute for Philosophy and Social Theory from Belgrade organized a conference with the said question: 'How to act together? From collective engagement to protest'. The special guest and key lecturer was Judith Butler, whose latest book *Notes Toward a Performative Theory of Assembly* and arguments about "concerted actions of the body," served as one of the inspirations for *collective* thinking about contemporary protests and politics. What are the ways in which physical bodies can act in politics? How are we (and are we) transforming and influencing the public and the political by employing embodied ways of coming together?

This special issue brings four papers presented at the conference. They tackle different topics, but however relate to one another as they revolve around the question of collective action, conditions that enable it, and limitations it meets. Niccolo Milanese's opening paper rethinks the question of *the audience* and the locutions of "granting/demanding an audience" through reading of the way in which "theatre, acting and the audience" are involved in the theories of state in Hobbes and Rousseau. Starting from one of the premises of the democratic ideal – that "everyone has both the right to be heard (either directly or through a representative) and the right to hear" – Milanese analyses ways in which the state, both in Hobbes' and Rousseau's theories, albeit with significant differences in understanding of the sovereignty and representation, "only appears as an artificial or fictional projection of the audience." Reposing the question of the audience, for Milanese, has three

major implications: political, theoretical, and practical, as it may “enable us to better see the mode of existence of the state, and consider how we practically can address, contest or change it.”

4 Giusi Strummiello’s paper on “rethinking community and the mechanisms of creating a sense of belonging” starts with Derrida’s two-fold claim that we *belong* to an era which radically subverts the very idea of belonging and community, and that, therefore, we should engage in conceiving “of a new sense, a new axiomatic, of community: the possibility of a new and different way of thinking of community that corresponds to the crisis of belonging.” Embracing the need to deconstruct “the hegemonic scheme of Us,” Strummiello however wonders what then makes “for effective and powerful change in a struggle for emancipation, or in a protest for the recognition of one or more rights, when carried out by a collective movement or a group.” Through comparing Balibar’s and Blanchot’s work, she proposes the hypothesis “that a plurality can affirm its rights in the midst of inequality, not because it is compacted and formed on the basis of equality, constituting a unified, homogeneous whole of identity (for example, We Women, We Workers, We Migrants); but because, in its difference, indeed because of this very difference, such plurality contradicts this very equality, or rather, contradicts the universality of equal rights, and by so doing, plurality realises, implements and establishes universality, thereby making itself a fundamental subjectivity, an authentic political subject.”

Sonja Vilč’s “The art of collective improvisation in theatre and politics” digs into the theory of theater, more precisely, the theory and method of *collective improvisation*, to show its potential contribution to modern political theory: an alternative way of understanding “acting together”. The practice of collective improvisation, it is argued, challenges our intuitive approaches to politics, and creates an “alternative model of being and acting together”, while simultaneously reevaluating some core critical-political concepts, like dissensus (Rancière), community (Nancy), and politics as a system of collectively binding decisions (Luhmann)

Finally, the last paper in the section is Ilina Jakimovska’s ethnographic approach to female social engagement in Macedonia’s past and present. Addressing the question of Macedonia’s women acting together, Jakimovska firstly re-examines and deconstructs the dominant narrative about the female passivity in the so-called traditional cultures, and then gives an illustration of the present day women’s struggle, with the aim to portray a continuity, rather than a gap-image, between the role of women in an old patriarchal Balkan society, and today’s struggles for emancipation and preservation of reproductive rights.

Niccolo Milanese

## An audience with ... the public, the representative, the sovereign

**Abstract** The right of audience, in common law, is the right of a lawyer to represent a client in a court. Royalty, the Pope and some Presidents grant audiences. What does the power to grant an audience consist in? And what does it mean to demand an audience (with)? Through a reading of the way in which the vocabulary of theatre, acting and audience is involved in the generation of a theory of state by Hobbes and Rousseau, this paper looks to reopen these questions as a political resource for us to re-imagine and refigure our ways of being together. Through readings of Hobbes and Rousseau, it looks at the ways in which the performance of politics creates the public, the representative and the sovereign and the ways these figures interact. It proposes an alternative role for theatre as places of affective learning and a civic ethics of playfulness, in which the auto-institution of the state as an imagined collectivity is fully assumed.

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**Key words:** *public, sovereignty, performance, audience, Rousseau, rhetoric, authority, representation, Hobbes.*

The question of whom the audience of an act of speech is, and how it is composed, was a central question of the rhetorical tradition of European humanism. Giambattista Vico writes in *On the study methods of our time* in 1708, “the whole object of eloquence, is relative to our audience, and it is following its opinions that we should set our discourse.” This question of the audience, which was a theoretical as well as a practical question, has largely been occluded in modern philosophy, for reasons which have to do with a heritage of Cartesianism in part, but also to do with the isolation of philosophy in academia, writing for an ideal audience, and distanced from practical political concerns and persuading particular audiences.

I have three broad reasons for wanting to re-pose the question of the audience. Firstly, a political reason about political contestation and mobilization: I have the sentiment that for lack of sufficient reasoning around whom is the audience being addressed, and how that audience is determined, many protest movements end up speaking only to and amongst themselves, and not ‘speaking to power’, or speaking outside a group of people already in substantive agreement. The second, more theoretical, reason is that the question of audience has come back into academic discussion in the last 20 years under the guise of trying to theorize ‘publics’. I am uneasy with this

discussion around publics, which seems to go too far in the direction of idealizing audiences, and thereby make it more difficult to understand what actually happens in public debate, for example, and specifically how audiences are formed. Thirdly, as I will aim to show in this paper, in the development of modern conceptions of the state the relationship of the audience to a speaker or actor was an essential consideration, and by reopening this question we can recover a political resource which may enable us to better see the mode of existence of the state, and consider how we practically can address, contest or change it.

### **The right to an audience, the right to be heard, the power to be heard**

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The theme of the audience manifests itself in our language in curious ways, and by highlighting some of them we can become more receptive to it. Popes, kings and queens, can *grant audiences* to people who want to meet them, who have 'requested an audience with the Pope,' for example. These sovereign figures have the power to determine their audience. Such meetings typically begin with the sovereign speaking first, so the visitor is the audience, even if the primary purpose of the meeting is for the visitor to say something, or ask something, of the sovereign. The Queen of England must always speak first before being spoken to. The origin of this use of 'audience' almost certainly comes from the Pope giving Papal audiences, and was then extended as a locution to royalty. This origin is significant given that the Pope is taken to be the voice of God on earth, the representative of God.

In English common law, there is the phrase the 'right of audience', which expresses the right of a lawyer to represent a client in a law court. A barrister has the right of audience in all courts of the land; a solicitor only has the right of audience in some specific courts. A person who decides to defend herself, a *litigant in person*, can also have the right of audience. Here the 'right of audience' is the *right to be heard*. The right to a *public* trial, and therefore the right of the public *to be auditors* of a trial, the *right to hear*, is a connected and very ancient idea.

Thus there are several distinctions we can make concerning audiences: there is the *right to be heard* and a corresponding *obligation to hear*. There is also the *right to hear*. We could summarise quite crudely that a part of the democratic ideal is that everyone has both the right to be heard (either directly or through a representative) and the right to hear. Much of the contemporary discussion about public spheres in a democracy is about trying to ensure that both aspects of this ideal are achieved to a maximum extent. We reason around how to make public spheres in which each voice is heard equally, and the *demand to hear* insists on more and more transparency on the part of the

state or authority. Of course, these aspects of speech and audition are not in themselves all of the ideal of democracy, nor even the most important parts: we have not yet said anything about the power to *decide*, to *act* or to *govern*.

The locutions ‘giving an audience’ and ‘right of audience’ suggest that the sovereign power to determine who is heard and who can hear goes further than the placing of restrictions on who can speak and who can hear: the power is first and foremost one of *creating an audience*. The Pope, or a king, seems to have the power *by fiat* to create an audience for his or her discourse. When they lose this power, they arguably lose all their power. This indicates that their power consists more in *being heard*, than in dictating an interpretation of what they say (after all, meaning is never totally stable). Other speakers do not automatically have an audience, and we should therefore look further at what this power to generate an audience could consist in. Sometimes an audience may already be present, waiting to be addressed, but most often this is not the case. So in addition to there being a *right to be heard*, an *obligation to hear* and a *right to hear*, there is the *power to determine who (or what) must be heard, who must hear, who (or what) cannot be heard and who cannot hear*.

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As Judith Butler (1998) has noted in *Excitable Speech*, the law has the capacity to say who and what can be heard and who and what cannot, when it legislates on, for example, hate speech. Building on Butler’s observations, we can also point out that the law has the quality associated with sovereignty of determining *what must be heard*: each citizen under the law is obliged to know the law in most cases (certainly when it comes to civil law), the obligation to *hear the law* – and if they do not know it, they *should know it* and so can be held responsible. This is part of what we normally call *the authority* of the law. Yet by putting the question in terms of *audience* and not in terms of *authority*, we put the emphasis not on how the law is generated, but on how it is received.

The obligation to listen to the law, and its eventual backing by force or punishment, is not in itself enough to account for how the audience of the law is created and maintained. This is something that Rousseau understood. As Rousseau points out in his *Letter to d’Alembert*, a law which is ignored by the people is worse than useless, and if an attempt to enforce it is made by force, it is likely to provoke only rebellion (Rousseau 2003: 118). The central problem of the *Social Contract* is precisely how to find a form of association in which each is the author of the (general) law he obeys, but an essential part of this problem is how to ensure the citizens are receptive to the laws that are made, and this goes beyond a problem of authorship. This aspect of the problem is usually glossed over by modern commentators (although it was a very practical concern for the French revolutionaries inspired by Rousseau, for example). Very summarily put, the solution that Rousseau works

towards is that the people 'love' their laws. We will go more deeply into this solution of Rousseau in the second part of this paper.

An alternative is for people to *fear* their laws or their sovereign. This again is about more than people fearing the *consequences* of not obeying the law, it is about them fearing the law itself, finding it terrifying. This is the strategy of Hobbes, and it is partly against this strategy, whilst borrowing several of the techniques from it, that Rousseau argues. In the imagery of Hobbes, laws are pronounced by the mouth of Leviathan, that terrifying creature from the mouth of which 'go burning lamps, and sparks of fire' according to the book of Job: 41. It is worth highlighting that in the famous frontispiece of the Leviathan for the 1651 edition, the people who make up the body of the beast are all looking away from the reader towards its head (and thus the reader joins them): they are the audience of the mouth of the beast. Yet in the edition made specially for Charles II, as Giorgio Agamben has pointed out (Agamben 2015: 37), the people making up the body of Leviathan look out towards the reader (i.e. the real sovereign, Charles). Hobbes no doubt felt obliged to make this change: the book is for the attention of the king, and Hobbes is like any other of the faces in Leviathan, that is, *part of the audience* of the king if he grants an audience by giving his attention.

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The image of Leviathan itself is an expression of a paradox common to all attempts to ground sovereignty in a social contract. This paradox can be put two ways. From one direction, there is what we could call a 'paradox of representation': what gives the right of the collectivity to represent the individuals? From the other direction, there is a 'paradox of the audience': what makes the audience of the law receptive to the law? Together, these are the questions of what is it that makes the body politic shown in the picture of Leviathan a unitary body, or what is it that fixes the regard of the faces in the body on the head? What is notable, and gives an entry into this discussion of the audience, is that Hobbes in answer to the first question turns towards the vocabulary of the theatre and his answer to the second in terms of fear appeals to a spectacular affect. We will therefore start the discussion with Hobbes' solution, and then turn to Rousseau's development of it, before drawing from these readings some reflections on an alternative relationship between audience and sovereign.

### **Hobbes: Of persons, authors and things personated**

In the very first page of *Leviathan*, Hobbes defines the Common-wealth as an artificial person created by the art of man (in my discussion I will follow Hobbes in talking about 'men' – this gender bias is not anodyne, and as I will suggest in the final section it demands to be contested, but this first requires we do not mask it). In the later chapter entitled 'Of Persons, Authors

and things Personated' he explains this distinction between a 'natural person' and a 'feigned or artificial person', and he draws on a theatrical vocabulary. He says:

"A person, is he whose words or actions are considered, either as his own, or as representing the words and actions of another man, or of any other thing to whom they are attributed, whether Truly or by Fiction. When they are considered as his own, then he is called a *Naturall Person*: And when they are considered as representing the words and actions of an other, then is he a *Feigned or Artificiall Person*." (Hobbes 1986 [1651]: Chap. XVI)

In the following paragraphs of the chapter, Hobbes points out that the word 'person' comes from 'persona' in Latin, which signified the disguise or outward appearance of a man as represented on stage, and has been transferred from the stage to 'any Representer of speech and action, as well in Tribunalls, as Theaters.' In this way 'a Person, is the same that an Actor is, both on the Stage and in common Conversation; and to Personate, is to Act, or Represent himself, or an other; and he that acteth another, is said to beare his Person, or act in his name'. He gives the example of Cicero, who said '*unus sustineo tres Personas; Mei, Adversarii and Judicis*, I bear three Persons; my own, my Adversaries and the Judges.'

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Hobbes says that some artificial persons "have their words and actions Owned by those whom they represent." Therefore this artificial Person is "the Actor; and he that owneth his words and actions is the Author." By 'Authority' Hobbes understands 'a Right of doing any act,' and 'done by Authority' means done by delegation or license from him whose right it is. Thus, the men in the state of nature, in making a covenant to give their right to govern themselves to the artificial Man that is the Common-wealth, on the condition that all other men do, thereby through this act create this Common-wealth. From this union is born Leviathan, which is the Authority of so much power and strength conferred on the Common-wealth that it provokes 'terror'.

The Common-wealth can be represented by one Man or by an Assembly of men. As Hobbes says at the beginning of Chapter XVIII, "A Common-wealth is said to be Instituted, when a Multitude of men do Agree, and Covenant, every one with every one, that to whatsoever Man, or Assembly of Men, shall be given by the major part, the Right to Present the Person of them all, (that is to say, to be their Representative.)" The king or the assembly is able to act, something that the Common-wealth cannot do *but* by its being personated. In this sense the Common-wealth is like a building, or a ship – an object which cannot itself act or speak, but which can be personated by a (legal) representative. Other examples given by Hobbes of non-persons are madmen, children, and idols, all of which need to be personated to have capacity to act.



We see then, that Hobbes identifies a person with an actor (both on stage and in society), and says that the Common-wealth is an artificial person, acting on behalf of the men that have performed a covenant to give it authority to represent them, to govern them. Since each of the men who make this covenant are authors, the delegation of powers has authority. This is what gives the collectivity (the state) the right to represent the individuals, and is Hobbes' answer to the paradox of representation. This artificial person is so terrifying in its assumed authority having come from so many, that like Leviathan it strikes fear into the Multitude that is its audience, in such a way that they are held in awe of it. This is Hobbes' answer to the paradox of audience: the terror keeps the faces of the subjects turned towards the face of the sovereign.

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There is a learned debate about whether the Common-wealth, in addition to being artificial, is also to be classed as represented 'by fiction' according to Hobbes' schema. Two leading contributions to this debate are Quentin Skinner (Skinner 1999), who maintains that the common wealth is artificial but not fictional, and David Runciman (Runciman 2000) who maintains it must be understood as fictional.

Skinner (Skinner 1999: 15), in making his argument, cites an interesting paragraph from *De Homine* which further explains what Hobbes has in mind when drawing these distinctions:

"For it was understood in the ancient theatre that not the player himself but someone else was speaking, for example Agamemnon, namely when the player, putting on the fictitious mask of Agamemnon, was for the time being Agamemnon. At a later stage, however, this was understood to be so even in the absence of the fictitious mask, namely when the actor declared publicly which person he was going to play."<sup>1</sup>

Skinner glosses this passage as suggesting that the acts of the actor playing Agamemnon will not be understood as his own acts, and hence he is an artificial person, but that since the real Agamemnon does not exist (it is just a character in a play of Aeschylus) the acts are fictitious since there is no one to whom they can be validly attributed. There is a parallel between the actor playing Agamemnon, and the sovereign representing the state. Skinner argues that whereas the representation of Agamemnon is fictitious, the representation of the state must be understood as 'truly' attributable to the state, and the acts of the sovereign are "in fact the actions of the State in the real world" (Skinner 1999: 22).

1 Skinner's translation of Hobbes 1839, XV.1, p. 130. "Intelligebatur enim in theatro loqui non ipse histrio, sed aliquis alius, puta Agamemnon, nimirum faciem fictitiam Agamemnonis induente histrione, qui pro illo tempore erat Agamemnon; quod tamen postea intelligebatur etiam sine facie ficta, nimirum profitente se actore quam personam acturus erat."



Runciman (2000: 275–6) argues that “the difference between Agamemnon and the state is not that one is a person by fiction and the other is not, but that one is a person by fiction whose attributed actions are backed up by the actions of real persons, and the other is not.” What distinguishes the actions of Agamemnon from those of the state, Runciman argues, is that the actions of Agamemnon stay inside a realm of fiction which is the play, whereas the state, like idols, madmen and bridges, is a person by fiction which has a place in the real world “of truly responsible action by the combined efforts of other real persons” (Runciman 1999: 276).

Neither Skinner nor Runciman are able to give a reading of the distinctions *natural/artificial* and *true/fictitious representation* which is wholly consistent with Hobbes’ texts, which suggests that perhaps Hobbes himself was unclear or uncertain about these distinctions. This is unsurprising for a reason which neither Skinner nor Runciman comment on: Hobbes, in the section of *Leviathan* they both take as their starting point, and as we underlined above, identifies *all persons as actors*, whether representing anyone else or not, whether ‘on the stage and in common conversation’. To be a person is to act. Therefore it is by no means clear what a natural person is, nor what representing ‘truly’ or ‘by fiction’ can mean. When Cicero says he has three persons, his own, his adversary and that of the judge, it is unclear in what way his relation to his own person is different from that of his relation to the adversary or judge. Perhaps Hobbes holds that ‘natural man’ is only possible in the state of nature before government appears, and therefore all actions in a civil state are fictitious because they enter into relations between men which are conventional, but in this reading the *only* relationship of authorship a natural man would seem to have is with the state, to which he has alienated all his rights of self-government. In any case, without a fuller account of what the self is for Hobbes, these distinctions will remain unclear.

Be that as it may, Skinner, in discussing the example of the actor of Agamemnon, deals with a modern objection that has been raised against Hobbes in including stage characters in his account of representation (Skinner attributes this to Hanna Pitkin (Skinner 1999:15)). Skinner’s response is instructive for us. Hobbes says that for there to be a valid act of representation, there must be someone or some collectivity that has the right to authorize it. The objection is that in the case of a play no one stands in this relation, no one has authorized the actions. Skinner quite rightly points out that at the time Hobbes was writing in England, the Master of Revels had to authorize any theatrical performance through the licensing of the play. Therefore it is at best anachronistic to criticize Hobbes on these grounds. Skinner seems to miss the more obvious defense that there is also, for a play, *an author* who has in a sense authorized the character, and we know that, in

times of censorship, authors have often been held responsible for characters they create.

Skinner's defense of Hobbes on this point seems to go against his attempt to draw a strict distinction between the fiction of a play and the reality of the actions of state. For why would the Master of Revels be so concerned about authorizing or not authorizing the representation of a play, if it were not for its effects 'in the real world'? What is more, as Skinner himself acknowledges in a footnote, Hobbes says in the *Elements of Law Natural and Politic* when discussing the use of language in instigation, that 'not truth but image maketh passion' and 'a Tragedie affecteth no lesse than a Murder, if well acted' (Hobbes 1969: ch.12.7). As we have already seen, it is essential to Hobbes' construction of the state that the sovereign *act the part* in a way that inspires terror and awe in his or her audience of subjects, and if we attempt to read Hobbes in a way that distinguishes too strictly theatrical performance from the sovereign performance, and if we focus exclusively on the side of the paradox of representation, we are likely to lose this side of the paradox of audience and the way theatricality is involved in resolving it.

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We will now turn to the way Rousseau appears to negate both the paradox of representation and the paradox of audience, only for them to reappear at the origin of the social contract. It may partly be Rousseau's artfulness in dealing with the paradox of audience in particular, and his continuing influence, that makes it difficult for us to discern in our own relationship with the state.

### Rousseau: society as spectacle

Jean-Jacques Rousseau, in his furious Letter to d'Alembert – which was arguably just as much addressed to his former friend Diderot who had included d'Alembert's entry on Rousseau's beloved Geneva in his *Encyclopedia* – attacks the proposal of authorizing theatres in Geneva. Rousseau criticizes theatres for all kinds of reasons, some of which seem to us (and already seemed to Rousseau's contemporary audience) exaggerated or otherwise objectionable. He criticizes theatres as promoting laziness and costing money, pulling people away from their honest work, promoting a confusion of genres and a kind of feminization of society, of actors being licentious, of even being thieves, and so on.

We will return to the main thrust of these arguments, but what is less well appreciated, and comes as something of a surprise to readers of the letter, is that after thousands of words criticizing theatres, Rousseau expresses his approval of spectacles, and even suggests that the whole of society can become a kind of spectacle. He says:

“Plant in the middle of a place a stake crowned with flowers, gather there the people and you will have a fete. Do even better: *make the spectators themselves the spectacle, make them themselves the actors*; do it in such a way that each person sees himself and loves himself in the others, so that all should be better united.” (Rousseau 2003: 182, my translation, emphasis added)

He goes on to celebrate village fetes in which young people dance with one another, with a view to finding a husband or wife, and he argues that such celebrations should be publicly authorized and presided over by a magistrate (Rousseau 2003: 185–6). Such village fetes are still quite common throughout Europe and the United States – if not always with the express purpose of encouraging the youth to fall in love – and indeed often organized by, or under the patronage of, the mayor or local state official.

What is striking about the enthusiasm of Rousseau for these kinds of ‘Republican’ spectacles is that the public become the actors, they become the audience for themselves. He asks, ‘what will be the object of these spectacles? What will be shown in them? Nothing!’ (Rousseau 2003: 182, my translation). Where Rousseau criticizes theatre actors as being potentially morally corrupt, he is happy for citizens to *act as themselves*. On the occasions of public spectacles – which Rousseau is careful to point out should only be occasional – the citizens become honest actors. What is striking is the lack of the distance we associate with theatricality between the actor herself and the character played: where in a theatre the ‘invisible curtain’ creates a distinction between the actor and character, and authorizes what has been called a ‘willing suspension of disbelief’, in Rousseau’s public spectacles in the open fields or on the central square of a village, there is perfect coincidence between the self and the character, and kind of transparency which can be themetised as sincerity and authenticity, or ‘simplicity’.

As my phrase ‘honest actors’ suggests, we can better appreciate Rousseau’s attitudes towards theatre by putting in parallel his concerns with the long-standing philosophical concern with the problem of the honest orator. If rhetoric is the art of persuasion, how can the rhetor also speak the truth? How can the orator be trustworthy and truthful? In its more careful formulations, this problem is specifically with how the orator can *remain* an honest man: does not his agility in persuasion lead to the potential corruption of his character, to the undermining of his virtuous predisposition to the truth? This paradox in the definition of rhetoric exercised Quintillion in particular, but of course is already present in Plato and Socrates’ dialogues with the sophists.

Diderot, in a text composed some twenty years after Rousseau’s letter, reformulates this problem with the honest orator in terms of the ‘paradox of the actor’. He summarises this paradox quite simply:

“Do not people in society talk of a man being a great actor? They do not mean by that that he feels, but that he excels in simulating, though he feels nothing.” (Diderot 1883: 108)

The paradox is that the greatest actor is one who is able to create the greatest affect amongst spectators, although he himself may feel none of the passions, the sentiments that he is expressing. Indeed, Diderot maintains that it would be very difficult for the actor to feel these sentiments consistently: plays are typically performed several times, to different audiences, and whilst an actor could realistically feel the emotions he is expressing once, trying to repeat the experience is likely to lead to an artificial-feeling performance.

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The introduction of this ‘paradox of the actor’ to the moral fabric of society, and the possibility for someone to be an ‘actor’ in this sense in society when not on stage (which is what Diderot points to in the quote above), is precisely what Rousseau seeks to avoid for his beloved Geneva, and his main concern in preventing the opening of a theatre there. Although the *Letter* was composed before the *Social Contract*, we can see that this concern is a consequence of his identification of the people with the sovereign. Unlike Hobbes, Rousseau refuses the possibility for the sovereign to be represented. Sovereignty is just the exercise of general will, and therefore cannot be alienated. Each citizen is a member of the sovereign: and therefore the sovereign cannot be represented but by itself. The sovereign can commission the government to wield its power, but Rousseau maintains, that ‘will (*volonté*) cannot be transmitted.’ (Rousseau 2011: II, 1) Rousseau’s concern is that theatrical acting introduces the possibility of a distance between the performance of citizens and their will, and this weakens the sovereign which relies on the spontaneous coincidence of reason and will, which Rousseau often romanticizes as the simple state of peasants and farmers. Rousseau’s concern is that theatrical acting will undermine the (moral) basis of political acting together, which happens *through* and *as* the sovereign.

It is essential for Rousseau that the private interest of individuals coincide with the general will, since this is what gives the general will its force. Misunderstanding of this point is common. Habermas for example says of Rousseau’s sovereign: “As members of a collective body, they fuse together into the macrosubject of a legislative practice that has broken with the particular interests of private persons subjected to laws” (Habermas 1997: 102). Rousseau says at the very beginning of the *Social Contract* that he is trying to ally “what right allows and what interest prescribes, in such a way that justice and utility are not divided” (ie. the link is precisely *not* broken). He seeks to establish relations in the state such that “one cannot work for others without at the same time working for oneself” (Rousseau 2001: II, 4). Rousseau’s constant objective is to maintain a unity between the particular interests of

private persons and the general will, which is precisely where the particular interests well-understood overlap. Habermas' neglect of this point is surely connected with his own development of a procedural account of legitimacy which seems to neglect its affective dimension.

Where Rousseau's refusal of (political) representation motivates a refusal of (theatrical) representation, the theme of spectacles and the question of the audience reappears in Rousseau's theory in the role of the legislator, the censor and civil religion and is ultimately concerned with the role of public opinion and what he calls public enlightenment ('les lumières publiques').<sup>2</sup>

To approach this point it is first instructive to note that whilst Rousseau is concerned to do all he can to prevent the opening of a theatre in Geneva, he is not in favour of censoring theatres where they already exist. Indeed in the *Letter* he boasts he is an avid theatre-goer in Paris, having followed the Comédie-Française for over 10 years, and there is no question of the legislator or anyone else closing it. In book four, chapter seven of the *Social Contract*, Rousseau makes clear that the censor can only conserve public morality, and cannot reestablish it. As Rousseau argued in chapter eleven of book three, political bodies have a natural life, and carry in themselves the causes of their destruction. The censor, like the doctor, can attempt to prolong the life by holding off corruption, but increasingly the corruption becomes inevitable. Rousseau's battle in the *Letter* is to try to preserve the health of Geneva, and he sees Paris as already corrupted.

This connects to the broader point that whilst the perfect coincidence of the general will and particular wills of the citizens is an ideal, in real societies there is rarely this harmony. As Rousseau says in chapter 3 of book 2, "If the general will can err': whilst the general will is always right and always leans towards public utility, it does not follow that the deliberations of the people always have the same rectitude. One always wants one's good, but one does not always see it." The role of the legislator is to work to ensure that the people can see their good. This is the 'secret' work of the legislator, who while he is apparently occupied with particular rules, is behind the scenes (as we might put it), working on the 'real constitution of the state' which is not engraved in marble nor in bronze, but in the 'hearts of the citizens', in their 'manners, their customs and above all in their opinions' ('des moeurs, des coutumes et surtout de l'opinion' (Rousseau 2001: II, 12)).

The censor is "not the judge of the opinion of the people, but only its declarer", and as soon as it moves away from the opinion of the people "its decisions are vain and without effect" (Rousseau 2001: IV, 7). Yet the example given in

2 On this topic, see the groundbreaking study of Bruno Bernardi (2014): *La Fabrique des concepts*.

the chapter of the *Social Contract* concerned with the censor of the way duels of honour are conducted, and which Rousseau relates directly with the same discussion in the *Letter*, shows that things are more complicated.

In the *Social Contract*, Rousseau gives the example of the use of 'Seconds' in duels – ie. calling on someone else to represent you in a duel. This practice was put to an end Rousseau says, by the king calling people who called up a replacement 'lache' (cowardly). But when the same edict tried to say that those who engage in duels *at all* are cowardly, the public simply mocked this decision, since it was contrary to the public opinion. When it came to the use of Seconds, the public opinion was receptive, but with regards to the practice of duels itself, public opinion was not prepared, and the ruling was worse than useless: the public mocked it and ignored it.

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In the *Letter*, Rousseau goes further and talks of the tribunal of marshals instituted in France to act as judges of honour. Rousseau says that this tribunal was created to "change public opinion about duels" (Rousseau 2003: 119). In order to achieve this change of opinion, Rousseau recommends firstly that such a tribunal cannot use any coercive methods, but rather simply honour and shame. He suggests that the apparitor summon the defendant by touching him with a white stick, and not appearing before the marshals would become itself an infamy. Secondly, in order for the tribunal to have authority, it was required for the judges to have authority on questions of honour in the public opinion, and in a 'military' society like France, military chiefs are therefore a good choice. Thirdly, for the tribunal to be successful, the king himself needed to appear to be subject to it. Above all, in order for the tribunal to be successful, all calls for combats between individuals needed to be submitted to the tribunal for judgment on whether they should be permitted, and the marshals would at the beginning need to authorize some duels, so as not to lose their authority before public opinion or appear biased. Then progressively, the society would move towards accepting the judgment of the tribunal (which would progressively rule-out any duels), and any remaining duels would become secretive and shameful. In this way, by 'art', the legislator arrives at changing the public opinion (Rousseau 2003: 121). We see that crucial in this ruse of the legislator is to guard the authority that comes from the general will or (its equivalent when it comes to particular matters) public opinion, and in this way, we might say, to bring the audience of the public opinion with him.

The example of the way public opinion concerning duels can be acted upon is an example of the general role of the legislator, which is to guide the people towards its own good, in such a way that its understanding and its will coincide. Here is the paradox of establishing political authority from a social contract, because the opinions of the people should flow from the law, but in

reality the opinions preexist the law. The social spirit which would found the general will is its result: “the effect would need to become the cause” (Rousseau 2001: II, 7) Hence the legislator is caught in a dialectic which calls for artfulness. Unable to use force or reason without losing his authority before the people (that is, losing his audience), the founders of political communities have often called upon the divine to give them authority, and Rousseau sees Moses in relation with God as the perfect example of a founder of a political community in this sense.<sup>3</sup> He says that any man can engrave laws in stone, or pretend to have a communication with the divine, but only the ‘great sprit’ of the legislator is able to found a community, and this miracle is only proved by its result. The censor, tribunals and magistrate continue the work of the founding legislator over the life of the political community.

Here we see that Rousseau understands that the paradox of representation and the paradox of the audience go together: the only way to establish the existence of the sovereign is for each individual to conceive of his own will as part of a common will, but this state of affairs will only come about through the actions of a sovereign. To deal with this gap, the legislator must (secretly) act upon the people in such a way that the people believe they are acting themselves, and only in this way do they really act as a collectivity: the people must believe it is acting when it is in-fact an audience (being acted-upon) and through this form of alchemy the audience really does become the actor and speaks as the general will and the public opinion. To use a terminology foreign to Rousseau but which speaks to us, this is the origin and function of ideology; what Rousseau says about the necessity of civil religion at the end of the *Social Contract*, as well as the whole enterprise of the book itself, in which Rousseau acts as the (secret) legislator, is to be understood in this way.

If we return to the injunction in the *Letter* to have public fetes, we see clearly the art of the legislator and its relation with the audience. When Rousseau says “plant in the middle of the place a stake crowned with flowers; gather there the people...” he is addressing the magistrate or legislator. It is the magistrate that creates the spectacle by planting the stake with flowers – for without this marker, there is no spectacle at all. The (secret) function of this spectacle, in which the only actors are the audience, is to make the people love each other. This love of the other is the precondition for sovereignty, and as Rousseau says of the civil religion, there is no way for the sovereign to oblige the citizens to love one another (or to believe the civil religion), but the sovereign can banish anyone who manifestly does not love the other citizens/does not believe the civil religion/refuses to take part in the spectacle,

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3 On this point see Bruno Karsenti (2012).



“not as someone impious, but as someone unsociable, as incapable of loving sincerely the law, justice and sacrificing as needed his life to his obligations” (Rousseau 2001: IV, 8).

### For a civic ethics of playfulness

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What is troubling in the scene of the village fete in the Letter to d’Alembert, and which gives some credence to the (exaggerated) reading of Rousseau which makes him border on tyrannical, is the demand for absolute coincidence between the citizen and the state. The requirement of total sincerity and authenticity, to the point of transparency – the impossibility of all theatricality and *seeming* – means the village fete risks becoming a joyless exercise, in which we do not, in fact, recognize one another. There is the lingering suspicion that the ideal of moral unity of the state is so exigent and therefore distant, ultimately only the legislator through his secret ways really *acts*. If this is the outcome, then there is the risk that despite attempting the opposite, there is as much alienation of power in Rousseau’s society as in Hobbes’ state of obedience, and we are all pretending (pre-tending: *stretched out before*) before the sovereign.

We should not accept this strong ideal of the unity of the state; we should reject it as impossible for us and dangerous; but we need to find a way of rejecting it without rejecting the strong ideal of equality of voice and audition which is its motivation and differentiation from the vision of Hobbes. Nor should we accept the precept of Rousseau that states necessarily lose their virtue as they age, in such a way that there is always a presupposition in favour of any law which is old. Instead of looking back to the Roman republic, Sparta, or a pastoral idyll, this romanticism carries the danger that the past which speaks to us today risks being a nationalistic and ethnic one. On these two conditions perhaps we can recover from our reading of Hobbes and Rousseau a virtuous role for a theatrical playfulness in our relationship with the state.

We have seen both with Hobbes and Rousseau the ways in which the state only appears as an artificial or fictional projection of the audience. For this projection to perdure, and as a precondition for the state to act and be heard in its declarations, the audience must be held in an affective state which keeps their attention, which we identified as *fear* in the case of Hobbes and *love* (albeit rather artificial love) in the case of Rousseau. If instead of fear or intense love, we were to aim towards the affective states of playfulness and care, we might tell (perform) the story of the state rather differently.

Firstly, we would be aware that the state is created through a performance, and so is a fiction of auto-institution. We would not see this as falseness or



as alienation, but precisely as the result of human creativity and imagination. To say that something is fictional or imaginary does not necessarily imply that it does not exist. There is a difference between saying that unicorns are imaginary, which implies that they do not exist and that the statement 'unicorns exist' is false, and saying that the state or the nation are imaginary, which does not imply that the state or the nation do not exist. To say that the state is a fiction, or is imaginary, can be a way of brining out the way the state is made from the imaginative resources of human creativity, it is lived through our relation to it. It also suggests that the state is contingent, and to some extent malleable: we do not have to imagine the state *as a nation*, for example (plenty of societies have not). If we can keep in mind this imaginary mode of existence of the state or of collectivity in general, and if we can *own it* as our representation, as *our play*, then we may recover a critical vocabulary to evaluate this representation. This vocabulary would be able to judge the state in terms of its consequences (does it increase material wellbeing? does it preserve the environmental resources? etc.) but also in itself, in what we could call aesthetic terms (what affective relationship does it promote? what emotions does it provoke? is it beautiful?). We would thus recover a palette of critical ethical, moral, political and aesthetic terms with which to appreciate the goodness (or otherwise) of the state.

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Secondly, we would be attentive to the ways in the state that some have easier access to an audience than others, because in *figuring* (from *figere*: *to shape, form*) the state in one way or another, we inevitably set some norms of sovereign behavior which tend to take precedence over others. This is particularly the case if we project the state as a person (a man, or a woman, or a monster, for example), but even if we conceive of its collectivity in other ways (as a machine, a network or a fluidity, for example). We could define as 'precarious subjects' precisely those citizens who have an insecure relationship with the audience of the rest of the society, and we could accord to them a particular degree of care. Ultimately we would recognize that we are all precarious subjects in the sense that we depend for our civil existence on the attention of others, on our audibility to an audience. In this way the power of creating an audience would be extended as widely as possible, and we would be aware of the distribution of the right to hear and the right to be heard, without making as a precondition for accession to these rights a particularly strong civic morality of authenticity or sincerity.

Thirdly, we could use theatre as a space of playfulness in which we could present, and eventually call into question, aspects of the social and political condition and the characters we are each called upon to play in it. If we appreciate that the creation of the state implies the creation of characters, these characters are open to appraisal as well.

A solution to the paradox of the honest orator is that the lawyer defending her client, for example, is able to understand her role as defence lawyer in a particular performance in which her behavior in defending to the best of her abilities her client is a contribution to a larger scene which overall promotes the social good (i.e. in order to ensure a fair hearing, it is important that both defendant and accuser are represented with the best arguments possible). This does not imply that the lawyer suspends her fidelity to the truth; it does imply that she understands she plays different roles at different times in society and she is able to place these roles in relation with a general good. The same can be said of the (professional) actor, who understands the difference between being on stage and being a mother, for example, and is able to place these roles in a mental projection of the collectivity.

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Theatre is a way in which the roles and their relation to the good can be questioned, and we need to understand theatre in this sense to include also 'theatrics' or the interrupting of repertoires of what is taken to be 'good' performance by citizens in different ways and contexts (which can include protest, pretending, rebellion and artistic creation). What is more, we might understand that given the many roles each of us needs to play, there is inevitably some element of 'seeming' in our relations with others: this element of performance is not a sign of a lack of moral integrity, but rather of the dexterity required to negotiate complex social relations which rely on some distance and differentiation between individuals. The worn and overcharged terms of authenticity and sincerity are not the best ways to characterize this playing of social roles. Through this theatrical *calling into question*, we might also become increasingly attentive to the ways our social relations and roles are mediated by commercial technologies and corporate interests, which tend to give voice to some over others, or result in the *power to create an audience* being inequitably distributed.

Fourthly, the theatre would be a space in which to experiment in new forms of collectivity which could correspond to new forms of subjectivity, not seeing in this a risk to the moral unity of the state, but as a space in which our affective relations to the collectivity are exercised and explored. Through enabling playfulness, the theatre would be a secure space in which affective learning would take place that empowers us to be more receptive to others both on and off the stage – inside the theatre, and on the square – and fosters in us the imaginative resources that allow political invention to happen.

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## Nikolo Milaneze

### Audijencija kod/Saslušanje ... javnosti, predstavnika, suverena

#### Apstrakt

Pravo na saslušanje (audijenciju), u običajnom pravu, jeste pravo advokata da zastupa klijenta na sudu. Kralj, Papa i neki predsednici primaju u audijenciju. U čemu se sastoji moć primanja u audijenciju (to grant an audience)? I šta znači zahtevati audijenciju? Čitanjem načina na koji je vokabular pozoriša, glume i audijencije (publike) uključen u proizvodnju teorije države kod Hobsa i Rusoa ovaj rad propituje pitanje političkih resursa koji nam pomažu da iznova promislimo načine bivanja zajedno. Preko Hobsa i Rusoa, ovaj tekst ispituje na koji način performiranje politike stvara javnost, predstavnika i suverena, te na koji način ove figure interaguju. Predlaže se alternativna uloga za pozorište kao mesto afektivnog učenja i građanske etike razigranosti u kojoj se autoinstitucija države kao zamišljenog zajedništva obuhvata u celosti.

**Ključne reči:** javnost, suverenost, izvedba, audijencija, publika, Ruso, retorika, autoritet, predstavljanje, Hobs.

Giusi Strummiello

## 'We have nothing in common': Rethinking community and the mechanisms of creating a sense of belonging

**Abstract** We live in an era of crisis for community and commonality. Our present experience, as noted by Derrida, is that of an aporia at the heart of belonging. Yet, it is in the very space torn apart by this aporia that we can try to conceive of a new sense of community and transform our way of thinking about being in common, which means the deconstruction of "Us" and of its enunciation. In the light of such a deconstruction, what makes for effective and powerful change in a struggle for emancipation, or in a protest for the recognition of one or more rights, when carried out by a collective movement or a group? This paper aims to answer that question, by seeking to investigate the conceptual and theoretical mechanisms that make a plural subject's protest or claim concrete in its quest for justice and equality, in the face of a growing and likewise concrete (or real) inequality.

**Key words:** *Belonging, community, appropriation, particular, universal, relation.*

In *Politics of Friendship*, Derrida (1997: 80) writes:

"We *belong* (this is what we take the risk of saying here) to the time of this mutation, which is precisely a harrowing tremor in the structure of the experience of *belonging*. Therefore of property. Of communal belonging and sharing: religion, family, ethnic group, nation, homeland, country, state, even humanity, love and friendship, *lovence*, be they public or private. We belong to this tremor, if that is possible; we tremble within it, belonging to it. It runs through us, and stops us dead in our tracks. We belong to it without belonging to it. Within it we hear the resonant echo of all the great discourses [...] where they assume the risk and the responsibility, but also where they *give themselves over to* the necessity of thinking and formalising, so to speak, absolute dislocation, borderless disjoining."

Derrida's description of our present human condition is disquieting, terrifying. We belong, he says, to a history that has profoundly called in doubt the category of belonging, subverting, from its roots, the idea itself of community and commonality. The destabilising element that dislocates in an absolute manner and forfeits the reference to a safe centre is the aporia at the heart of belonging: indeed, the moment that belonging is affirmed, it is immediately removed. Belonging is only given by its spectral, negative supplement.

Nevertheless, for Derrida, it is in the very space torn apart by this aporia that we can conceive of a new sense, a new axiomatic, of community: the possibility of a new and different way of thinking of community that corresponds to the crisis of belonging, and therefore doesn't repeat the ruinous history that marked the intellectual experiences of community and communism in the 20<sup>th</sup> century. Such a possibility resides precisely in the space of aporia, in the bond of a dispossession.<sup>1</sup>

Community must no longer be understood in terms of appropriation, identification, incorporation or fusion, but instead as an experience of exteriority and relation essentially, which, as such, impedes stability, continuity, and fixity in any one of many plural identities. The connection between members of a community, externalised in relationships, overturns and transforms, therefore, the way in which the subject is understood, and even transforms the way of conceiving the *being in common*, beyond both the model offered by the dialectics of inter-subjective recognition and the canon of the sovereign Subject. Relationship is a making-in-common which thrives on the interruption of such commonality. In common amongst men there is precisely the absence of common, the nothing-in-common, the common non-belonging.

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For Derrida, all this derives, moreover, from the deconstruction of "Us" and of its enunciation, since the problem is that of seeking not to reduce differences and singularities to one sole measure, to a unified, homogeneous whole of identity, and therefore to go beyond the principle of fraternity and friendship as a symmetrical relationship of equality. What must take shape, for Derrida, is another way of thinking of community, through deconstructing the hegemonic scheme of Us, the fraternisation of our own and others, and through rejecting the paradigm of symmetry, calculation and commensurability. In other words, thinking of community as a whole of equivalences without a general equivalent, community released from the peremptory demands of calculated reciprocity, and open instead to disproportion, to the irreducible singularity of others, of all others.<sup>2</sup>

In the light of such a deconstruction, what makes for effective and powerful change in a struggle for emancipation, or in a protest for the recognition of one or more rights, when carried out by a collective movement or a group? How can the strongly oppositional, critical, antagonistic stance against the powers-that-be, when adopted by a group of individuals, be affirmed in the public arena as a moment of political identity, as an experience of creation,

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1 On Derrida's critical contribution to the recurrent debate on community and on the aporia of this community, see: Balibar 2009.

2 For further thoughts on community, beyond Derrida, the following texts are fundamental: Blanchot 1983; Nancy 1990 [1986]; 1996; Agamben 1990; R. Esposito 2003.

institution, as the form of an organising power in view of a different and more democratic order, both in state and politics?

How can we answer these questions? First of all, let me say that what I would like to do here is certainly not provide an analysis or a response that is strictly political. My intention is rather to move toward problematising, in a radical way, the topic which lies at the heart of these questions, by attempting to investigate the conceptual and theoretical mechanisms that make a plural subject's protest or claim *concrete* in its quest for justice and equality, in the face of a growing and likewise concrete (or real) inequality.

What I would like to propose here, by comparing Balibar's and Blanchot's work, is the hypothesis that a plurality can affirm its rights in the midst of inequality, not because it is compacted and formed on the basis of equality, constituting a unified, homogeneous whole of identity (for example, We Women, We Workers, We Migrants). But because, in its difference, indeed because of this very difference, such plurality contradicts this very equality, or rather, contradicts the universality of equal rights, and by so doing, plurality realises, implements and establishes universality, thereby making itself a fundamental subjectivity, an authentic political subject.

Anthropological differences, the multiple differences between humans and inhumans, in this sense, would not constitute an obstacle to the process of universalisation of the (political) subject and of citizens' rights, but the mainstay for the citizen to become a subject, indeed the horizon for the creation of an authentic political community as a system of equivalence without a general equivalent. Such a community, as Balibar emphasises, in order to be the form under which the universality of the subject, the multiplicity of differences specific to being human, and the recognition or vindication of rights are all held together, is a community which:

“...cannot be thought, therefore, either as particular or as absolutely universal, not as deriving [its] rights from rights of an anthropological ‘character’, nor as ignoring [the latter] in the name of a transcendental equivalence of all the ways human subjects have of relating to one another, nor as fixing the differences in categories, classifications, hierarchies or castes.” (Balibar 2011: 24)

In their irreducible nature – impossible to reduce to a single measure or canon – the differences show that the contradiction of exclusion and excluded is what allows universality to verify and manifest itself as such. In this sense, the differences do not represent the particular as opposed to the universal, but a dislocation at the heart itself of the universal. Such a difference, Balibar specifies, does not so much denote the difference between individuals, but rather the original lack of symmetry in relations between individuals, through which those same individuals fulfil both themselves and the human.

This means thinking of *human* and *community*, not in terms of appropriation, identification, incorporation or fusion, but as an experience essentially of exteriority, of relations, which, as such, impedes all stability, all continuity, all fixity in one of the diverse and plural identities:

“In its individual modalities, never reducible to a single model, anthropological difference is therefore not only the place of difficult identifications and normalisations; it is also the place in which originate uncomfortable overturnings of power, dislocations of belonging, counter-identifications and the invention of alternative norms that Foucault calls ‘counter-conducts.’” (Balibar 2011: 515)

The relation between humans, externalised in relationships, overturns and transforms, therefore, the way in which the human and its fulfilment are understood, and even transforms the way of conceiving the *being in common*, beyond both the model offered by the dialectics of inter-subjective recognition and the canon of the sovereign Subject.

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For Balibar, the main reference point of this “subversive” theoretical-conceptual strategy is represented by Marx. It is well known that Balibar proposed to refer to Marx’s early materialist philosophy (starting with a comment on Feuerbach) as an “ontology of relation”. And it is also well known that he intended to activate in this expression all its fundamentally oxymoronic sense, in that it wouldn’t allude so much to the fact that the essence of being human lies in *relating* or *being in relation to* – from a perspective that tends to historicise and de-essentialise, de-substantialise, the concept of human and tends to make relations the fundamental categories for understanding the real – but more to something that would turn the idea of human essence into its opposite, thereby leading to a new idea of social relations. Indeed, when Marx writes that, in reality, human essence is not an abstraction that inheres in each individual, but rather the whole of social relations (understood as open and indeterminate), not only does he transform the notion of man, revealing that the human is essentially social, but he also affirms the social, in the dissymmetry of its relations, as the condition of possibility for each individual existence and a *modus* of its ideal, universal realisation:

“In the measure to which the term ‘essence’ is applied in a ‘materialistic’ way to the anthropological problem, it even acquires a paradoxical (anti)ontological meaning through which its recognised effects are overturned: instead of ‘unifying’ and ‘totalising’ a multiplicity of attributes, it now opens up an indefinite range of metamorphoses (or transformations), in the measure to which individuals are essentially ‘modes’ of the social relations they actively produce, or through which they collectively interact with others and with natural ‘conditions.’” (Balibar 2014: 167)

For Balibar, the aporia of the Marxist formula – a formula which proposes an equivalence between the idea of human essence and social relations in a context that aims to discard, once and for all, any substantialist or essentialist definition of the human – can be sustained if one thinks in a radical way of the “fact that the human only exists in the plural” (Balibar 2014: 169). In what does such a radical position consist? Not only in believing simply that the human is given by a plurality of irreducible singularities, a homogeneous plurality, but that this plurality, in turn, pluralises itself, so to speak; in other words, it splits, differentiates, both inside and out. So we are looking at a plurality which contradicts itself the moment it is established, which withdraws all possibility of sharing the moment it places itself in common. *Relation* is a placing in common, which ultimately does not have anything in common, which experiences continually the interruption of this commonality:

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“...social relations, in a strong sense, are those which, holding humans together and preventing their ‘isolation’, also create their irreducible difference, in particular, distributing them among the various classes. This doesn’t mean that these distributions are stable or eternal or coherent. In other words, ‘social relations’ are always internally determined as differences, transformations, contradictions or conflicts, which are sufficiently radical so as to leave only the heterogeneity which they create as the common [ground]. (Balibar 2014: 169–170).”

Thus a different way of intending the universal, the common, and their relation, is outlined. A way of thinking that heads a universality which is effectively inclusive of differences (all differences) and that recognises the important role played by the latter in the constitution of appearances.

It is only because there is nothing in common among men, and only because what is in common among men is the absence of commonality, that some such thing as an intensive universal – because continually in tension, aporetic, and hence continually revocable, continually open over its own (inhuman) abyss – can be deployed and effectually operative and operating. The relation between men is therefore a relation built from and in infinite difference, in the interruption of their commonality. Not by chance Balibar refers to Blanchot in this regard; the latter also attempted to glean a way of thinking of *relation* that could withdraw from the dominion of unity and the supremacy of the subject. Indeed, Blanchot speaks of a relation between men, not in terms of unity, unification and continuity, with the consciousness of overturning the usual and reassuring ways in which we have always thought in relation to the other. Blanchot reduces these ways to two basic types: the first falls under the law of the same and of unity, and thus demands that separation be annulled, that difference be reduced to what is identical in order to affirm the truth and fullness of All and of the Subject; the second aims to bring about the same unity through the identification or confusion of the I with the Other.



It is undeniable, however, as Blanchot recognises, that every time we speak or think we always do so in virtue of such a unity. It would be absurd to claim to have done away with coherent and comprehensive thought once and for all. Nevertheless, the effort must be toward seeking to think of the Other without necessarily having recourse every time to the categories of one and the same. So it would be a matter of imagining a third relation, beyond the horizon represented by one and being.

What does the relation that withdraws from the sovereignty of the One look like? The relation not reduced to the measure of One becomes multiple, numberless, always implicated in the possibility of not being determined and so of being indeterminate, subject to the fluidity of continuous dislocation that compels the I to come out of its place and its role, and to make itself a “nomadic and anonymous [subject] in a space–abyss of resonance and condensation” (Blanchot 1993: 90–91).

In this relation the I and the Other are neither separate nor distant: in the absence of the power of the One, every measure is cancelled, and therefore every spatial collocation of the poles of relation too (what is, in fact, missing is the criterion for placing here and there, for saying, seeing and quantifying the distance). Instead, the terms of *relation* are reciprocally extraneous; an extraneousness that can no longer be defined as either separation or distance, but instead should be defined, according to Blanchot, as interruption. There is thus nothing given between men (neither a God, nor a World, nor a Nature) if not the pure evanescence and fragility of that “between”. Without doubt, the range and consequences of this theoretical gesture are remarkable. Above all, what becomes of man from such a perspective?

“... man is what is most distant from man, coming toward him as what is irreducibly Distant; in this sense, far more separated from him than he is from the limit of the Universe or than he would be from God himself. This means also that this distance represents what, from man to man, escapes human power—which is capable of anything. This relation founded by a pure lack in speech is designated there where my power ceases, there where possibility falls away. (Blanchot 1993: 92).”

The Other, with which one is in relation, places itself beyond my reach: its extraneousness cannot be assimilated to that of an object, nor to that of Nature, nor even to that of reality itself, which I can subjugate to my power at any time, including it along the horizon of my representations. Nor is its extraneousness that of a personal order, which distinguishes among men, considering them in their inter–changeability and therefore exposes them to the connection of common values.

Such extraneousness is that which comes from man, from the other, that is, in that it *is* man. As a result, for Blanchot, only man appears, along the whole

spectrum of reality, as decentred: not only does he escape from the cage of my perspective, but he is himself without his own horizon.

The third kind of relation, therefore, sets up a relationship without unity and without equality, in which it is not possible to hypothesise any communication, whether subjective (from subject to subject or from subject to object) or trans- or inter-subjective. If the Other speaks to me s/he does not do so as I would, whereas if it's me who speaks to him/her, I address someone who has no collocation, who is suspended in a caesura which cancels the vision of both duality and unity. Hence the "between" of this relation is the repudiation of any consistency of being:

"It is this fissure—this relation with the other—that we ventured to characterize as an interruption of being. And now we will add: between man and man there is an interval that would be neither of being nor of non-being, an interval borne by the Difference of speech—a difference preceding everything that is different and everything unique." (Blanchot 1993: 93)

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What Blanchot's gesture seems to inaugurate is a radical questioning of the Other/Others and their consistency of being. The third kind of relation demystifies any reduction of the other to a subjectivity, without however turning him/her into a mere object as a result. With the Other/Others it makes no sense even to ask who they are: "*Autrui* cannot designate a nature, it cannot characterize a being or an essential trait. Or, to express this crudely, *autrui* is not a certain type of man whose task it is to occupy this role — in the manner of the saints and prophets, delegates of the Most High — opposite the clan of the 'I's.'" (Blanchot 1993: 94).

Now, the absence of a measure for such a relation not only means that the other can never coincide with me, but also that I can never coincide with the other: just as the other is an other for me, so am I an other for him/her. Yet here, Blanchot warns, we mustn't intend this "doubling of non-reciprocity" in a dialectical sense, since that would end up leading the relation to its inevitable fulfilment, in the sense of its affirmation as full unity and equality. It is the subtraction of any measure and any unity which prevents the playing field of dissymmetry between the I and the Other from becoming a homogeneous field of equals: there is not just a single dissymmetry, there is not just one plane of discontinuity, but rather:

"...a double dissymmetry, a double discontinuity, as though the empty space between the one and the other were not homogeneous but polarized: as through this space constituted a non-isomorphic field bearing a double distortion, at once infinitely negative and infinitely positive, and such that one should call it neutral if it is well understood that the neutral does not annul, does not neutralize this double-signed infinity, but bears in it the way of an enigma." (Blanchot 1993: 95)

At this point, the question “Who are the others?” inevitably gives way to the question “What becomes of the human community?” since the others must respond to a relation of extraneousness between man and man, a relation without measure, always in excess. The other is merely the name affixed to something without a name, something which is completely other in that it is other, and which at a certain point in the language game is designated with the word “man”.

In the experience of the word, in which one responds to a relation of impossibility and extraneousness, one experiences man as absolutely other, and this other does not let us think of it in either transcendental or immanent terms. The other is man, it is what pertains to man, even if it is just to put him in parentheses or inverted commas: the other, not as God or Nature, but really a man, “more Other than any other thing”. The other pertains to man and displaces both the personal power of the subject and the power of the impersonal: it is the mystery of the neutral, which eludes the question of being and the question of all.

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The third kind of relation is therefore a neutral one for Blanchot, in the sense of a relation in which the one is never comprised in the other, in which the two terms of the relation itself do not form either a binomial or a unity: they are reciprocally extraneous, yet without being able to claim any privilege, indeed reinforcing the dissymmetry and discontinuity between them. It is as if, even while giving themselves up to the relation, the terms aspired to distance themselves from this very same relation, separated from it by an infinite distance and difference that can never be bridged or reversed.

What is created with this relation is, for Blanchot, an infinite dual separation: the third kind of relation is the relation of extraneousness, of separation between two terms that then separate themselves from this very separation which holds them in relation. In the relation itself, the two terms tend to offer themselves as distinct and different from the relation. The Other at stake in this relation, then, is not just one of the two terms, since it is the relation itself between the two that requires this movement of infinite separation:

“... for in this other relation, and through it, the other is for me the very presence of the other in his infinite distance: man as absolutely other and radically foreign; he who does not yield to the Same nor is exalted in the unity of the Unique. [...] It is as though in the time-space of interrelation it were necessary to think under a double contradiction; to think the Other first as the distortion of a field that is nevertheless continuous, as the dislocation and the rupture of discontinuity— and then as the infinite of a relation that is without terms and as the infinite termination of a term without relation.” (Blanchot 1993: 99)

These last words of Blanchot's recall Balibar's operation, consisting, as we have seen, in the possibility of achieving a community without a "transcendental equivalent". What these two thinkers seem to share is the intention no longer to recognise in the other something which a common measure, the belonging to a common space, maintains in a relation of continuity and unity with myself, thereby reducing its singularity. The relation, instead, forms in the separation, the interval, the interruption. To the word, in Blanchot's case, to the political vindication, in Balibar's case, does not fall the task of eliminating this anomaly, but of containing it as a dislocation, keeping it as such without saying, absorbing or normalising it. Sustaining the aporia, living in the dislocation given by the differential of subjectivity does not mean fatalistic resignation to a time of silence and passivity, but rather opening oneself up to an authentic transformation of man and of his access to the universal that can truly take difference on board:

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"But let us understand that the arrest here is not necessarily or simply marked by silence, by a blank or a gap (this would be too crude), but by a change in the form or the structure of language [...]. A change such that to speak (to write) is to cease thinking solely with a view to unity, and to make the relations of words an essentially dissymmetrical field governed by discontinuity; as though, having renounced the uninterrupted force of a coherent discourse, it were a matter of drawing out a level of language where one might gain the power not only to express oneself in an intermittent manner, but also to allow intermittence itself to speak: a speech that, non-unifying, is no longer content with being a passage or a bridge—a non-pontificating speech capable of clearing the two shores separated by the abyss, but without filling in the abyss or reuniting its shores: a speech without reference to unity." (Blanchot 1993: 103–104)

English translation by Lisa Adams

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Đuzi Strumielo

### **„Nemamo ništa zajedničko“: Promišljanje zajednice i mehanizmi stvaranja osećaja pripadnosti**

#### **Apstrakt**

Živimo u dobu krize zajednice i zajedničkog. Naše sadašnje iskustvo, kako je to primetio Derida, jeste iskustvo aporie u srcu pripadanja. No, svejedno, upravo u prostoru koji je ova aporija razjedinila možemo pokušati da začnemo novi osećaj zajednice i transformišemo način na koji mislimo o bivanju zajedno, što pretpostavlja dekonstrukciju „Mi“ i „Mi-govora.“ Ali, u svetlu takve dekonstrukcije, šta bi bila efektna i moćna promena koju bi doneo neki kolektivni pokret ili neka grupa koja se bori za emancipaciju ili protestuje zarad priznanja prava? Ovaj rad stremi odgovoru na to pitanje pokušajem da se istraže pojmovni i teorijski mehanizmi koji konkretizuju protest ili zahtev pluralnog subjekta u njegovoj potrazi za pravdom i jednakošću, nasuprot rastućoj i, takođe, konkretnoj (ili realnoj) nejednakosti.

**Ključne reči:** Pripadanje, zajednica, prisvajanje, partikularno, univerzalno, odnos.

Sonja Vilč

## Acting together: the art of collective improvisation in theatre and politics

**Abstract** The paper analyzes the concept of collective improvisation and draws out its potentials for social and political theory. Translating the ideas of collective improvisation from their original context in the theatre into the field of political thought, I argue that they offer a new understanding of political action by re-evaluating the concepts of dissensus (Rancière) and community (Nancy), as well as the ways in which politics as a system needs to produce collectively binding decisions (Luhmann). I conclude that the ideas inherent in the practice of collective improvisation, as it has been developed within the tradition of modern theatre improvisation, subvert our intuitive ways of thinking about politics and thereby offer an alternative model of being and acting together.

**Keywords:** collective improvisation, theatre improvisation, acting, political philosophy, political theory.

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### Introduction

When we talk about political action, collective engagement and protest<sup>1</sup>, those three concepts imply that when we engage for something, or protest against something, we have a certain idea of a better state than the one that is now, we also have an idea of how the future will look like, and ideally we also have some kind of a strategy, a plan for a sequence of actions that will lead us to that better future.

Here I will present a specific point of view, where collective action exists *without* having an idea of where this collective action will bring us, so there is no specific vision of what the future will, or should look like.

This alternative way of understanding 'acting together' does not come from political theory, but from theatre theory, more precisely from a very specific theory of acting. The specific theory of acting I will be referring to here can be summed up under the category 'modern theatre improvisation'. Its beginnings were influenced by the popular theatre tradition *commedia dell'arte* as well as by avant-garde theatre experiments and were consolidated into a specific philosophy and technique of performing by several

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<sup>1</sup> Referring to the wording of the conference *How To Act Together: From Collective Engagement To Protest* where this paper was first presented.

'founding fathers': Viola Spolin, David Shepherd, Paul Sills, Del Close and Keith Johnstone. Since their first theatre workshops and performances in the 1950s, which took place partly in the UK and partly in the U.S. and Canada, the first improvisational troupes focused on collective improvisation not as mere acting exercises or tools to develop scripted materials, but made collective improvisation into an artform in itself, only made possible by a unique philosophy of collective creation and human communication. In the following decades modern theatre improvisation as a technique of performing has spread globally and developed – with some analogies to the genesis and the developments of jazz – into many variations: from mainstream entertainment to experimental performance and applied theatre, influenced by specific regional and institutional contexts, often also blurring the lines between different theatre genres as well as the strict division between classical and modern approaches to performances, and between scripted and non-scripted theatre. However, in order to show the conceptual potential of collective improvisation to political philosophy, I will here focus on what is specific to the tradition of modern theatre improvisation and not on its intersections with other theories of acting, other approaches to making theatre or any other approach to collective creation.

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First, I will outline the method and philosophy of collective improvisation, as it is practiced in the theatre (and more recently, also in film), in order to then translate it into the context of political theory and show how collective improvisation re-assesses the concepts of not only collective action, but also of dissensus (Rancière), of community (Nancy) and collective decision-making (Luhmann).

### **Modern Theatre Improvisation: Definition And Basic Principles**

Modern theatre improvisation is a specific theatre tradition where performances are created through spontaneous interactions of performers, live in front of the audience.

As an acting technique, modern theatre improvisation encompasses a set of rules, principles and ideas of how to act together with other actors – collectively – on stage, with no script.

The development of collective improvisation in the theatre can be historically contextualized within the avant-garde attacks on the classical approach to theatre, on the roles and hierarchies within the classical theatre (author, director, actors). One of the new approaches to doing theatre (or art in general) that I address here is the collaborative approach to creating completely improvised performances, as it was pioneered by the workshops of the theatre

educator Viola Spolin in Chicago in the 1930s, continued with the first professional improvisational troupe The Compass in the 1950s, and developed by Keith Johnstone in the Londons Royal Court Theatre also in the 1950s.

Focusing on the difference between classical approach to theatre on the one hand and collective improvisation (as one of the theatrical counterparts to it) on the other hand, we can say that where in the classical approach there was a director, hierarchically higher than the actors and giving them directions on how they are to act (and how to act well), in collective improvisation the role of the director dissolves into a collective of actors who are equal in status and are directing their own actions themselves. Where in classical theatre there was an author of a script, in collective improvisation there is no script, the actors know no more than the fact that they will act together, but not what (until they have acted it out).

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The question is then, if there is no director, no script and the actors are just left to themselves, how can actors create a performance collectively?

The pioneers of modern theatre improvisation came up with the basic principles of collective improvisation that performers rely on up to this very day:

#### *1st Principle*

The first principle of improvisation is that *the actor needs to 'say yes'/accept their own first impulse*. The actor who enters an empty stage makes the first action that comes to their mind, meaning that the first choice of action is always the best choice.

#### *2nd Principle*

The second principle states that you have to *'say yes' to your fellow actors*, that is *accept their actions as established reality* – do not deny what is said or done by other actors onstage. If another actor establishes something, be it physically or verbally, it is there.

#### *3rd Principle*

The third principle says: *take the active instead of the passive choice*. This means that you are free to choose onstage. You are expected not only to accept the reality established by another actor, but you also *have to establish additional things yourself*.

#### *4th Principle*

And the last principle is: make meaningful connections between the elements already established.

(Johnstone 1979, Sweet 1994, Vilč 2015)



## Re-visiting the Notions of Community, (Dis)Agreement and Collective Decision-Making

These very technical principles of theatre acting as described above, if we look at them more closely, also carry an implicit philosophy of human interaction, of the social and of the collective. What does this mean in terms of political theory? Let us look at the examples how collective improvisation offers the ways to rethink the concepts of community, disagreement and collective decision-making.

### 1. Community

Collective improvisation, as practiced across the abovementioned examples, creates a community of those who share improvisation as a common language of performing. This common language can be, in the most extreme case, the only thing the actors have in common. However, the technique of improvisation enables any two random actors to be and act together, without the necessity of any other intermediary (a script, a director, or even a common spoken language). Collective improvisation thus offers itself as an example of how to imagine a community that has nothing else in common but that which is happening in the moment – not a common past, not a common future. In order to act together, neither a common identity needs to be constructed in terms of some common substance nor is there a need to imagine a future scenario for being-together that we will all agree on now. (Vilč 2015: 166)

If we have escaped the trap of one single idea leading the way for everybody and consequentially having the need to erase and destroy everything that does not conform to it – still, the question remains: if collective improvisation allows for everybody to do what they want, doesn't the community of those who are acting together just fall apart? (Vilč 2015: 166–167)

This is exactly the question that Jean-Luc Nancy tries to answer when looking for a contemporary way to think about the community without falling into totalitarianism on the one side and liberal individualism on the other. To avoid falling into dispersed individualism, Nancy redefines how we understand freedom and independence. As he says, freedom and independence are never floating in a void but are always freedom *for* someone or something or independence *of* someone or something. (Nancy 1991) While improvising, a performer is free exactly because he or she is free to choose how to react to the action of their acting partner. But to have this freedom, the performer *needs* the acting partner who does this or that action in the first place. This means that the performers who are acting together can be free only *through* each other. Likewise, being independent of a script means that the actors

are not dependent on some voice, external to them, but on each other. (Vilč 2015: 167) This is a much more radical idea than that of a simple 'collaboration'. The ethical principle here is not that of collaboration or team work or the like – the principle here is that the first impulse of the first action or wish for an action comes from outside of me and not from myself. So a community, in a sense, comes before those who make it. (Vilč 2015: 155–156) It is on the example of collective improvisation – where individuals who are thrown into the same space and time give themselves as their only goal to make sense of it together – that we can imagine a community that would not be oppressive, on the one hand, and not be just a random cluster of individuals following their own interests on the other.

## 2. (Dis)Agreement

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There are, roughly speaking, two ways in which to think about politics, and consequently, two ways in which collective improvisation can contribute to that thinking. One way of thinking about politics is to think in terms of the community – what makes a community, who belongs to it, who does not and what the systems of inclusion and exclusion are. In this view, the political act is always that of voicing some kind of disagreement: a disagreement as to how a particular community is identified and formed, the disagreement of those who have been excluded from that community, the disagreement about what the topics of common concern are at all. (Rancière: 2004)

As shown above, along the lines of Jean-Luc Nancy, collective improvisation gets around the problem of disagreement, since without script and without predefined roles, there is – strictly speaking – nothing to disagree about. If community comes before those who make it, if the first impulses for action come only through the other, even a seemingly negative or negating action will be accepted and integrated into the course of the ongoing interaction, changing its course as any other action does. However, one very basic specificity of theatrical training in collective improvisation must be mentioned in some more detail. The first skill to be acquired is getting rid of the reflex to reject or ignore actions by the fellow actors and subsequently the reflex to accept and further develop whatever is already going on is trained on a regular basis. Actors who begin their training in collective improvisation learn to listen and not to block impulses from their fellow actors not by any kind of ideology, but out of practical necessity: while improvising together, they quickly realize that by not listening and/or blocking, a common action can never develop, it stales in place, they prohibit any possible story to evolve and increase uncertainty and mistrust among actors. This is not an intellectual realization which would arise out of a theoretical discourse, but an emotional, physical and intuitive experience that comes out of live interaction onstage.

Beginner improvisers learn through experience that in order to survive on-stage, in order to produce anything worth being a part of or watching, they need to support each other. Failing, misunderstandings and messing up are a part of the process and in the best case become, as any other element, a building block to what is to happen next. Teaching collective improvisation on the other hand brings at least two insights: first, listening and agreeing are skills much harder to acquire than ignoring and rejecting (which oddly enough seem to be the default states), and second, with proper training the former become the basis of any successful collective action and make it resilient to real or potential destructive forces, similarly to the logic of soft power.

In collective improvisation the philosophy of being together is postulated on the need to agree on *something* – this something could be *anything*, but there needs to be an agreement first if any kind of ‘acting together’ is going to happen. A group of people can come together to do a performance, and it does not have to be because they would gather to do a ‘specific’ performance with a ‘specific’ concept but can be just from the sheer fact that they want to *be* together and do *something* together. If this something could be anything, it means that the group has joined not because they already share a common direction or interest, but because their only common interest is to *find* a common interest. (Vilč 2015: 168) If we take a look at the method and the philosophy of collective improvisation, how does this happen? How does a group decide on anything?

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### 3. Decision-Making

Here we come to the second way of thinking about politics – politics as a system that enables a group to come to collectively binding decisions. (Luhmann 2002) Any community needs to be able to make decisions about common concerns, and the different ways in which this can be done are classified as different political systems. In collective improvisation, in the context of artistic practice, we are not necessarily talking about political communities, but more technically about systems of decision-making. However, this offers interesting insights into how we understand power, hierarchy and policy-making on a broader scale. A first analogy that comes to mind is that of hierarchical vs. non-hierarchical systems of cooperation and decision-making. In a classical account of improvisational theatre, there is no script and no director, nobody has any priority in deciding anything and the actors are free to act as they choose.

If we take a closer look at who makes decisions in collective improvisations and how these decisions relate to the distribution of power within the group, we could say that every individual is empowered to decide. But – this empowerment is only possible because all the others are *actively listening*, paying

attention to what one will do, so that they can find their own reaction, their own way of relating to what is being acted out. In the practice of collective improvisation, decisions are made not only in real time but are being made by many who are simultaneously constantly tuning in to the decisions of the other actors. However, in collective improvisation, taking the initiative is extremely important – that is, not only accepting what is happening but also taking a step further, adding new things, either by taking the next step in the same direction or completely changing it. Collective improvisation without such initiative does not work, but the role of the initiator is not fixed – the role of the initiator is constantly jumping from one actor to the other. The analogy to anarchy would be fitting if we assume that it implies that a hierarchy between actors is not set in advance and that no kind of hierarchy is being preserved throughout the performance – the analogy to anarchy would also be correct, if it implies that there is no hierarchy at all. If anarchy means that there is no leader, the analogy to collective improvisation is justified, but, at the same time, to presume that in collective improvisation there is no order would be false. There is no pre-set order, but there is an *emergent order*, which becomes evident in retrospect, after the performance is finished.

Since in collective improvisation there is no author and no one to prescribe the order of events, improvisers are trained to respect the principle of lining up one event after another in such a way that they establish connections between each subsequent action. The ‘Yes, and’ principle expresses this basic rule for how a common direction, and more specifically, a common thread can be taken up through collective action, even if there is no overall leader to give orders and make order.

To be able to let a certain order emerge out of collective action, to line up one event after the other, one action after another and make connections between them, requires from the actors one paramount skill – listening. It is only through listening, through caring what the other actors are doing and saying, without reserve, that collective improvisation can ‘work’.

The more actors there are, the less one needs to actively initiate, say or do, and the more one needs to *actively listen*. As two or more actors stand in front of each other, not knowing what the other will do next, the uncertainty diminishes with each subsequent action, as the terrain of the improvisation becomes more and more defined and the actors begin to recognize patterns, possible directions, and narrow them down. At some point, the actors acting together will connect on a level of the so-called ‘group mind’, where the expectation and the enactment of what is going to happen next becomes the same for everybody involved. In moments of such flow, everybody seems to be thinking the same thing and following exactly the same plan – even though there is none. (Vilč 2015: 169–171)

## Conclusion

The type of understanding of agency and action, as described through the basic principles of modern theatre improvisation and its theoretical implications, lets us rethink some central concepts in political theory, such as community, dissensus and collectively binding decision-making. By doing so, the basic principles of modern theatre improvisation enable us to articulate an alternative approach to political practice as well by abstracting them from their performative context. The result of this procedure sums up a political philosophy of being and acting together in the following manner:

1. A community is not formed out of those who share the same interests, but out of those whose only common interest is – *to find a common interest*.
2. Political subjects do not grow out of the sum of those who were left uncounted, were overseen and overheard, of those who disagree – but they grow out of the sum of those who agree to agree on something.
3. Decisions are always provisional: they are made quickly, but they are also abandoned quickly, when necessary.
4. The highest virtue of politics is not being able to speak, but being able to listen.

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## Sonja Vilč

### Delati zajedno: umetnost kolektivne improvizacije u pozorištu i politici

#### Apstrakt

Rad analizira pojam kolektivne improvizacije i mogućnosti njegove primene na društvenu i političku teoriju. Tvrdim da nam prevođenje ideja o kolektivnoj improvizaciji, iz njihovog izvornog pozorišnog konteksta u polje političke misli, otvara nova razumevanja političkog delovanja, preosmišljavanjem pojmova neslaganja (dissensus) (Ransijer), zajednice (Nansi), i politike kao sistema kolektivno obavezujućih odluka (Luman). U zaključku tvrdim da nam ideje inherentne praksi kolektivne improvizacije – kako je razvijana u tradiciji moderne pozorišne improvizacije – podrivaju intuitivno mišljenje o politici i time pružaju alternativni model za zajedničko bivanje i delanje.

**Ključne reči:** kolektivna improvizacija, pozorišna improvizacija, delanje, politička filozofija, politička teorija.

Ilina Jakimovska

## 'If you are a girl, stay at home' – an ethnographic examination of female social engagement from the rural 19th century to contemporary political protests in Macedonia

**Abstract** Balkan history has been presented, in gender terms, as a history of oppressed women, stark patriarchy and male domination. This narrative has rarely been questioned, its echoes still lingering in the corridors of those disciplines that helped its creation and promotion. Being one of them, ethnology can, and should play a central role in the deconstruction of the role of women in the so-called traditional cultures, thus establishing a potential continuity between their past and their present struggles.

**Key words:** gender roles, power struggle, women, protests, abortion, ethnography, Macedonia.

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It was a very hot May afternoon in a village in South-Western Macedonia, where ethnology students conducted their annual field research. The tour was jokingly called a 'Freudian' one, since most of the villages in the area of Prespa lake that we visited had names suggestive of carnal acts and fertility. In one of them, struggling to find interviewees that would answer our meticulously prepared questionnaires, we noticed an elderly lady dressed in mourning black, sitting on something imitating a bench, her wrinkled palms quietly resting on her lap. In an act of a typical ethnographic lack of subtlety, we approached, waving our dictaphones in front of her undisturbed face.

"Was it important, when you were young, to be a virgin before marriage?" asked her a female student whose research topic were pre-marital sexual relations in these rural areas. Like in a suspense scene from a Western movie, the old lady just sighed, and replied: "O, children, there were, there are, and there will be girls who want to have fun. *The penis has no end.*" While we stood there stunned by her answer, followed by a loud burst of laughter, she maintained her composure resembling one of a stereotypical Native-American chief, who has just proclaimed a universally acknowledged truth.

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Ethnographic authenticity is often based upon anecdotes like this one, which promptly and decisively strike an epistemological blow, one that can hardly be matched by any theory. Our reaction to this particular one speaks louder than the 'controversial' narrative itself, since it reveals the deeply embedded disregard for discourses that do not match the already established, mainstream ones. This comes as no surprise, having in mind that the image of modest and obedient Balkan women, that would never publicly utter a phrase involving male genitals, has been perpetuated both by domestic and foreign ethnographers from the 19th to the middle of the 20th century. Their writings portray women mostly as passively experiencing social reality, not capable of social critique, rebellion or initiating change.

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The flaw of most of these materials however does not lie in their lack of authenticity, or in their deliberate aim to serve a pre-established notion of an overpowering and omnipotent patriarchy at the Balkans, although at times this might also be the case. The situation is more accurately described through a Macedonian folklore metaphor of 'being blind even though you can see' (*pri ochi slep*). What these researchers and authors have not been able to see for a long time, was the hidden, not manifest but latent aspect of gender power struggle, expressed through different actions, conflict resolutions, negotiations or tactical moves of women. These mechanisms of 'female subculture' made them active, albeit hidden agents of micro-social change.

It was not until the end of the 20th century that this idea gradually entered the academic writings of (mostly younger) ethnologists and anthropologists in Macedonia, who started re-reading and re-examining existing ethnographic materials through these new lenses. Suddenly, ethnographic data related to the active position of women in social life, collected mostly at the beginning of the 20th century, miraculously emerged from the shadows. One such article, by the well-known Serbian ethnologist and anthropo-geographer Milenko Filipovic (1902–1967), who conducted field studies in Macedonia during the 1930s, stated that, according to his field data, at the end of the 19th century there were a number of women-heads of villages. This had been considered impossible for a very long time and had contradicted the established social norms that prevented women from performing important political functions (Филиповић 1991). It is ironic though that his reports on 12 such brave and charismatic women in few of the cases do not contain their personal names, but the ones derived from their husbands' (for example Mileica, meaning the wife of Mile), something which remained a well-established practice well into the 20th century rural Macedonia.

One of the reasons why early ethnographers have often neglected or skipped such 'controversial' data might be a result of an absence of a solid methodological basis, that could serve as a key for their interpretation. Ethnographers



have often solely registered and described a certain custom, or a certain state of affairs, avoiding analysis or connections to other elements of culture. Thus, their ethnographic data often seem contradictory, which is maybe a reason why these researchers could not have taken a conclusive, firm stance on the position of women in the family and the wider community.

An example of this situation can be found in another work of the above mentioned Filipovic, who, while writing about the customs and beliefs in the Skopje valley in 1937, states the following: “In past times, men and women could not speak to each other in public. They also dance the *horo* separately. In general women outside the house have a lower status than men. In Skopje one can often see a villager from the mountain of Skopska Crna Gora riding a horse, while his wife walks in front of it dressed in festive clothes, carrying the baby’s cradle on her left shoulder” (Филиповић 1939: 153). However, later in the text he speaks about the phenomenon of ‘tying up’ (*vrzivanje*), that is, initiating male impotence through magic: “A man is *tied up* by a female magician or a girl that he has abandoned, who is thus taking revenge [...] In Kuckovo (a village near Skopje) people say that even the brides that were not virgins on the day of the wedding cast magic spells on the bride-groom so that he does not notice that they were previously dishonored” (Филиповић 1939: 242). This means that the same women, who just a couple of pages before have walked solemnly in front of the horse that carried their ‘master’, are suddenly capable, even for the slightest offence, to take away a man’s sexual and reproductive power, thus at the same time depriving him of his social status.

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During the same period, the 1930s, such skills, but of the women of the Poreche region (Central Macedonia), have been described in detail by Polish anthropologist Joseph Obremski (Обремски 2001), who focused upon those areas of not-so-hidden power, such as certain female-centered rituals, healing, as well as ‘black’ magic (spells and curses). These acts, especially when targeting males or male domination in general, have strengthened individual positions of women, at the same time generating and sustaining female solidarity through centuries.

The role of women was especially relevant in the frames of traditional medicine. Contrary to the Western biomedical model for interpreting disease, the skill to diagnose and to cure in the frames of traditional culture lies in the intimate sphere of the individual, while the acts themselves take place in one’s home or immediate surroundings. In this private realm, women were the ones responsible for the health of the family: healthcare, especially when it came to children, was one of the many aspects of women’s domestic work. This situation was identical in most of Europe until the 17<sup>th</sup> century: “Prior to this period, orally transmitted and written systems of

belief and practice often remained entirely within the private sphere, being passed down through generations of women, to be modified in turn by each woman's practical experience" (Billington, Hockey, and Strawbridge 1998: 112). When domestic remedies did not solve the problem, assistance was sought from local healers, again mostly older and experienced women, who possessed a great range of knowledge and skills regarding healing plants, preparation of balms, and especially magical curative procedures. Obrembski registers the domination of women in the area of care-giving, and even proclaims it as their monopoly. This was also reported by Stevan Tanović (Тановић 1927: 76) in his study of the Gevgelija area (in southeast Macedonia), published in 1927:

"The one who takes care of the sick, if he is a man – it is his wife; if it is a child – the mother, if she is a woman – another woman. A man would seldom take care of his sick wife. When the illness starts to become serious relatives are sought out, so that their wives come for a visit and bring "punuda" (some food or other necessities for the sick person – my note)."

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It was only by the end of the 19<sup>th</sup> and the beginning of 20<sup>th</sup> century that the treatment of the diseases in Macedonia started to be gradually transferred from the private to the public sphere of contemporary medicine and its institutions, as well as the general care of the sick. The term 'gradually' is used since the trust in the knowledge of folk medicine, based upon life experience, built and transmitted through centuries, could not be replaced with the same level of trust towards contemporary medicine overnight. Moreover, the latter, at least at the beginning, was in a huge part based upon folk wisdom, and it recognized its relevance. People sought medical help from the city professionals only in serious cases, after they would try all other options available in their immediate surroundings.

However, women have not always implemented their skills for the benefit of others. Obrembski reports that white, but especially black magic, is efficient only when it is done by a woman, more precisely an old woman, who is childless, or who can no longer bear children. Women-magicians are described as 'pretentious, evil and jealous', a designation resembling the one stereotypical of a witch. However, the Macedonian word for witch, *veshterka*, in fact contains the adjective *vesht*, meaning skillful, recognizing the ability to do evil as certain knowledge, even a calling. The personage of the witch in Macedonian folk tales is often related to the one of the devil – the latent misogyny of folk culture is intensified when old women are in question. They can be dangerous even solely through speaking, i.e. cursing. The fear of being cursed lies in the supposed magical power of the word, which can induce physical and/or psychological harm, especially when uttered by a woman in an act of rage.

A woman is considered 'nasty' or 'dangerous' if she does not adhere to the dominant models of female behavior, i.e. if she 'does not know her place', meaning the one socially bounded by her home and her family. In a folk song titled 'When I departed, Cveto', an anonymous male poet retells about his departure to a faraway land to earn some money, while his wife, Cveta, tearfully promises him to faithfully wait for him and take care of their children.

But I didn't trust you  
 and thus came back promptly –  
 Our door Cveto was closed  
 our children were sleeping  
 while you were at the neighbors'.  
 There you were drinking black coffee  
 drinking black coffee  
 making sweet conversation.  
 Do what you wanna do  
 but forget about me, Cveto.

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Although in a very discreet fashion, the song alludes to women who are not as loyal and as ready as most of the other women to sacrifice their own cravings (for coffee or for something else) for the sake of the family as prescribed by traditional norms. Such female characters are especially dominant in erotic folk stories. The overwhelming sexual 'appetite' of women is treated in an ironical and sometimes even cynical fashion, but also providing a clear didactic message. In a story titled 'A horny woman who did not leave her husband at peace' (Пенушлиски 1985: 29), a husband is continuously sexually attacked by his insatiable wife, and thus asks for help from his friend. Together, they coin a plot to stop this unwanted trend. They warn the woman that an excess of sex can lead to death, after which she reconsiders her priorities, and stops bothering her husband. "Thus, the wife had sex with her man again, but now *as it should be done*, in a lesser extent, not too much, and not whenever she wanted, and at all times" (idem: 30).

The emphasized sexual desire of women is not only neutrally defined as atypical, but it is also sanctioned as such. On the other hand, male sexual appetite is not criticized, regardless of whether it is directed towards the lawful wife, or another woman. The only example when it becomes a target of parody and *schadenfreude* is when an old man is sexually zealous. Potency is related to youth, and it is related to getting married and having children – once these goals are accomplished, even man's sexuality seems grotesque. On the other hand, the possibility of old women having sexual desires is completely excluded.

The duality of the role of women in traditional culture is also well illustrated through other forms of verbal folklore, such as Macedonian proverbs. 'If you

are a girl stay at home', or 'When a girl is born even the rooftops cry', and 'A drunk woman is like a crazy pig' imply that the destiny of a woman is one of suffering and restrictions, but on the other hand we have proverbs such as 'Women and foxes have the same mother,' or 'Women present themselves to men from the waist down, but not from the waist up', that present them in a completely different light, as sly and manipulative. As with proverbs in general, there is no right or wrong version, their simultaneous existence simply conveys the complexity of the issue. There is also an interesting proverb, contradicting the general preference of male over female children in folk culture – 'Every mother loves her daughter more than her son' (Cepenkov 1980). A possible explanation is that emotionally and practically daughters take better care of their parents compared to their favored, and thus often spoiled, brothers, at least until they (the daughters) get married and thus become a part of a new family, taking care of their husband's parents.

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### The new face of 'girl power'

After these pieces of ethnographic evidence of the dual, sometimes blurred and fluid status of women in traditional culture, that do not present them as passive sufferers of their own fate, it is somehow curious why this idea of the gap between their real and their ideal historical position has met such resistance in certain academic circles, and more generally in the local feminist camp.<sup>1</sup> Does the idea that our grand-grandmothers were not so humble threaten our own accomplishments in the fight for women's rights? Wouldn't it be more constructive if, instead of creating a somewhat artificial gap between the past female struggles and the contemporary ones, we promote the idea of continuity, and thus build a bridge between generations? Recent developments in Macedonia related to female agency have shown that such a possibility exists.

The wave of protests in Macedonia, that started in December 2014, aiming to fight political corruption and provide better living conditions, promoted the idea of strong, brave and smart women and girls, who were often, hand in hand, in the first protest rows, delivering public speeches and vocally expressing their dissatisfaction in the media. The Special Prosecution team, that

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1 A good overview of the feminist attitudes towards traditional roles of women in Macedonia is presented in "Patriarchy is Guilty for Everything" by Ana Ashtalkovska, published in the Journal of the Institute of Ethnology and Anthropology, *EthnoAnthropoZoom*, n. 5, 2005, electronic version available at [http://www.iea.pmf.ukim.edu.mk/EAZ/EAZ\\_05/EAZ\\_2004\\_PDF/Ashtalkoska\\_A.na\\_EAZ\\_2005\\_ang.pdf](http://www.iea.pmf.ukim.edu.mk/EAZ/EAZ_05/EAZ_2004_PDF/Ashtalkoska_A.na_EAZ_2005_ang.pdf). The author critically examines the overwhelming utilization of the term 'patriarchy', as a universal synonym for discrimination of women, without leaving necessary space for different and sometimes contradicting narratives concerning power and gender in the local cultural context.

has been formed in order to analyze the potential criminal activities of the current political elite, consists of three such strong and courageous women.

However, among activists' actions that paved the way for the mass protests that followed, were the ones of May–June 2013, targeting the proposed changes of the Law on Abortion, that have contributed to the creation of an atmosphere of solidarity and free expression, that culminated with the so called 'Colorful revolution' of 2016, a term stemming from the practice of the protesters to throw paint on the government buildings and monuments from the project Skopje 2014.<sup>2</sup>

In order to explain the events that led to this particular law-changing initiative and the reactions that followed, one has to take a step back and analyze different statements of Government officials and high church representatives prior to this period. Three events in this sense point to the conclusion that, besides the general conservative ideology promoted by the ruling structures during the whole duration of its mandate (the last ten years), a particular timing has been chosen to emphasize the topics of family values and decreased birth rate, and their connection to the societal role of women.

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One of these events is the speech given in 2012 by now ex-prime minister Gruevski, at a celebration of the Day of VMRO, 23th of October, a state holiday introduced after right-wing VMRO-DPMNE came to power in 2006. At a mass public gathering heavily covered by the media, he commenced his speech noting that it would be 'non-standard for such occasions', however dedicated to an important topic that requires 'mutual mobilization and action'. The challenge i.e. the problem that he addressed was the one of depopulation, or as he has put it, 'the recession of the nation'. "We live in times when families seldom have a second child, not to mention a third or a fourth. We discuss false values, such as same-sex marriages, we talk about so called women's rights, while our country is becoming less and less populated", stated Gruevski during the speech.

Despite the formal division of religion and the state, high church officials have publicly supported such ideological statements of politicians, offering interpretations that are not only based on religious doctrines, but also on their personal views of socio-cultural phenomena. Such was the statement

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2 The project is a Government-funded revamp of the Macedonian Capital, that aims to give the city a more impressive and 'historic' look, through construction of monuments, sculptures, facades and new buildings. At the time when it was first announced, back in 2010, the project envisaged the construction of some 40 new objects, estimating a cost of 80 million Euros. Current data provided by Balkan Investigative Report Network claim that the price of the project is 650 million Euros, while the number of objects is around 140. More at: <http://skopje2014.prizma.birn.eu.com/> (last accessed 03.02.2017).

of bishop Petar, a vocal high representative of the Macedonian Orthodox Church, who has interpreted the high divorce rate in Macedonia as a result of female 'capricious' behavior:

"A major part of the couples that got married in church are getting divorced since they do not want to show humility, due to their vanity, since everyone wants to be in command, forgetting that the man is the head of the house, and the women should be submissive, not in the sense that she should not have human rights – she has more rights than men. I am convinced that women will either save or destroy our Macedonian nation and our church, since what is planted in their wombs should be born if we want to survive as a nation."<sup>3</sup>

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That this rhetoric served a premeditated purpose became clear in May 2013, when amendments to the Law on Abortion were proposed. The argument for changing the existing Law was that it was outdated, 36 years old, and that it should be adjusted to the new, modern medical procedures. However, the changes were far from 'cosmetic'. Four of the articles significantly differed from the previous Law, threatening the privacy, dignity and health of women. Those were:

- An introduction of a written request for abortion that should be filled-in by the woman, and whose content should be established by the Minister of Health himself.
- An obligatory counseling of women who wish to cancel their pregnancy, which in case it is not provided could result with the doctor being sanctioned with 2000–3500 Euros.
- Introduction of the 3 days 'deliberation period' for making the final decision on abortion.

Activists, women's organizations, female parliamentarians from the oppositional parties, as well as (mostly female) citizens from different generations, have gathered on three occasions in front of the Parliament, at the time when the proposal was discussed, as well as during the final voting. Their arguments were that the Law is not only restrictive, but harmful to women's rights, that instead of making abortion more difficult the main focus should be put on prevention and reproductive health, and that the abortion rate in Macedonia (11 of 1000 women in 2012) is far lower than the average global and European one.

The success of this action, to stop the Law from being adopted, was unfortunately very limited. Only two provisions were changed from the first draft

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3 For a collection of media articles containing the statement see: <http://www.time.mk/cluster/9974db7f73/g-petar-zenata-e-vinovna-mazot-e-glava-na-semejstvoto.html>, from 6 May 2013.

– the article that prescribed obligatory counseling of the woman *together* with her partner/husband, and the one that prescribed obligatory informing of the partner/husband on the decision for abortion. The whole action was also handicapped by the fact that the whole procedure was hasty, with the Law being finally adopted just before the Parliament closed for collective summer holiday.

On the positive side, however, this event gave strength to the different initiatives and organizations that participated in the protests, and led towards their unification. The latest follow-up to the above mentioned events happened recently, prior to the Parliamentary elections in Macedonia from December 11<sup>th</sup> 2016, when ten political parties of the opposition have signed a declaration obliging them to initiate changes on the controversial Law of 2013 once the elections are over. The issue of abortion and women's rights in general has thus connected different political actors from the center and the left, as well as men and women from different generations and ethnic backgrounds. Despite the preliminary disappointment of the direct participants in the protests due to the lack of immediate effects, in retrospect a very important goal was achieved: gender issues have been recognized as one of the most important elements of political struggle, along with fighting nationalism, corruption and nepotism.

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Through combining ethnographic data on the past status of women, and their sometimes secret and hidden, but still vivid strategies for fighting the gender power structure, with the fresh and still ongoing struggles of girls and women from Macedonia, this article tries to show that cross-generational, multi-cultural and other platforms of 'networking' among women bear results. Although the effects of their resistance might not be immediate, when acting together, especially in times of social crisis, in the long run women can push not only gender, but also human boundaries. Just as an avalanche might start with just a snowflake, they can initiate or play an important auxiliary role in creating big political and more general cultural changes, not as the proverb advises – by staying at home – but by inhabiting public spaces, city squares, political arenas and virtual territories with their bodies and minds.

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Ilina Jakimovska

### „Ako si žensko ostani kod kuće“ – etnografsko propitivanje ženskog društvenog angažmana od ruralnog 19. veka do savremenih političkih protesta u Makedoniji

#### Apstrakt

Istorija Balkana nam se predstavlja, kad su rodni odnosi u pitanju, kao istorija potlačenih žena, potpune patrijarhije i muške dominacije. Ovaj narativ se retko propitivao, te i dalje odjekuje u hodnicima onih disciplina koje su pomogle njegovom uobličavanju i promovisanju. Budući jedna od tih disciplina, etnologija može i treba da igra glavnu ulogu u dekonstrukciji shvatanja položaja žena u tzv. tradicionalnim kulturama, te da uspostavi mogući kontinuitet između prošlih i sadašnjih borbi za ženska prava.

**Кључне речи:** rodne uloge, borba za moć, žene, protesti, abortus, etnografija, Makedonija.



LIBERALISMS AND ANTI-LIBERALISMS  
- CHALLENGES AND ALTERNATIVES

LIBERALIZMI I ANTILIBERALIZMI  
- IZAZOVI I ALTERNATIVE

II

Edited by Mark Losoncz



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## Association, property, territory: what is at stake in immigration?

**Abstract** It is often claimed that states have territorial rights, and that these rights include the right to exclude people who seek admission to their territory. In this paper I will examine whether the most defensible account of territorial rights can provide support to the right to exclude. I will discuss three types of theories of territorial rights. The first account links the right of states to exclude to the prior right of individuals to freedom of association, which is said to include the right not to associate and to dissociate. The second is a Lockean theory that grounds the territorial rights of states, and hence their right to exclude, in the prior right of individuals to private property in the land that constitutes the territory of the state. I argue that these accounts have independently implausible implications, regardless of their implications for the immigration debate. The third account is a Kantian theory that bases the territorial jurisdiction of states on individuals' duty to create, sustain and submit themselves to a shared system of law that is a necessary condition of guaranteeing their rights and of discharging their duties towards one another. I will argue that the Kantian account is superior to its current alternatives. However, I also suggest that it cannot ground a broad right to exclude.

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The ground and extent of the right of states, if any, to exclude unwanted potential immigrants from their territory on discretionary grounds is one of the most hotly contested issues in contemporary normative political theory, as well as one that has immediate and urgent practical relevance. There are many millions of transnational migrants each year, and the likelihood of this number significantly diminishing in the foreseeable future is quite low. Current international legal practice holds that as a general rule, states have the right to exclude noncitizens who seek admission into their territory with the exception of refugees as defined by the Geneva Convention on Refugees (1951). The right to exclude is generally understood to be one among several aspects of the territorial rights of states, which also include, most importantly, the right to exercise exclusive jurisdiction over a particular territory, and control over the natural resources to be found in that territory. However, there is disagreement in political theory both about the purported grounds of territorial rights, and their precise limits, including

whether or not they involve the right to exclude noncitizens.<sup>1</sup> In this paper I will engage with some of the most prominent accounts of territorial rights. My goal is to see how plausible these accounts are as theories of territorial rights *in general*, and to explore what they imply regarding the existence and extent of the right to exclude.

Before presenting these theories, a number of clarifications and stipulations are in order. First, I only discuss such conceptions of territorial rights here that are, broadly speaking, individualistic in the sense that they do not derive territorial rights from the claims or interests of groups *qua* groups (i.e. as distinct from the claims and rights of their individual members). Hence, I exclude nationalist accounts of territory, including liberal nationalist ones.<sup>2</sup> The reason for this exclusion is that I am assuming, without providing arguments here, that at the fundamental level, political morality is constituted by principles that have individualistic justification, i.e. they are justified in virtue of the manner in which they relate to the valid claims of individuals. Furthermore, the political institutions and practices of liberal democracies are in general justified on individualist grounds, and it is an issue of special interest whether their routinely asserted right to exclude potential immigrants is consistent with the principles to which they claim allegiance. Second, I will frame the debate between those who think that states in general have a discretionary right not to admit noncitizens, on the one hand, and those who are skeptical of such a right, in terms of the existence or absence of a “right to exclude,” rather than in the more familiar terms of “open borders” versus “closed borders”. This choice of terminology is justified given that the main issue under discussion here does not concern the substantive reasons that may exist that argue in favor of restrictive immigration controls or against them, i.e. the kinds of considerations that may be taken into account by decision-makers when they determine border policy. The issue, rather, is whether state officials have a *moral right* to allow these various considerations to determine border controls. To illustrate, some theorists argue that there is some particular good, such as the maintenance of a distinctive culture, or social trust and solidarity, the promotion of which depends on restricting immigration.<sup>3</sup> In a similar vein, others might argue that some other goods, such as cultural diversity, are best promoted by permissive immigration policies. Regardless of their substantive merits or lack thereof, however, these suggestions are silent on whether it is morally permissible to promote the particular goods or interests that they invoke through coercive border controls. It may be coherently suggested,

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1 For important discussions of territorial rights, see Simmons 2001; Stilz 2009; Nine 2008; Miller 2012.

2 See e.g. Miller 2007; for criticism, see Stilz 2011.

3 See e.g. Walzer 1983; Miller 1997.

for instance, that even though social trust is an important good, and that the promotion of this good depends on limiting immigration, states do not have the right to promote this good in this manner because that would violate the rights of others. Likewise, the fact that diversity is good does not entail that its pursuit makes border controls impermissible. If we assume that political morality incorporates at least some nonconsequentialist constraints, then we ought not to rule out the possibility that certain ways of promoting the good are impermissible. As Michael Blake writes, “From the fact that we have an interest in a particular set of policies, we cannot infer that we have a right to it—particularly if other people may have interests, or even rights, in the absence of those policies.” (Blake 2013) Therefore, the issue at stake here is not whether there are some good reasons for restricting immigration, but whether or not states have a moral right to act on those reasons. (It is not usually in doubt that they have a *legal* right to do so, with the exception of the admission of refugees, which signatories of the Geneva Convention are legally required to do. The question is whether that legal right has any sound basis in political morality). Third, I will use the term ‘admission-seekers’ for all categories of people that seek to enter the territory of a state, to capture all possible grounds of claiming admission. I use this term instead of “immigrant” or “migrant” because many in the theoretical literature and especially outside the academic discourse have come to use “immigrant” in contrast with “refugee” as mutually exclusive terms, to refer to people who seek admission not because their human rights have been violated, but for other, typically economic reasons. The term “admission-seeker” is intended to be neutral with respect to different types of admission claims.

I will engage with three types of theories of territorial rights. The first account links the right of states to exclude to the prior right of individuals to freedom of association, which is said to include the right not to associate and to dissociate. The second is a Lockean theory that grounds the territorial rights of states, and hence their right to exclude, in the prior right of individuals to private property in the land that constitutes the territory of the state. I argue that these accounts have independently implausible implications, regardless of their implications for the immigration debate. Some of these are sufficient to exclude them from consideration. The third account is a Kantian theory that bases the territorial jurisdiction of states on individuals’ duty to create, sustain and submit themselves to a shared system of law that is a necessary condition of guaranteeing their rights and of discharging their duties towards one another. I will argue that the Kantian account is superior to its current alternatives. However, I also suggest that it cannot ground a broad right to exclude.

## Association and the right to exclude

It has been prominently argued by Christopher Wellman that the right of states to exclude admission-seekers is grounded in their citizens' individual right to freedom of association (Wellman 2008). The freedom to associate with others that one wants to associate with is usually understood to be of paramount moral significance. It is rarely disputed that this freedom is a crucial aspect of personal autonomy, of being able to take charge of our lives and to give it a direction of our own determination. Living our lives in association with people whom we want to share it (provided that they have the same wish) is essential to being the authors of our lives. We need only to think of the examples of marriage, of friendship and of religious worship to appreciate the importance of the right to associate freely. By the same token, not having to share our lives with people we don't want to share it with is an equally essential element of personal autonomy. Therefore, so the argument goes, the collective of citizens of a state has the right, derived from the rights of its individual members, to make collective decisions through their political institutions about whom they want to admit into the territory of their state and whom not (Wellman 2008: 109-114).

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The argument from association, as I will call it, is a deontological argument insofar that it does not rest on the thought that restricting immigration is necessary to promote some good. In fact, Wellman states that personally, he is in favor of fairly open borders, and would presumably support them if the issue came up for vote (Wellman 2008: 116-117). His claim is simply that the community of citizens has the *moral* right to opt in favor of closed borders if the appropriate majority so decides. How should one evaluate the argument from association as an account of the right of states to exclude? I will make two types of arguments against this account. First, I will draw out some very implausible, indeed unpalatable implication of understanding the community of citizens on the basis of associational freedom. Second, I will advance a more fundamental challenge that raises doubts regarding this manner of construing the right of association.

The first point that should be noted is that understanding political community on the basis of associational freedom in the manner Wellman suggests has much more far-reaching implications than he seems to realize. He suggests that the right of free association involves not simply the right not to associate (i.e. not to enter into associational relations with people whom one does not *already* share an association) but also the right to dissociate, i.e. to sever *existing* associational ties with persons with whom one shares certain associations. This seems certainly right as far as some associations are concerned: people have the right to divorce their partners or end friendships essentially on any ground that they personally see as sufficient, even if doing so

is a terrible choice under the circumstances. However, the issue is somewhat murkier in the case of associations that have a stated, specific goal or dominating ideal. Consider the case of religious communities or churches. Churches certainly have the right to establish their own official doctrine and system of behavioral norms, and also to exclude or not to admit anyone whose stated views and beliefs are inconsistent with the official views of that church, or whose behavior violate clearly established norms of the community. It is far less clear to me whether churches have the right to refuse to admit or to exclude people who fully comply with those doctrines and norms. Consider the following example: does a church have the right to exclude or refuse to admit people on the basis of racial criteria even though the stated doctrine and goals of the church make no reference to race? I doubt that it does.<sup>4</sup> I think this example is importantly different from a real life case, in which the issue was whether the Boy Scouts of America may refuse to admit gay members at a time when the organization's code clearly prohibited gays from being members.<sup>5</sup> This is so because in the hypothetical example race is wholly irrelevant to the church's mission, while the Boy Scouts' at the time of the legal challenge officially held that engaging in homosexual acts or even the desire to do so is contrary to the ideals of the group. However, let us grant, for the sake of argument, that in the case of typical associations, the right to exclude, i.e. to sever existing relational ties, is broad and nearly unlimited. The obvious implication of understanding the political community of citizens as an instance of associational freedom is that the right to exclude is not limited to current noncitizens but extends to *current citizens* as well. By Wellman's own lights, we would have to say that states have the right to strip current citizens of their citizenship on just about any grounds that an appropriately specified majority deems fit. This is surely an absurd consequence. No existing liberal democracy claims to have that *discretionary* right; typically, stripping citizens of their citizenship is restricted to cases of treason, desertion from the military during wartime, or when citizenship was fraudulently acquired in the first place (Herzog 2011)<sup>6</sup>. The Universal Declaration of Human Rights (Article 15 (2)) prohibits the arbitrary revocation of nationality (i.e. citizenship), without specifying, however, what counts as arbitrary. The European Convention on

4 Even though I believe it does have the right to incorporate racial criteria in its doctrines, and then, as despicable as such a practice may be, it will have the right to exclude people belonging to the specified racial group.

5 The case is discussed in Wellman 2008: 111. The United States Supreme Court decided in favour of the Boy Scouts' right to exclude gays in *Boy Scouts of America et al. vs. Dale*, 530 U.S., 640 (2000). Recently, the group have decided on its own to accept gay members.

6 Some countries don't recognize dual citizenship and thus those of their citizens who acquire citizenship in another state lose their original citizenship. In others, permanent residence in another country or service in a foreign army may lead to loss of citizenship. These practices, however, may be seen as ones in which loss of citizenship is chosen voluntarily by the affected individuals.

Nationality (1997) goes further by providing an exhaustive list of grounds for revocation.<sup>7</sup> If we tend to think, after reflection, that there is no *discretionary* right to revoke the citizenship status of current citizens, then that judgment should be taken as a strike against understanding political community as an instance of associational freedom. Both current international legal practice and common moral intuition suggests that states don't have the right to revoke citizenship on arbitrary grounds. If that practice and that intuition tracks valid moral principles, then this suggests that there is no such right. But if so, and if the right to dissociate is part and parcel of the right to associate, then we have very good reason to doubt that the acquisition and loss of citizenship is to be understood on the basis of the freedom of association.

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Another wildly implausible implication of linking the purported right to exclude to the right of free association can be seen if we consider the issue of reproductive freedom. It is nearly universally agreed that, barring special circumstances, people have the right to procreate and decide to have children. Moreover, couples (or individuals) may exercise this right without the consent of their fellow citizens. However, the children that are born as a result of such decisions have the right to stay in the territory of the state and normally become members not only of their families but also of the political community. This is not dependent on the positive decision of the political community as a whole. If we approve of this practice, as most people believe we should, then those who ground the right to exclude on the freedom of association face a dilemma. On one horn of the dilemma, they may claim that in the cases of exercises of reproductive freedom the rights of *individuals* to associate (in this case with their prospective children) defeats the right of the *political community* to exercise its right not to associate. But if the individual right to associate can override the collective's similar right, then the door is wide open for individuals to invite noncitizens to the territory of their state and offer them permanent residence as an instance of their associational freedom. In other words, if the individual right of association can typically override the collective's similar right, then the latter is not a very strong right and cannot justify current immigration practices. On the other horn of the dilemma, they may admit that admission to the political community is not governed by the principles of associational freedom. While the first horn of the dilemma only weakens the theory, the second horn is fatal.

To see why the problem of reproductive freedom is so thorny for the argument from association, we may notice that children do not, as a matter of general principle, become members of whatever associations their parents are the members of. Take the case of Christian churches, for instance. Sure, most religious parents raise their children to adopt the same religious beliefs. But

7 For discussion, see De Groot – Vink, internet and Bauböck – Perchinig – Sievers: 2009.



typically, children do not become members of their parents' church simply in virtue of birth but through baptism or some similar practice. There is no analogy of baptism for children to become citizens—they acquire it in virtue of birth itself. This points to an important disanalogy with typical exercises of associational freedom. Needless to say, the same holds for the various other voluntary organizations to which parents belong; their kids don't become members automatically by birth. To be sure, these practices are not determinative. The associational theorist may respond that it is not her theory but these practices that are in need of revision. However, these practices as they currently exist are much more in line with the way freedom of association is typically understood. In the standard view, the voluntary choice of the individual to become a member (rather than her parents' decision) is a necessary condition of acquiring membership. Therefore, it stands to reason that the same should hold for citizenship, were it a case of associational freedom.<sup>8</sup>

Now, the proponent of the argument from association may counter the above objections by suggesting that they can be neutered once we consider that the right to freedom of association is not absolute, and that it competes with other moral considerations. For instance, she may suggest that revocation of citizenship on arbitrary grounds would be such a severe blow to the personal autonomy of current citizens, whose projects and relationships are typically attached to continued presence in the territory of the state of their current citizenship, that is incomparable to what is at stake in terms of autonomy for current noncitizen admission-seekers. So in the case of current citizens, individual autonomy defeats freedom of association. This may also explain some of our contemporary practices, such as the easier naturalization of the spouses or other family members of current citizens. Perhaps the argument might be extended to reproductive freedom: individuals' autonomy-based interest in being able to make reproductive choices on their own outweighs the importance of freedom of association. Less plausibly, it may be suggested that this interest also explains why newborns automatically become citizens as well. I am not sure whether this strategy is very promising, because it opens up the way for a potentially broad range of claims to override the collective right of freedom of association, which will then look less firm as a basis of the nearly blanket right to exclude that is the justificatory target. However, for the sake of discussion I would like to entertain the possibility that this rebuttal might succeed. I therefore put forward two separate considerations that suggest that associational freedom is an altogether misguided suggestion as the basis of the right to exclude and of membership in the political community, respectively. These considerations represent a more fundamental challenge than the previous ones insofar that they do not simply point out implausible implications.

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8 For discussion of these and similar problems, see also Fine 2010.

The first consideration is the following. What is at stake in granting or withholding admission from admission-seekers is not membership in the political community, but rather entry into and (extended) stay in the state's territory. Those who are admitted to the territory need not be granted citizenship (Sandelind 2015: 498). However, the freedom of association is naturally understood in this context as applying to citizenship, not to residence. It is wildly implausible to construe residence in the same geographical territory as sharing an association in the relevant sense. To begin with, that would imply that it would be necessary to get the approval of current residents before one could move into a neighborhood in order to live there. That would be grossly objectionable, for obvious reasons. Equally obviously, access to physical space to reside and live and simply to move around is a vital good that everyone crucially depends on to have any kind of life; everyone must be able to occupy some space. Freedom of association cannot extend to the exclusive control of, and the right to deny access to, goods that are vital even for mere subsistence. (I will return to this claim below). Finally, if sharing the same territory counts as sharing an association in the relevant sense, then the whole of humanity may be seen as constituting one single association in virtue of sharing the surface of the Earth. But then, by associational logic humanity as a whole would have the collective right to exclude persons from the territory of the Earth, which is absurd. The proponent of the argument from association faces a fatal dilemma yet again. It is either the case that sharing residence in the same territory is not an instance of sharing an association. In that case, the state's right to exclude admission-seekers from its territory cannot be defended on associational grounds. Alternatively, sharing residence in a given territory is a form of association, but then the right to exclude is defeated by the claims of members to access to vital goods. Either way, the blanket right of states to exclude admission-seekers from its territory cannot be justified on associational grounds.

Now, the following rebuttal to the preceding argument may be considered. It is true that admission to and residence in territory is logically distinct from membership in the political community (i.e. citizenship), but they are normatively inseparable, at least in the longer term. Long-term residents are permanently subject to the authority of the state; their relation to it is, for normative purposes, not different from that of citizens. Therefore, they ought to be able to *acquire* citizenship at request after a certain period of time, as a matter of democratic right.<sup>9</sup> Therefore, admittance to territory with the purpose of residence is tantamount to a conditional offer of citizenship (See Sandelind 2015: 498 and Fine 2008: 344). Therefore, *insofar*

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9 This claim is admitted even by theorists who uphold the right to exclude. Walzer 1983: 31-63.

that membership in the political community is a matter of associational freedom, states do have the right to exclude admission-seekers from their territory because admission to territory morally commits them to admission to the political community. Let us call this the “bundling argument” (the term “bundling” is borrowed from Fine 2008: 344). Abstractly, the bundling argument states that if X has the right to refuse to give A to Y, and if giving B to Y would commit X to giving A to Y as well, then X has the right to refuse to give B, too, even though X does not have the right to refuse B *per se*, i.e. when considered independently of the commitments that giving B would create.

I am not sure if this is a generally valid form of argument. Suppose you have the right to refuse to let me into your house (even if letting me in would not impose more than modest costs on you). Suppose also that you have no right to refuse vital assistance to me if you can do so at little cost to yourself. Suppose further that the only way you can give me vital assistance under the circumstances is to take me into your house and provide it there. Other things being equal (i.e. if the costs to you of having to admit me into your house are not excessive), it would seem to me that you cannot refuse to admit me into your house under the circumstances. Now, it *might* be argued that the “other things being equal” clause does not apply to the immigration case: it may be suggested that admitting people into the political community imposes much larger burden on current members than simply admitting people into the territory of their state. It is hard to believe that this could be so. Sharing public space and the material and cultural environment looks like more immediately consequential than sharing political membership. But one reason why it *could* be seen differently is suggested by Wellman. Members (citizens) have the right to participate in decisions regarding the formal political structure of the group itself, i.e. about its very collective self (see Wellman 2008: 115). Therefore, I will entertain the thought that this rebuttal is successful.

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What the rebuttal shows if it succeeds is this. Even though states do not have an *associational* right to exclude admission-seekers from their territory, the right to exclude from territory is a necessary condition of exercising their right to associational freedom. Therefore, they have the right to that which is a necessary condition of the exercise of their right to associate because otherwise the latter would be vacuous.<sup>10</sup> This rebuttal preserves as one of its premises the assumption that political membership is based on associational

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10 I think this argument runs into the obvious problem that in many cases, the admission-seekers' admission to territory is also a necessary condition of the exercise of many of *their* fundamental rights. Therefore, in order to show that the current members' right to exclude prevails it is not sufficient to show that that right is a necessary condition of the exercise of their associational rights. It also has to be shown that that right enjoys priority over the fundamental rights of admission-seekers. However, I will not pursue this argument here.

freedom. Now, I will challenge this thought directly. Let me start by pointing out an obvious fact: political communities and states are not voluntary organizations. The overwhelming majority of members become citizens by birth rather than by choice, as is the case with voluntary associations falling under the scope of associational freedom. Moreover, it is not simply the manner of acquiring membership that marks a sharp contrast between states and voluntary associations. Voluntary associations have morally optional goals, i.e. such goals that their members do not typically have a prior and independent duty to pursue (or do not have a duty to pursue it in an associational form).<sup>11</sup> Voluntary associations are typically about the pursuit of projects and goals that persons are free to adopt and also not to adopt—religious worship, artistic, scholarly, professional or athletic advancement, and so on. They are, at a fundamental level, about what people do with their lives as far as their exercise of personal autonomy is concerned. As part of their personal autonomy, they may decide to pursue certain goals or activities or relationships in a collective, associational setting rather than on their own. By contrast, states are non-voluntary in a second, crucially important sense as well. Their goal, or point of existing, is constituted by morally required rather than optional ends. States by hypothesis make rules that are binding for all those subject to them and can be enforced through the use or threat of force even against those who disagree with them. This right to rule and use force can be justified only because it is a necessary condition of their members' and residents' discharging such duties that they have towards each other prior to and independent of the existence of the state. They have a fundamental duty to live in peace and justice with each other, which is not possible without submitting themselves to and sustaining a shared system of just laws.<sup>12</sup> If they cannot honor their duty to live in justice with each other without submitting themselves to the authority of the state, then they have a duty to submit themselves to it. This is not optional but morally required of them.

What is the import of this difference? I think it helps us clarifying the ground and limits of freedom of association. The moral significance of the freedom to associate is related to the moral significance of personal autonomy, i.e. of being able to pursue our self-chosen projects and relationships that we adopt in light of our own reasons. Even though we may think (as I do) that the values in light of which we decide which projects and relationships to pursue are objective, it is still the case that the reasons provided by these objective

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11 I added the qualification in within the brackets to acknowledge that some voluntary associations pursue goals that plausibly all of us have a humanitarian duty to contribute to (think of Amnesty International, for instance). But we do not have a duty to pursue it *by* becoming members of AI or donating to it, or in any way contributing to it.

12 I am assuming here a Kantian theory of the basis of political authority and obligation. For details, see e.g. Arthur Ripstein, Anna Stilz, Jeremy Waldron, etc.

values alone underdetermine what projects we have most reason to adopt (see Raz 1986: 385-390). We are morally free to choose among the available projects, and we are also morally free to decide with whom, if anyone, we intend to pursue these projects. This is a crucial aspect of autonomy. But of course our personal autonomy extends only to the use of goods and resources that we rightfully possess. I cannot pursue my self-chosen projects by taking what is yours or, which amounts to the same thing, by excluding your access to that which you have a rightful claim to. The pursuit of personal autonomy is constrained by justice (which is not to deny that part of the point of justice may be to enable people to pursue their autonomous projects). It cannot be exercised in such a manner that results in the violation of the justice-based claims of others to access to vital goods. For that reason, insofar as access to territory is itself a vital good or a necessary condition of the exercise of fundamental rights grounded in justice, associational freedom does not include the right to exclude admission-seekers from a particular territory, provided that they depend on access to that territory in order to be able to exercise their fundamental rights.<sup>13</sup>

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Two conclusions emerge from this discussion. First, the goals and function of political community (understood as an institutionally organized society exercising control over a particular territory) are crucially different from those of voluntary associations that fall within the purview of associational freedom. The latter are instances of collective exercises of personal autonomy in the pursuit of optional projects, while the former is the collective pursuit of a morally required project, the establishment of justice over a given territory, which is a necessary condition of the fair pursuit of autonomy for all. Therefore, the former is morally prior to and constrains the latter. Individuals' right to pursue their autonomy, individually or in voluntary association with others, is limited to the use of goods and resources that they rightfully possess. One of the chief goals of political community, by contrast, is exactly to make sure that each person possesses the goods that they have a rightful claim to. Second, and relatedly, people may not exercise their autonomy in such ways as to exclude others from what they have a rightful claim to. Therefore, whether admission-seekers may be excluded from the territory of the state they seek admission to depends not on the associational freedom of current members and residents, but on whether their admission is necessary for them (the admission-seekers) to have their valid claims met, and whether their admission would threaten the valid claims of current residents to a fair share of resources, etc. An account of the fair

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13 To be sure, admission-seekers hold this claim not against particular states but against the international community of states. Therefore, their claim to territory is not a claim to be admitted to the territory of a particular state.

shares that each – both admission-seekers and current residents – are entitled to is both logically and normatively prior to a proper account of freedom of association. It is logically prior because we can specify what counts as a morally protected exercise of associational freedom only once we have determined who is entitled to what resources, and whether a particular exercise involves only those resources that the persons engaging in it rightfully possess. And it is normatively prior just because only those exercises are morally protected that involve only such resources that are rightfully held by those engaging in them. In sum, the right to freedom of association cannot ground the right to exclude.

### Property and the right to exclude

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Another influential, Lockean theory of the territorial rights of states claims that states' right to exercise exclusive jurisdiction over a particular territory is derived from the prior right of ownership of their individual residents of the land that makes up that territory. The idea is that first, individuals gain ownership rights of pieces of land, and subsequently they decide to form a political community, in the process transferring (at least some aspects of) their ownership rights to the state.<sup>14</sup> The state's territorial rights are simply an aggregation of prior individual rights of property in land, deriving from delegation by each individual who had such property rights. And since property right over a particular territory is usually understood to include the right to control entry into that territory, there is a simple and straightforward inference from property rights through territorial rights to the right to exclude admission-seekers.

It seems to me that the problems with the proposal based on individual property rights are glaringly obvious and should make this account a non-starter.<sup>15</sup> First of all, it rests on a very controversial and implausible theory of political authority based on individual consent. It is widely recognized that consent cannot be the basis of the general authority of the state, since most people do not by an act of voluntary and deliberate consent submit themselves to the authority of the state. As for delegation of property rights to the state, this is even more implausible in the case of later generations who acquire property rights already under the circumstances of political rule. It is very hard to see which of their acts could be seen as a moral equivalent of delegating their property rights to the state. Secondly and independently,

14 See Steiner, 1996. Cara Nine's account in Nine 2008 represents another Lockean view, but one that does not rely on individual ownership. Therefore, the criticisms that follow do not apply to her view.

15 For a thorough criticism, see e.g. Stilz 2009. My objections listed below are adopted from her work.

if the ultimate basis of the territorial rights of states is individual property rights in land, then it should be possible, morally speaking, for individuals to withdraw their delegation and secede from the state with their land. The fact that such a right is neither recognized in legal practice nor claimed by many as plausible suggests that there is no such individual right to secede.<sup>16</sup> I take the fact that the Lockean property-based theory implies an individual right to secede as a *reductio*, and therefore will not further discuss this account.<sup>17</sup> Instead, I turn to the third, Kantian account.

## Occupancy and Territorial Rights

In this section I will outline what I take to be the most plausible basis of state's territorial rights, and then turn to examine whether this account supports the robust right to exclude that is generally asserted both by national governments and many theorists. This account relies on individuals' dependence on secure access to and occupancy of *some* territory for their ability to pursue their projects and relationships in an autonomous manner.<sup>18</sup> Its starting point is the rather simple and straightforward observation that it is true of almost all people that being able to pursue their long-term projects and relationships that occupy central roles in their life-plans – studies, careers, romantic relationships and friendships, family, etc. – require that they have secure access to the particular places to which these projects and relationships are attached. By 'secure' access I mean that by and large, they can enter these places and stay within them at will, without having to depend on the discretionary decision of some other party, be it a private actor or some official. It is important to notice that the pursuit of individual autonomy is dependent on having secure access to *particular* places in a way that guaranteeing more basic rights such as subsistence, freedom from torture, inhuman punishment or persecution is *not*. In principle, it is possible for one's most basic human rights to be safely protected while continuously being transported from one place to another, all the while being well-fed and well-housed, and safe from physical or psychological suffering. The same is not true (at least for the overwhelming majority of people) for the pursuit of more complex, medium- and long-term plans that involve the investment of effort, time, the development of skills, working on complex tasks, associating and building

16 Of course, this is just an appeal to intuition rather than an argument. Steiner does in fact insist, heroically, that this seemingly implausible implication of the property-based theory is one that we should accept. See Steiner 2008.

17 There are other, similarly fatal objections to this view, such as its failure to distinguish between property rights, jurisdictional rights, and meta-jurisdictional rights, amply discussed in Stilz and Nine.

18 The account broadly follows Kantian theories of territorial rights, e.g. the works by Stilz referred to above and Ypi 2014.



relationships with *particular* others, etc. These plans typically depend on being regularly present in the same locations. And since people have a very strong moral claim to the conditions of autonomy (the latter understood as the pursuit of projects chosen or endorsed in light of one's own convictions about value), they have a very strong moral claim to securely access and stay in the locations where they have already ongoing projects.

I am assuming that the claim to access locations to which existing projects are linked is stronger than the claim to access locations where one wishes to engage in future projects not yet started, other things being equal.<sup>19</sup> This is so for the following reason. The fact that one has already been engaged with a project, that she already invested significant effort, time, resources and thought to it, creates new and stronger reasons to *go on* with these projects than the reasons that there are to *start* these projects in the first place. There are many valuable projects that one may engage with, the objective value of which provides reasons to pursue them. However, given value pluralism and a reasonable degree of incommensurability of values, these reasons alone do not determine which projects one has most reason to pursue, or more reason than some others. By contrast, the fact of having chosen a particular project and of having pursued it to a non-trivial degree singles that project out as salient and provides one with special reasons to continue with them.<sup>20</sup> (This is not to say that these special reasons cannot be defeated by other considerations. One may always come to see that chosen projects are not good fits for one's personality, even as she continues to see them as objectively valuable). Therefore, other things being equal, there is more at stake for someone in being able to *continue* to pursue projects that one has developed a commitment to than for someone in being able to *start* a particular project that one has not yet invested significantly emotionally, intellectually and otherwise.

If this is so, then people with existing projects tied to particular locations have (defeasible) priority in access to those locations over people with no existing projects tied to the locations, should it be the case that their claims to access conflict, other things being equal. And since current residents typically have more ongoing projects tied to a location than current non-residents, residents have some priority, other things being equal. However, other things are often not equal and it is now time to unpack the conditions under which the suggested priority holds. First, it should be noted that the priority claim just introduced grounds a (defeasible) right to exclude people from a location who lack existing projects tied to it only when their claims to access *conflict* with the claims to access of people with existing projects

19 However, other things are usually not equal, as I discuss below.

20 See Raz 1986: 385-90.



tied to the location. When their claims do *not* conflict, or when the formers' access would merely make it slightly more onerous for the latter's to pursue their existing projects, then there is no such presumptive right. Second, the priority holds only if there are no other interests, *more fundamental* than autonomy, at stake for those without current projects tied to the location. If their basic human rights of subsistence and freedom from inhuman treatment, etc. can be secured only if they can access those locations, then the autonomy-based priority of people with current projects in the location can be defeated. Third, the priority holds only if those without current projects in the location have equivalent (or at least adequate) opportunities for similar projects in other locations, either at the place of their current residence or at other places such that their access to them does not conflict with the autonomy-based claims of *their* current residents. If a particular project can be pursued in a single country, and it has no equivalents elsewhere either, then the priority of current residents strikes me as significantly weaker.

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I will return to the issue of the relative strength of claims of different categories of people to access a particular location shortly. But how do we get from the claims of individuals to access particular locations to the territorial right of states to exercise exclusive jurisdiction over a particular territory? It is this transition that gives this account of territorial rights a distinctly Kantian flavor. The general idea is that individuals can enjoy their "external" freedom of property and autonomy only under a shared system of laws, because without such, it is impossible to impartially and peacefully resolve disagreements regarding the precise boundaries of the rights of each. Moreover, since there is a conventional aspect to how the specific boundaries are drawn, i.e. morality alone underspecifies the content of these rights, there are several different but equivalent or at least acceptable ways of drawing them. However, a scheme of rights can operate only if a single system of legal rules are in place to specify the boundaries for all. This is why it is necessary not only that *some* system of rules is implemented in a territory, but that a single system is implemented exclusively. This is why states need *exclusive* jurisdiction over a particular territory, since exclusivity is a necessary condition of their being able to realize their overarching goal, the establishment of a system of rights and justice among persons. The right of states to exercise exclusive jurisdiction over a particular territory is thus grounded in the fact that this right is necessary to establish justice among persons in that territory.

The general point can also be made without reference to the specifics of Kantian political theory. The basic idea is that the state – the maker and enforcer of binding rules – is a necessary condition of establishing justice among persons residing in a given territory. Among other things, one of the main functions of states is to resolve coordination problems among persons

– problems arising from the fact that many goals are such that there are multiple and roughly equivalent alternative ways of achieving them but they can be achieved only if all or at least most people adopt the *same* alternative course of action. Traffic is the textbook example: it is plausibly a shared goal of all drivers to be able to reach their destinations safely and without causing harm to or imposing undue risk on others. They can achieve their shared goal only if they follow the same traffic conventions. However, there are multiple and equally good alternative conventions – there is nothing morally or practically salient about driving either on the left or on the right – and thus mere commitment to the same goal by each traffic participant will not be sufficient to achieve it. One convention has to be selected authoritatively and enforced against all. The need to establish coordination explains both the necessity of political authority for achieving justice *and* that one single authority has to exercise exclusive jurisdiction over a territory. This is so because if there are multiple (and independent)<sup>21</sup> authorities, they may select and enforce different coordination points for the same coordination problems. The bottom line is the same. The state's right to exclusive jurisdiction over a given territory is grounded in such exclusivity being a necessary condition of establishing justice in that territory.

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### Territorial rights and the right to exclude

It is sometimes taken as self-evident that the territorial rights of states include the robust moral right to exclude admission-seekers on discretionary grounds. However, the right to exclude, if any, must be shown to be following from the same considerations that ground the right of exclusive jurisdiction itself. The link between the two is not conceptual – it is possible to imagine states having the right of exclusive jurisdiction without possessing the right to exclude whoever they want. If there is a right to exclude, there must be a substantive argument that shows it to be linked with the same considerations that justify territorial rights in general. In this section, the task is to explore whether the particular account of territorial rights that was outlined in the previous section provides any support for the right to exclude, and if so, how much.

The account outlined above was grounded in people's dependence on secure access to the use of territory for provision of their human rights as well as the pursuit of their autonomous projects. The individual claim to territory is a universal one; it is true of every individual, regardless of where they live

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21 I add this qualifier to acknowledge the possibility of multiple authorities that are not strictly independent of each other in that they divide up the jurisdiction in functional terms, such that one may make rules in some domains and the other in different ones. Arguably, the European Union represents such a functional division of jurisdiction.

or of the institutional, cultural or associational ties that may exist between them, that they depend on access to territory for their human rights and autonomy. Therefore, only such an international legal system can be morally justified from this perspective that secures this access to each person, universally. The putative right to exclude must be examined in this light.

It is not immediately self-evident that the right to exclude is incompatible with providing everyone secure access to territory. The individual claim to territory, as formulated above, does not make reference to access to any particular territory. Plausibly and with the exception of uninhabited and uninhabitable places, just about any territory is capable of supporting people's human rights and autonomous projects. In other words, their human rights and autonomy can be protected even if they do not have access to the specific destinations of their preference, as long as they have access to *some* places that offer protection of these interests. Therefore, it might be suggested that a world consisting only of internally just states (or at least states that pass a threshold of decency in terms of human rights fulfillment) with the right to exclude could satisfy everyone's claim to territory, universally. To be sure, the right to exclude would not be unlimited. Specifically, under current circumstances, where a large number of states fall short of providing basic human rights and the conditions of autonomy for many of their citizens, the claim to territory of many persons can be guaranteed only if they are admitted to the territory of some state that does offer such protections. Therefore, the account of territorial rights outlined in this paper does not provide support for the exclusion of refugees subject to persecution in their source country or of destitute admission-seekers lacking the conditions of autonomy. Their claims count no less than the claims of current residents. This is, in and of itself, a significant result that crucially constrains the scope of the putative right to exclude under current and foreseeable conditions.

However, I want to show that the basis of the right to exclude is dubious even assuming that every person's relevant interests are protected by some minimally just state. In an important respect, whether there is a limited right to exclude under those highly idealized conditions depends on where the burden of proof is in this matter. It has been argued above that the territorial rights of states are grounded in their being a necessary condition of establishing justice among persons over a given territory. The form of the argument suggests that territorial rights are justified *only* to the extent that they are *necessary* for protecting persons' relevant rights. Now, it was suggested in the previous paragraph that under some special, highly favorable conditions, satisfying individuals' underlying claims is compatible with states' right to exclude. But this putative right being *compatible* with the relevant rights of individuals does not in any way entail that it is *necessary* for the

state to discharge its basic protective function. And then, if it is not necessary for that function, then it cannot be justified on this basis. The fact that the right to exclude is compatible (under some conditions) with the relevant individual rights is not sufficient for its justification. The burden of proof is on the proponents of the right to exclude that it is also necessary to protect the relevant individual rights. Nothing has been suggested so far that would support that much stronger claim.

At this point, the proponent of the right to exclude may choose one of two strategies. First, he may try to show that the right is indeed necessary in general for the state to discharge its justice-related functions. This would entail showing that states that lack the right to exclude cannot discharge their basic justice-related functions. Alternatively, he may try to shift the burden of proof back on his opponent by arguing that states can exercise whatever rights that are *consistent* with (even if not necessary for) their basic justice-related functions, and that it is the opponent of the right to exclude that must point to the wrongs that would be entailed by exercising the right to exclude. And, by hypothesis, the putative wrongs cannot be related to basic human rights and autonomy, since the latter were shown to be compatible (under the right circumstances) with the right to exclude. Therefore, the question boils down to where the burden of proof is: under the right circumstances, the right to exclude is assumed to be neither necessary for, nor incompatible with, guaranteeing those rights of individuals that ultimately ground the territorial rights of states. If those individual rights do not, by themselves, decide the matter one way or another, then the question is this: which side holds the presumption in its favor that has to be defeated by the other side?

To clarify, if one side has a right to do something and no fundamental interests of others are at stake, then the right is undefeated even if the right-holder does not have a fundamental interest in exercising that right, either. We are now assuming, for the sake of argument, that under favorable but conceivable conditions there are no fundamental, justice-related interests at stake in states' exercising exclusion. Exclusion is compatible with everyone having their relevant rights protected, but at the same time lacking the power to exclude does not undermine states' ability to discharge their justice-related functions. Then, whether exercising exclusion is morally defensible depends on whether states have a presumptive right to exclude or individuals have a presumptive right to be admitted to whatever territory of their choice. If viewed in this light, the case appears to tilt in favor of the presumptive right of individuals. States do not have interests of their own that are independent of the interests of those over whom they exercise authority. By contrast, it is easy to see what interests individuals may have to be admitted to the territory of states of their choices. They may find countries different

from that of their current citizenship or legal residence more congenial for themselves for a number of different reasons: they may prefer their culture, climate, or professional opportunities to those of their own current home, they may have intimate relationships tied to those countries, and so on. Now, to be sure, admitting non-residents to the territory of a state does implicate the interests of its current residents. While it does not in general hold that immigrants are a drag on the economy or on the host country's social services, there may be all types of adjustment costs that are borne and sometimes painfully felt by specific individuals even if the host society is made better off (or not made worse off) *on the whole*. Moreover, the sudden influx of a very large number of admission-seekers may indeed disrupt the normal operation of particular state functions.<sup>22</sup>

This raises the problem of burden-sharing in two distinct ways. First, what counts as a fair distribution of burdens of immigration's adjustment costs *among states*? And second, what counts as a fair distribution of adjustment costs *among individuals* within a particular state? The answers to these questions depend, of course on the content and scope of the principles of distributive justice that there are good reasons to accept. This is too large a topic to address here in any detail. However, a couple of points may be suggested tentatively. First, to the extent that are particular individuals or groups within a society that experience special costs related to immigration, then the host society has a collective responsibility of justice to compensate them for those costs. Second, to the extent that particular societies face immigration on such a scale that places significant costs on them beyond the short term, the international community can be reasonable expected to either share the costs or to redirect some of the admission-seekers to other societies. After all, the interests of admission-seekers in being admitted are frequently not tied to unique destinations but to destinations with particular characteristics that are usually shared by some other states as well, and their claims to be admitted are not held against specific states but against all states that share those characteristics, collectively.

To sum up, considerations of costs beyond the short term, and of burden-sharing, do not appear to support a robust right to exclude even in an idealized

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22 It is easy to exaggerate this point. I am not aware of a single example of a reasonably well-functioning, developed society whose public institutions experienced long-term, significant disruption as a *direct* result of immigration. Short-term shocks are another matter, but they are, after all, short-term. More often, disruption is not the direct result of immigration but of the public's reaction to it. But then it may be suggested that the public's attitudes ought to be sensitive to considerations of justice, rather than the other way around. The expected reactions of the public certainly constitute relevant considerations for political decision-makers, but they are not directly relevant for the morality of the right to exclude.

world where such a right would be consistent with protecting all the relevant rights of all individuals universally. Such considerations may justify compensation and even limited temporary restrictions on admission, but nothing like the wholesale discretionary right to exclude that is routinely claimed by currently existing states.

## Conclusion

I have argued in this paper that the territorial rights of states cannot be understood as being grounded either in the associational rights of their current citizens or in their property rights in land as transferred to the state. I suggested that the Kantian conception of territorial rights as developed in recent years by a number of theorists provides a more plausible basis. On this account, the territorial rights of states are ultimately grounded in individuals' claim to territory as part of the necessary conditions of protecting their basic human rights and the conditions of their autonomy. However, I have argued that if the basis of territorial rights is to be found in this direction, then those rights do not include a broad right to exclude admission-seekers. Even though the putative right to exclude may, under very favorable conditions, be *compatible* with the individual rights that ground the territorial rights of states, it is not *necessary* for the state to discharge its basic justice-related functions. Therefore, to the extent that the content of territorial rights is specified with reference to the necessary conditions of fulfilling basic human rights and providing for the conditions of autonomy, the practice of excluding admission-seekers cannot be justified on that basis.

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## Zoltan Mikloši

### Udruživanje, svojina i teritorija: o čemu govorimo kada govorimo o imigraciji?

#### Apstrakt

Često se tvrdi da države imaju teritorijalna prava, odnosno da ta prava podrazumevaju i pravo na isključivanje ljudi koji bi želeli da budu primljeni u teritorije pojedinih država. U ovom članku ćemo proučavati pitanje da li najviše odbranjiva teza o teritorijalnim pravima može da pruži podršku isključivanju. Analiziraću tri tipa teorije o teritorijalnim pravima. Prva teorija povezuje pravo država na isključivanje sa osnovnijem pravom pojedinaca na udruživanje. Druga teorija je lokovska teorija u kojoj se teritorijalna prava država, uključujući pravo na isključivanje, baziraju na osnovnijem pravu pojedinaca na privatnu svojину na zemlji koja konstituše teritoriju države. Tvrdim da ove teorije imaju posledice koje nisu plauzibilne, bez obzira na njihove implikacije u odnosu na rasprave o imigraciji. Treća teorija je kantijanska teorija koja se zasniva na teritorijalnoj jurisdikciji država, imajući u vidu obaveze pojedinaca u stvaranju i održavanju pravnog sistema koji je nužni uslov u garantovanju njihovih prava, odnosno u pogledu izvršavanja njihovih obaveza. Moja teza je da je kantijanska teorija superiorna u odnosu na njene alternative, zatim da se pomoću nje ne može zasnivati šire pravo na isključivanje.

**Ključne reči:** pravo na isključivanje, sloboda udruživanja, svojina, teritorijalna prava

Marjan Ivković

## The intersubjectivist conception of autonomy: Axel Honneth's Neo-Hegelian critique of liberalism

**Abstract** The paper reconstructs Axel Honneth's Neo-Hegelian critique of the classical-liberal conception of autonomy and his articulation of an alternative view of personal autonomy as the property of certain types of intersubjective relations of recognition in modernity, developed most systematically in Honneth's recent work *Freedom's Right (Das Recht der Freiheit)*. The analysis of *Freedom's Right* focuses on reconstructing Honneth's critique of the 'negative' and 'reflexive' types of freedom (autonomy) articulated within the liberal tradition, and contrasting the former two with the conception of 'social freedom' (the intersubjectivist conception of autonomy) that Honneth formulates through a detailed 'normative reconstruction of modernity'. Finally, the paper considers the proximity of Honneth's 'Hegelian liberalism' to communitarianism.

**Key Words:** Honneth, liberalism, autonomy, freedom, intersubjectivity, individualism

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### Introduction: Axel Honneth's Critique of the Classical Liberal Conception of Autonomy

In his recent works, Axel Honneth, the influential third-generation critical theorist and social philosopher, has described himself as a 'Hegelian liberal' (Honneth, 2011b). The central concern of Honneth's works such as *Suffering from Indeterminacy*, *Pathologies of Individual Freedom*, and *Freedom's Right* is the reappropriation of the mature Hegel's philosophy of right, which aims at presenting a substantive 'Hegelian liberal' theory of justice, methodologically grounded in what Honneth terms the 'normative reconstruction' of modernity (Honneth, 2001, 2010, 2011a). This project is to a considerable extent underpinned by what Honneth understands as his critique of classical (individualist) variants of liberalism and an attempt to articulate an alternative conception of personal autonomy, grounded in the notion of an intersubjectively constituted 'ethical life'. In this paper, I reconstruct the logic of Honneth's Hegelian critique of the classical liberal conception of 'negative freedom' and the individualist understanding of autonomy as moral 'self-determination' against the background of Honneth's own intersubjectivist conception of autonomy as 'social freedom'.

As Bert van den Brink and David Owen note in *Recognition and Power*, 'with Kant, Habermas, and Rawls, Honneth shares a strong commitment to the



notion of the autonomy of the person understood as a source of justified social claims that are brought into practices of public moral reasoning', but he criticizes these authors at the same time for developing their concepts of autonomy too narrowly, 'in abstraction from historical contexts of institutionalized ethical life' (van den Brink and Owen, 2007: 7). As I will try to show, these contexts of ethical life are theorized by Honneth as specific institutionalized relations of *symmetrical intersubjective recognition*, which Honneth understands as the actual 'media' of personal autonomy – in other words, personal autonomy can only be meaningfully exercised within these intersubjective relations.

### Honneth's Conception of Democracy as 'Reflexive Cooperation'

Honneth's neo-Hegelian critique of classical liberalism also encompasses an articulation of a political ideal – a particular theorization of democracy – which combines Deweyan pragmatism with Honneth's theory of recognition. For example, in 'Democracy as Reflexive Cooperation', Honneth interprets John Dewey's theory of democracy as arguing in favour of a social order of 'cooperative self-realization'. Honneth distinguishes between two principal contemporary theories of radical democracy – republicanism and proceduralism – claiming that Dewey's perspective differs from both conceptions, as it shifts the theoretical focus from 'communicative consultation' to 'social cooperation' (Honneth, 2007: 220). In contrast to Hannah Arendt, Dewey's critique of the classical liberal perspective rests on a fundamental pragmatist conviction that 'communicative freedom' is not embodied in linguistic interaction as such but in the 'communal (*gemeinschaftlich*) employment of individual forces to cope with given problems' (ibid: 222). Honneth identifies the Deweyan idea of 'cooperative self-realization', not only in Hegel's theory of ethical life, but in the prominent representatives of the first- and second-generation critical theory as well: 'the different models of practice that Horkheimer, Marcuse and Habermas offer are all only representatives of that one thought, according to which the socialization of human beings can only be successful under conditions of cooperative freedom' (Honneth, 2009: 26).

Dewey's reflections provide Honneth with initial conceptual means for elaborating his 'formal concept of ethical life' into an explicit political ideal. In 'Post-Traditional Communities', for example, Honneth further builds on these arguments, claiming that 'the freedom of self-realization thus depends upon the existence of communities in which individuals value one another in light of commonly shared goals' (Honneth, 2007: 257). Democracy as reflexive cooperation requires the existence of a substantive ethical 'life-world' which is at the same time capable of accommodating the processes of legal universalization and cultural inclusion. However, it is only in his

reappropriation of the late Hegel's philosophy of right, in works such as *Suffering from Indeterminacy* and *Freedom's Right*, that Honneth will substantially elaborate his political-theoretic position.

### Individualism as 'Moral Disorientation'

76 Honneth's reconstructive efforts in *Suffering from Indeterminacy* are complex and detailed, but the main aim is to bring to attention Hegel's argument that 'abstract rights' (negative freedom) and 'morality' (freedom of choice between meaningful alternatives) are necessary but insufficient preconditions of human autonomy (Honneth, 2001). The subject's 'abstract right' to withdraw from any particular intersubjective commitment that is not legally binding is a necessary precondition of freedom, and so is the capacity for moral reflection which enables a subject to 'turn inwards', and, weighing up the available arguments, decide for the best possible course of action. However, when most of the intersubjectively articulated action-guiding norms become problematized in times of rapid social change (such as Hegel's own time), the subject's turning inward will easily lead her towards endless reflection and self-examination, resulting in an incapacity to act. In Hegel's words, the individual will be 'suffering from indeterminacy' – a state of moral disorientation that Hegel considers to be characteristic of his own time.

The modern social actors' preoccupation with abstract legal rights and moral autonomy have, according to Honneth, obscured the fact that our social reality embodies exactly the ethical resources that we need in situations which demand complex normative judgement. In Honneth's interpretation of Hegel, true moral reflexivity requires an individual to recognize that the norms which guide her action do not exist as pure ideas, but are present within the practical circumstances of her social existence. Hegel transforms his moral-philosophical account into a diagnosis of social pathologies ('indeterminacy') by arguing that, as long as social actors are, so to say, 'bewitched' by the argumentative force of negative freedom and the Kantian individualist conception of moral autonomy, society will remain in a state which resembles Durkheim's concept of *anomie*. In Honneth's understanding, social reality in Hegel's perspective is not 'indifferent' to the way subjects experience it (Honneth, 2001).

As Honneth explains, Hegel's fundamental normative and social-theoretical premise is that the institutional order of the modern (bourgeois) society already embodies a high degree of 'reason', and that it provides the means for overcoming the individuals' state of 'indeterminacy'. However, it is only in his recent *Freedom's Right* that Honneth will elaborate the intersubjective nature of this societally embodied 'reason', in the form of specific normative claims that underpin social interaction in modern societal 'sub-domains' of the private sphere, the market economy and the political public sphere.

## Freedom's Right: Personal Autonomy as the Property of Intersubjective Relations

*Freedom's Right* is essentially an extensive elaboration of Honneth's main line of argument developed in *Suffering from Indeterminacy* – the critique of the liberal concept of negative freedom and the Kantian notion of moral autonomy in favour of the Hegelian account of 'social freedom'. Honneth elaborates his earlier Hegelian thesis, arguing that the greater part of everyday social interaction in modern societies consists of intersubjective relations of a 'substantive-ethical' kind. Some types of these relationships – personal relationships, capitalist economy, the public sphere – possess the potential of providing social actors with an experience of 'social freedom' (which I here interpret as an intersubjectivist conceptualization of personal autonomy), a potential that has been realized to a greater or lesser degree over the course of history. The two other forms of modern 'freedom' within social reality – the 'legal' or 'negative' freedom (absence of any form of coercion, often equated with 'freedom' as such in everyday language) and the 'moral' or 'reflexive' type (most commonly associated with the Kantian notion of moral autonomy), Honneth argues, can only exist and have meaning against the background of what Honneth terms the cultural 'lifeworld' of substantive-ethical relations.

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However, as Honneth suggests, these insufficient forms of human freedom are commonly mistaken for its 'totality', and the realm of the cultural lifeworld is generally treated as a realm of heteronomy, without any kind of emancipatory potential – this self-misunderstanding of modern social actors, according to Honneth, leads to certain forms of *social pathologies*<sup>1</sup>.

The main thrust of Honneth's 'normative reconstruction', in my understanding, is the conceptualization of specific 'normative claims' (*Ansprüche*) – the fundamental action-guiding principles that underpin the three spheres of social action – the private, the economic and the political – and constitute the essence of their 'freedom potential', although the empirically existing spheres are otherwise shot through with relations of power, status subordination and economic exploitation. Honneth's perspective here relies on an earlier definition of 'reconstructive social critique' articulated in 'Grounding Recognition', where Honneth identifies a 'gap' between the normative 'potentiality' and 'actuality' of the institutionalized action-guiding principles in the mentioned spheres. (Honneth, 2002).

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<sup>1</sup> Max Pensky argues, for example, that these pathologies can be understood as 'problems of solidarity': 'Hegel's *Philosophy of Right*, as his mature theory of social solidarity, is crucial for Honneth's project', since 'it explores how an ethical conception of bourgeois civil society – the modern condition of political existence – generates *problems of solidarity* that at least for Hegel cannot be solved at the level of civil society itself' (Pensky, 2011:130).

According to Honneth's critique, liberal political philosophy has 'severed' the theorization of normative principles from the analysis of social reality, so that the former occurs in abstraction from empirical reality (Honneth, 2011: 14). Hegel's philosophy of right provides an alternative model: it formulates a theory of justice through the analysis of the actual, empirical 'ethical life' of modern societies, and reconstructs the normative-theoretical principles of justice on the basis of the existing normative claims that frame social interaction.

One of Honneth's foundational theoretical premises in *Freedom's Right* is that the notions of *justice* and *freedom* have become completely interimbricated over the course of modernity. In other words, all contemporary conceptual variations of 'justice' and the 'just society' crystallize themselves around one core idea – that of individual freedom, or personal autonomy (Honneth, 2011: 35). In the manner of Charles Taylor's hermeneutics of modernity, Honneth argues that the fusion of the discourses of justice and freedom has occurred gradually, over the course of the last several centuries, and that the concept of *personal autonomy* has exerted a tremendous 'gravitational force' with respect to all other concerns of moral-philosophical thinking (ibid: 36).

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The concept of *equality*, Honneth suggests, is actually a dependent variable – it is merely the means for attaining the fundamental *end* of freedom, in the sense that only an egalitarian social order can provide the institutional framework that safeguards everyone's autonomy. Honneth thus becomes able to draw a *line of continuity* between two forms of normative theory – the 'formal' and 'substantive' moral-philosophical standpoints.

Honneth's argument attempts to erase the 'unbridgeable chasm' between those theoretical standpoints concerned with protecting the irreducible pluralism of moral worldviews, on the one hand (all variants of liberalism), and those that put forward a substantive 'vision of the good life', i.e. social order that enables the 'flourishing' of all its subjects, on the other (various forms of 'perfectionism'). Honneth argues that within every modern theory of justice, freedom is the *telos* of justice, regardless of how both are conceptualized. The argument that Honneth develops might be represented by the following scheme:

Justice <-> Freedom <-> Self-Realization

The concept of freedom in Honneth's perspective is synonymous with personal autonomy, and it mediates between the two opposing paradigms, as they had, for example, been conceptualized by Nancy Fraser in her critique of Honneth, and enables him to draw a line of continuity. Honneth also makes one crucial ontological claim: that freedom is essentially a *property of intersubjective social action*, not a state of an individual self understood *in abstracto*, or the absence of undesirable circumstances. This argument enables

Honneth to claim that there is no categorial difference between those conceptualizations of freedom which are considered 'formal' in the above mentioned sense (e.g. liberal 'negative' freedom), and those which treat freedom as a state of individual self-fulfillment.

### The 'potentiality of freedom' – the insufficiency of the legal and moral forms of autonomy

These theoretical moves prepare the ground for Honneth's central argument that the Hegelian conception of freedom has significant advantages over the liberal and proceduralist standpoints. The normative-reconstructive enterprise that Honneth subsequently embarks upon should demonstrate that the negative and reflexive types of freedom, although indispensable for modern autonomous life, ensure a mere 'possibility' of living autonomously, whereas the thick interactive webs of 'ethical life' found in informal personal relationships, the economy and the political public sphere are the 'reality' of freedom in which social actors can, so to say, immerse themselves – they are the 'stuff' of which autonomous life is actually made.

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The first two types of freedom are 'parasitic upon' the latter, as they only enable a social subject to temporarily withdraw from the immediacy of the everyday webs of interaction, and to reflect upon her position within them – her particular choices and commitments – with the possibility of changing it. The crux of Hegel's argument that Honneth takes over is that the experience of personal freedom is best described as the feeling of 'being at one with oneself in another' ('bei sich Selbst sein im Anderen'); in other words, the situation in which the pursuit of our own 'purposes' is *facilitated*, rather than obstructed, by the other actors' pursuit of theirs, and vice versa (Honneth, 2011a: 113-114). In the language of Hegelian recognition theory, the experience of freedom is the equivalent of the interactive partners' mutual *recognition* of their *capability* to facilitate each other's self-realization within the institutionalized realms of social interaction.

The Hegelian concept of freedom, according to Honneth, is more comprehensive and more empirically adequate than the rival concepts of negative and reflexive freedom, and it is more *intuitively plausible* to us than the liberal and Kantian conceptualizations. As Honneth argues in a crucial paragraph of the book:

Hegel's idea of social freedom possesses a higher degree of correspondence with the pre-theoretical intuitions and social experiences than other modern representations of freedom. For socialized subjects, it must be a kind of self-understandable fact that the degree of their individual freedom depends on how responsive their contexts of action are with respect to their goals and intentions: the stronger their impression that their purposes are

supported, even carried forth, by those with whom they regularly interact, the more they will come to see their social environment as the space within which their self constantly expands (Honneth, 2011a: 113, my translation).

It is highly questionable, in my opinion, whether this notion of freedom is intuitively closer to ordinary social actors than the classical liberal and Kantian conceptualizations. Charles Taylor's hermeneutical analysis, for example, would rather suggest that we have 'learned', over the course of modernity, to think of freedom and autonomy primarily in terms of the liberal conception, as the property of an individual subject (Taylor, 2001). However, there is some degree of plausibility to Honneth's claim that it is impossible to theoretically exhaust the meaning of 'freedom' in all its empirical manifestations by defining it as a state-sanctioned, legally guaranteed set of rights that prevent coercion and remove particular obstacles to action.

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Honneth argues that the greater part of what we consider to be 'individual freedom' in contemporary societies does not come in the shape of legally codified rights, but is a property of a 'network of weakly institutionalized practices and customs, which give us a feeling of social confirmation or of a possibility to express ourselves freely' (Honneth, 2011a: 126, my translation). Although Honneth does not use recognition-theoretic language in this instance, he later clarifies that intersubjective relations within the ethical lifeworld are in fact relations of mutual recognition, those of the reciprocal confirmation of the actors' emotional needs, moral autonomy and their valuable roles within the process of social reproduction.

There is, according to Honneth, a strong tendency in contemporary societies to overlook the fact that our experience of freedom has a multi-faceted nature, and to reduce it, both in theories of justice and in public discourses of justification, to the realm of state-sanctioned rights. This reduction is the source of a number of social pathologies that Honneth subsequently discusses in his analysis of legal and moral freedom. As Honneth argues, a social pathology consists in the 'curtailing [Beeinträchtigung] of the social actors' rational capacities of taking part in diversified forms of social cooperation' (Honneth, 2011a: 157, my translation). The key of the definition is the adjective 'rational': according to Honneth, pathology differs from injustice in that it manifests itself as a 'reflexivity' disorder (or 'second-order disorder') – a situation in which some or most social actors are no longer able to comprehend the full meaning of the 'primary action- and value-systems' of a given social order (ibid).

Honneth's conceptualizations of 'legal' and 'moral' freedom, taken together, constitute the realm of the 'possibility', or 'potentiality' (Möglichkeit) of freedom, which only has meaning against the background of freedom's 'actuality' (Wirklichkeit), embodied in the three mentioned spheres of modern

ethical life. Let us first take a look at the most basic precondition of personal autonomy - the liberal concept of negative freedom. The realm of state-sanctioned rights that protects the individuals' freedom from coercion plays the role of providing the individuals with a 'space for the exploration of their penchants, preferences and intentions' (Honneth, 2011a: 129, my translation). The two fundamental instances of legal freedom are the *right to form contracts* and the *right to private property*. In line with Honneth's understanding of freedom as a quality of intersubjective relations, the realm of 'subjective rights' is a particular 'sphere of action'.

There is a fundamental contradiction within this sphere of action in Honneth's view, since legal subjects can only enjoy their right to negative freedom in privacy, as atomized individuals, while, on the other hand, they can only come to understand themselves as authors of these same rights in terms of a collective of citizens engaged in democratic will-formation. The 'negative' and political-cooperative dimensions are both constituents of the legally guaranteed freedom, but they establish two qualitatively different spheres of action. The tension between the private and the collective autonomy 'runs through the centre of the legal subject', as Honneth puts it (Honneth, 2011a: 144, my translation).

The first, negativist meaning of legal freedom is purely procedural, while the second, cooperative one requires the actors to internalize an entire cultural pattern of democratic civic activism. In other words, it requires the existence of a certain form of *ethical life*, without which the actors would have no motivation to engage in collective will-formation in the first place (Honneth, 2011a: 130-131). The full exercise of personal autonomy within the action sphere of legal rights is, according to Honneth, only possible if an entire realm of *social freedom*, in the form of a 'democratic ethical life' is already in place (ibid: 119). Even the negative dimension of legal freedom is premised upon the existence of a differentiated ethical lifeworld. Echoing John Stuart Mill's argument, Honneth points out that without the rich variety of ethical worldviews which stand at the disposal of social actors, not only would there be little motivation for political action, but the process of ethical self-questioning, safeguarded by the liberal right of freedom from coercion, would hardly be possible at all.

In light of these arguments, Honneth further clarifies that the 'social' rights of the modern democratic welfare state should be understood in terms of the state providing social actors with the *material foundation* for effective exercise of personal autonomy - in other words, these rights are there to enable the realization of the mere 'potentiality' of negative freedom (Honneth, 2011a: 142). Honneth argues that any attempt at shrinking the volume of social rights guaranteed by the state or rendering them conditional upon



the 'good conduct' of the subjects destroys their fundamental meaning of the 'guarantors' of autonomy that every citizen is entitled to (ibid: 142-143). This argument, in my opinion, helps Honneth fend off the widespread criticism that he is a 'culturalist' concerned only with the symbolic preconditions of successful identity formation (e.g. McNay, 2008; Fraser and Honneth, 2003; Alexander and Lara, 1996)<sup>2</sup>.

As Honneth argues, modern developed societies are witnessing cases of a *social pathology* related to the sphere of legal freedom – social actors are increasingly prone to 'forgetting' the limitations and the particular role of legal freedom, and mistaking this particular type of freedom for its *totality*. Since Honneth explains social pathology as the reduction of the actors' multi-faceted capacities for rational action, the result of the above process is not a 'deformation' of the individual character, but an 'impoverishment' and 'rigidification' of social interaction and the actors' self-relation. The absolutization of legal freedom involves an excessive juridification of interpersonal relationships (Honneth, 2011: 162a). Echoing Habermas' argument that juridification is an instance of the systemic colonization of the lifeworld, Honneth argues that the individuals engaged in social interaction within such 'ethical' spheres as the family, education system, and the realm of cultural production in contemporary societies are ever more inclined to act exclusively as rights-bearers.

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### The Limits of the Kantian Conception of Moral Freedom

Unlike the sphere of legally guaranteed subjective rights, stepping into the realm of moral freedom does not require the actors to abstract from the wealth of their and their interactive partners' particularities. Moral freedom could be seen as the second step towards personal autonomy in Honneth's perspective: while the sphere of legal rights establishes a kind of firm outer boundary that protects a space of individual normative self-reflection from outside interventions, moral freedom represents the actual 'set of tools' with which the reflective process is carried out. However, moral freedom does not itself provide the material of reflection, which consists of substantive-ethical components.

The Kantian conception of reflexive freedom is centred around the argument that personal self-determination should have the form of 'self-legislation' (Selbstgesetzgebung), a practice which requires the actor to submit

2 In the rejoinder to his commentators in *Axel Honneth: Critical Essays*, Honneth most concisely defines his political position as Hegelian liberal: 'I, too, am convinced that the theory of recognition results in a "Hegelian" expansion of liberalism, which consists in adding social conditions of autonomy to the catalogue of rights that ensure autonomy' (Honneth, 2011b: 414).



her inherited moral worldviews and guidelines of action to the test of universalizability, and then reappropriate or discard them.

However, there is more to Kant's conception of moral freedom than the mere reconsideration of pre-given, internalized and inherited ethical determinations, as Honneth points out. The essence of reflexive freedom, in the Kantian sense of self-legislation, is the imperative that we arrange our whole lives, the entire network of our action-orientations, according to the reflexively appropriated universalist moral norms (Honneth, 2011a: 182). In other words, self-legislation does not only consist in applying the test of universalizability to particular situations, but requires one to define one's entire being through a form of acting consistently, and to gradually actualize one's normative self-image in the complexes of social action, 'expressing in practice what kind of person one wants to be' (ibid: 184, my translation). Moreover, this is not an *a priori* defined process, as the actor actually *learns* and decides upon what kind of moral subject she wants to be over the course of countless particular situations.

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As in the case of negative freedom, there are strong tendencies in contemporary societies, according to Honneth, to hypostatize reflexive freedom as the totality of personal autonomy. The exercise of moral autonomy, like that of legal freedom, presupposes the successful formation of a specific type of social subject – the 'moral personality' – through the process of socialization. In order to act as a morally autonomous subject, one has to abstract, not from the entire complex of one's ethical self, but from all the convictions and relationships that cannot pass the test of normative universalization – in other words, one has to abstract from the normative 'situatedness' of one's ethical self. As Honneth explains, we as moral actors are required to think and behave as if we did not already share with our interactive partners a 'particular pre-understanding regarding the institutional facts and norms' of our cultural context, in other words, as if our interlocutors were virtually 'understanding' and 'consenting to' our arguments in a cultural vacuum (Honneth, 2011a: 196).

This is another way for Honneth to point out that reflexive freedom, just as its legal variety, only makes sense within a context of ethical life. Moral reflection always happens within an ethical lifeworld, and it is supposed to help us find our way in the complexities of everyday interaction and become what we might call 'autonomous citizens' of such a lifeworld, not help us 'emancipate' ourselves from it. Moreover, moral autonomy in the form of self-legislation is not antithetical to the world of concrete social roles and ethical bonds<sup>3</sup>.

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3 This can also be understood in the sense that 'we *become autonomous* only through being taken care of within an autonomy-supporting culture', as Antti Kauppinen has argued (Kauppinen, 2011: 296).

The mentioned pathology of reflexive freedom results from the actors' inability to understand its limits and proper place, as outlined above. This means that the actors succumb to the seductive image of moral autonomy as completely sovereign individual self-legislation conducted in an ahistorical and context-insensitive manner. The actors then begin to lose from sight the fact that their everyday interactive contexts are already 'shot through' with moral reason to some extent.

### The 'actuality of freedom': privacy, economy and democratic will-formation as spheres of social freedom

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In light of the above considerations, one might say that the negative and reflexive types of freedom are there to provide social actors with the right to temporarily 'free themselves' from 'social freedom' itself. When we exercise negative and reflexive freedom, we do so in everyday interactive situations which require us to ascribe certain capacities to our interlocutors and vice versa. What, then, is the qualitative difference between acts of recognition within the first two forms of practicing personal autonomy, and those pertaining to the third one, without which, according to Honneth, the former would in fact be meaningless?

The Hegelian argument implies that freedom consists in an experience of 'being at one with oneself in another', i.e. the realization that the pursuit of one's goals in life is not only compatible with, but that it *facilitates* the self-realization of one's interactive partners, and is in turn *facilitated by it*. The crux of this argument is an ontological claim that freedom equals a state of emotional fulfilment that comes with intersubjective *recognition*. The principal difference between recognition in the spheres of legal and reflexive freedom, on the one hand, and in that of social freedom, on the other, is in the relationship between the act of recognition and the pursuit of the actors' individual goals. In the first two spheres, Honneth points out, recognition is only a *precondition* for the individual actors' concrete pursuits. I cannot exercise my right to negative freedom or moral reflexivity if the others do not recognize me as a person capable of comprehending and acting upon the principles that culturally constitute these types of freedom.

In the case of social freedom, embodied for example in relations of friendship, recognition has a more *constitutive* role – one cannot pursue a course of action as a *friend* except with respect to another person who *recognizes* her as a friend. In other words, being recognized as a friend is *intrinsic to the role of friend*, i.e. to the very practice of social freedom. In the spheres of social freedom, recognition is an end in itself, an act that creates a nexus between two individuals in the form of a friendly relationship (Honneth, 2011a: 224-5). Honneth argues that this form of intersubjective recognition is a 'moral'

phenomenon because it requires us to approach the other subject as if we had already *presumed the value* of her strivings and goals of action and understood the role that our own acts will play in their realization. Only those domains of social interaction that are constituted on the basis of such intrinsic morality can be considered spheres of social freedom. This criterion enables Honneth to single out personal relationships, economic action and the political public sphere as dimensions of social freedom in contemporary societies. These spheres, Honneth argues, are all characterized by the quality of 'complementary reciprocity' (komplementäre Wechselseitigkeit) (Honneth, 2011a: 269).

In Honneth's perspective, personal relationships are the framework for giving and obtaining *affective care*, the realm of economy should enable the actors to obtain *self-esteem*, while the public sphere offers the necessary room for experiencing *respect* of one's moral autonomy. The modern institution of 'romantic', interest-free friendship that, according to Honneth, has no 'historical precedent' in pre-modern forms of friendship, is one such institution that 'actualizes' the possibility of an anxiety-free expression and confirmation of one's emotions in an interactive context (Honneth, 2011a: 243). Modern friendship is a sphere of social freedom, Honneth argues, because it enables us to experience our feelings, impressions and intentions as 'presentable' and articulable. It offers us an experience of the 'setting free' of our will in friendly interaction – this experience of free, relaxed 'self-articulation' constitutes the essence of modern friendship, as Honneth points out (Honneth, 2011a: 249).

A similar role, in Honneth's understanding, is played by modern *romantic love*, a sphere of the 'free emotional interplay' between individuals, which provides a qualitatively distinct kind of affective care and the possibility of 'expressing' one's emotional self (and thereby affirming its reality). The sphere of the modern *nuclear family* is the third dimension of social freedom within the realm of personal relationships. The normative transformation of the nuclear family, as Honneth points out, is closely intertwined with the evolution of intimate relationships, more precisely their internal 'emancipation' from economic and status imperatives over the course of modernity.

The modern sphere of *economic interaction* (the capitalist market) is another sphere of social freedom. Hegel, and later Durkheim, were, according to Honneth, among the rare theorists who were able to conceive of the new economic sphere as the potential source of social *solidarity* through the actors' experience of *mutual interdependence*. The crucial premise of both thinkers' perspectives, in Honneth's view, is that market interactions can only function smoothly if the actors do not treat each other merely as bearers of legal contract rights, but also recognize each other as 'members of a cooperative

collectivity' (Honneth, 2011a: 329). These acts of recognition enable actors to begin experiencing 'solidarity' and are in fact the *precondition* for the actors' capacity to treat each other as legal persons – their existence thus implies that market economy can be theorized as a sphere of *social freedom* as well.

The nexus of solidarity that is established between the actors engaged in economic interaction enables them to experience the market as a sphere of social freedom, since their actions possess the quality of 'complementary reciprocity': the actors facilitate the fulfillment of each other's *material needs* through acts of economic exchange (Honneth, 2011a: 348). Honneth argues that the sphere of economic action has, since the establishment of capitalism, possessed a 'normative surplus', a promise of freedom that had to be 'actualized' through class struggle and other types of political conflict – this process, according to Honneth, is still far from completion.

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In Honneth's understanding, the *democratic public sphere* is a realm of social freedom *par excellence* – that is, if its potential could ever become fully actualized (Honneth, 2011a: 470-71). Similar to the realm of economic action, this sphere might give us a false impression that it is constituted purely on the basis of *legal* and *moral* freedom, as the liberal and proceduralist standpoints would have us believe. Honneth's perspective, in contrast, stresses that a 'democratic ethical life', a cultural pattern that teaches individuals to treat democratic will-formation as a worthwhile activity, is the very core of the political public sphere. Echoing the earlier mentioned conceptualization of democracy as 'reflexive cooperation', Honneth argues that political rights cannot be understood in relation to an isolated individual, they are inherently intersubjective in nature. Moreover, the public sphere should not be theorized in isolation from the previously analyzed ones of personal relationships and economic interaction. Whether or not this sphere of action stands up to its own potentiality of freedom depends, according to Honneth, on whether the debates within it are part of an overarching learning process that reinforces the struggles for the actualization of freedom in the other two spheres (Honneth, 2011a: 473).

Honneth bases his argument on the Durkheimian concept of 'constitutional patriotism', which presumes the readiness of social actors to interiorize the communicative roles of 'speakers' and 'hearers', enabling them to reciprocally 'express' their personal strivings and search for the best institutional framework to realize them (Honneth, 2011a: 500). Honneth points out that Durkheim's perspective is close to that of John Dewey, who conceived of democracy as the 'governance of reflexivity', a collective employment of the individual members' intelligence in the solving of problems that constantly arise within everyday life (ibid: 504-5).

For this purpose, the institutionalization of a democratic public sphere on the basis of legal and reflexive freedom is insufficient. What is required in order to realize the potentiality of collective will-formation is a long series of social struggles to remove the *substantive obstacles* to deliberation – class domination, gender subordination and cultural hierarchies. This should eventually result in the formation of a 'class-transcending, all-encompassing realm of communication', without which there can be no meaningful 'exchange of opinion' between social groups (Honneth, 2011a: 540, my translation). According to his perspective, the normative conception of the state that can be 'read out' of modern Western history is the one of 'reflexive organ', which the social actors engaged in democratic will-formation can use to practically implement their 'experimental' solutions to crucial societal problems (Honneth, 2011a: 570). These experimental solutions can, for example, take the shape of policies that are implemented through state intervention in the economic sphere, which Honneth considers to be the precondition for transforming the market economy into a domain of social freedom (ibid: 580).

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The third, final precondition for transforming the public sphere into a realm of social freedom, as I already indicated, is the existence of a particular 'political culture' (Honneth, 2011a: 612). In Honneth's view, democratic will-formation is impossible without a degree of already actualized social freedom. Social actors must already be able, to a certain extent, to experience freedom in the realms of economic action and personal relationships, before they can begin to understand themselves as citizens of a democratic state. Honneth argues that the mentioned 'all-encompassing' realm of communication can only be brought about by a kind of 'synergy' between the struggles for recognition in all three spheres of (potential) social freedom – the private, the economic, and the political.

### **Concluding Remarks: Hegelian Liberalism and Communitarianism**

As I tried to show, Honneth's main criterion for evaluating the normative progress achieved within the three spheres of 'social freedom' up to the present is the extent to which social actors have actualized the normative potential of 'complementary reciprocity' (symmetrical recognition) that each of these spheres harbours. The essence of Honneth's 'Hegelian liberalism' is the argument that it is only through participating in relations of symmetrical recognition within the three spheres of modern ethical life that social actors can actually experience personal autonomy in the full sense of the term – namely, they can experience 'social freedom' as a sense of 'complementary reciprocity' that characterizes their intersubjective relations. As Antti Kauppinen points out, Honneth's argument can also be interpreted in a negative

sense – it is primarily when we experience a *disruption* in the normal functioning of these intersubjective relations that we realize they are constitutive of our sense of personal autonomy:

Honneth's methodological starting point is a solid Hegelian insight: the dependence of autonomy on social relationships is revealed when the disruption of those relationships leads to a reduction in one's ability to make autonomous choices. The normally invisible intersubjective dependence manifests itself when there is a problem (Kauppinen, 2011: 267).

In *Freedom's Right*, Honneth's 'Hegelian liberal' perspective comes, in a normative-theoretical sense, considerably closer to communitarianism and the notion of 'situated criticism' than in any of his previous works, since the potential of 'complementary reciprocity' that the modern societal spheres of intimacy, economy and politics possess is a thoroughly historical phenomenon, whose origins can be located within the confines of Western modernity. Honneth effectively argues that, without being immersed in the universe of the historically evolved spheres of intersubjective ethical life, there isn't much that the subject can reflect upon, and the liberal and Kantian conceptions of freedom seem rather useless. A similar point has been made by communitarian political philosophers, notably Michael Walzer, who argues, in opposition to what he considers to be the 'postmodern' visions of 'radical freedom' as self-transformation, that the freedom to completely redefine oneself is meaningless unless it exists against the background of a complex web of already given cultural and ethical commitments (Walzer, 1983).

However, the crucial difference with respect to communitarianism consists in the fact that, in Honneth's perspective, the argument that the negative and reflexive types of freedom have little sense without pre-given commitments that stem from traditional lifeworlds assumes a very specific meaning, since in Honneth's view the ethical lifeworld, or, rather, the three spheres of symmetrical intersubjective recognition (the private, economic and public sphere) are the very *medium* of personal autonomy, not just the background against which it is exercised.

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## Marjan Ivković

Intersubjektivistička koncepcija autonomije:  
Honetova novohegelijanska kritika liberalizma

### Apstrakt

U radu se rekonstruiše novohegelijanska kritika klasične liberalne koncepcije autonomije u delu Aksela Honeta, kao i Honetova formulacija alternativnog shvaćanja lične autonomije kao karakteristike određenih formi intersubjektivnog priznanja, koja je najsystematičnije izložena u *Pravu slobode (Das Recht der Freiheit)*. Analiza *Prava slobode* se fokusira na rekonstruisanje Honetove kritike koncepcija 'negativne' i 'refleksivne' slobode (autonomije) artikuliranih u liberalnoj tradiciji, i kontrastira ove koncepcije sa pojmom 'socijalne slobode' (intersubjektivističke koncepcije autonomije) koji Honet artikulira putem detaljne 'normativne rekonstrukcije modernosti'. Rad se naposljetku osvrće na odnos Honetovog 'hegelijanskog liberalizma' i komunitarizma.

**Ključne reči:** Honet, liberalizam, autonomija, sloboda, intersubjektivnost, individualizam

Nenad Dimitrijević

## Liberal autonomy in a troubled context

**Abstract** Autonomy, understood as self-rule, is almost routinely accepted as one of the core liberal concepts. Still, a closer view reveals that both the status and meaning of autonomy are controversial. The text departs from a short summary of the main theoretical disputes surrounding the concept. A critique of the standard internalist account is followed by an attempt to offer reasons for accepting a relational reading of autonomy. The central question of the text is context-specific. It asks about the possibility and meaning of liberal autonomy in a society whose past is marked by mass regime-sponsored (and sometimes widely supported) crimes. The background assumption is that mass crime leaves actors in heteronomous condition. At stake is reestablishing individual autonomies of two types of actors, whose group-specific identities have been created by crime: the ethical community of those who share collective identity with victims, and the ethical community of those who share collective identity with perpetrators.

**Keywords:** autonomy, harm, morality, ethics, special duties, memory, acknowledgment

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### 1. Autonomy: the basic meaning and some conceptual controversies

Autonomy stands for self-rule, ability of a person to lead her life following her own reasons, preferences, motives, or desires. It requires that a person's life is free of external forces that would obstruct her own choices. Recall the famous phrase of Joel Feinberg: "I am autonomous if I rule me, and no one else rules I" (Feinberg 1980: 21). The opposite is heteronomy: it refers to the individual lives being led by externally imposed conditions or demands, which a person does not perceive as her own.

However, the simplicity of the introductory identification is deceiving. There are many questions to ask. For instance, the concept of autonomy is often constructed by a generous recourse to some other concepts: think of liberty, sovereignty, identity, authenticity, self-reflection, responsibility, or free will. Each of these concepts calls for elucidation, in general, and in its relation to autonomy. Besides, autonomy seems to rely on strong normative claims the status of which is not immediately clear. It is good to be autonomous, while it is not good to live in a heteronomous condition of oppression. But, this claim still does not tell us what the good consists of. Does the concept of autonomy supply ultimate normative meanings that serve as the basis for justification



for other concepts, practices, and institutions? Or, do the normative propositions of autonomy themselves have to undergo the test of justification? Is it possible to think of autonomy as a substantive normative concept? In response to the latter question, one powerful stream among the theories of autonomy argues that normativity of the concept has to be restrained to a body of procedural requirements, which would focus on preventing interference with a person's free choice. In this view, presented in more detail below, the task of procedural fairness is to guarantee the condition in which a competent person would be able to decide independently on the content of her life choices (Christman, internet). The assumption is that all the substantive choices are equally valuable, provided that they are authentically individual. Recall finally that autonomy is routinely recognized as one of the foundational features of liberalism. Liberalism apparently derives the status of the individual, character of societal relationships, political obligation, and legitimacy of political authority from this concept. It is not plain how this 'strategy of continuity' travels uninterrupted from the original individualist departure point to the level of political community.

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Theoreticians who study autonomy are aware of these and related ambiguities of the broadly identified concept. Many disagreements unfold, pertaining to the nature of autonomy, its elements, conditions, and the conceptual (ir)relevance of the social and political context in which persons live (Dworkin 1988: 7-8). Still, it is possible to identify a dominant view, often labelled 'standard approach'. It focuses on the exposition of features and conditions of autonomy. Autonomy requires first the capacity of a person for cognitive and normative reflection. One should be able to understand oneself: a competent person defines her values, beliefs, interests, preferences, and the directions of her actions. Second, one should be in control of one's choices and actions in accordance with one's self-perception. A self-reflective person is not autonomous if she is prevented – by other people, by social and political power relations, or by any other contingent circumstances – from identifying and following her choices. These two conditions are sometimes summarized in the notion of authenticity: the core individual traits and the actions chosen and performed, shape and express a person's true self.<sup>1</sup> The opposite would be 'alienation', a condition in which we perceive what we know, feel, or do, as something that is not our own (Christman 2007: 12).

The standard approach consists of intuitively strong propositions. It keeps investing an unwavering trust in the claim that self-government requires a person's sovereign choice of beliefs and actions in determining the meaning and course of her life. It insists that going for less amounts to denial of

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<sup>1</sup> For a detailed critical analysis of the concept of authenticity and the controversies that surround it, see e.g. Oshana 2007: 413.

autonomy. The approach is ‘internalist’ or ‘subjectivist’. Cognitive and normative capacities and choices of a person are set mainly in terms of personal traits.<sup>2</sup> This informs the analytical perspective: “Internalist theories take the perspective of the individual whose self-government is at issue to determine her autonomy” (Oshana 1998: 81). It follows further that these theories tend to see autonomy as empty of any content that could be prescribed from the outside, either for any person in any situation, or for a particular person in a particular situation. This is internalist proceduralism: the refusal to include substantive normative features is presented as a necessary step in the protection of the very core of the individual self-governance.<sup>3</sup>

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Harry Frankfurt offers an important addition to this account. His core contribution is the claim that an autonomous person should possess and demonstrate the ability to revisit and change her volitions. Departing from the question what it means to act freely, Frankfurt develops a ‘hierarchical’ reading of autonomy (Frankfurt 1971: 6). Autonomy requires that a person assumes responsibility for her choices. An autonomous person enters a reflective process in which she engages with her ‘first-order desires’ expressed in her original values, beliefs, preferences, and plans for action. This ‘second-order’ reflective process is meant to provide for a proper identification of what it means to be autonomous, by stipulating which of our first-order desires are truly ours. A person disassociates herself from her immediate volitions, asks if she really wants those volitions, and acts on those original volitions only if the second-order test approves of them. In this process, a person reflectively identifies herself with what moves her thought and action (Frankfurt 1971: 6). This is how the criterion of authenticity is met.<sup>4</sup>

However, the critics of internalist proceduralism remain unconvinced. The objection of regress points that second-order desires are not defined in terms of normative reflection on the original volition. The question is what, if anything, such a reflection adds to the concept of autonomy. In other words, it

2 “Internalist models understand ascriptions of personal autonomy to depend only on the structural and/or historical character of a person’s psychological states and dispositions, and on an agent’s judgments about them.” Oshana 1998: 83.

3 “Only individuals can be the measure of their own autonomy. Apart from the formal good of an integrated personality, and the procedural good of autonomy competency, autonomous lives are remarkable more for their differences than for their similarities. To affirm a list of universal personal goods or an account of an objectively good personal life and to maintain that every autonomous life must realize such goods is to deny the uniqueness of individuals. It is to create a mold that autonomous lives must inevitably break.” – Myers 1989: 82; quoted after Oshana 2007: 422.

4 Gerald Dworkin defines the identity-authenticity feature of the hierarchical approach in the following way: “It is only when a person identifies with the influences that motivate him, assimilates them to himself, views himself as the kind of person who wishes to be moved in particular ways, that these influences are to be identified as his.” Dworkin 1988: 43.

is not entirely clear how second-order reflection makes a difference, or how it makes one autonomous in dealing with one's original preferences (Fischer 2005: 313). Second, Frankfurt remains vulnerable to the standard objections against the internalist position. While this view does not necessarily imply the refusal of any relevance of the person's environment, it refuses to see autonomy as a characteristic that would address the relationships among persons (Christman 2009: 33). It sees other individuals, social context, and political authority principally as threats that should be kept at bay, because each of them could negatively affect the person's ability to think and act in a self-governing way. Third, its persistence on the procedural independence – claiming that making sense of one's life is incompatible with social, ethical, or universalizable moral commitments that would be expressed in normative substantive terms – comes at a price that appears to be too high. In this reading, an almost exclusive focus is on the genesis (conditions) of autonomy, which is supposed to lead to the human condition respectful of one's identity and authenticity. This approach reduces autonomy to a kind of meta-concept that is ultimately incapable of accounting for the meaning of self-rule that it aims to promote.

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I find these criticisms convincing. In looking for an alternative, I depart from two trivially obvious points that are in themselves non-philosophical, but that may be still relevant for a philosophical inquiry of autonomy. First, we – assumptively autonomous persons – do not live our individual lives in isolation. In the standard account, the only reference to interactions with other persons is the requirement of procedural fairness, which forbids violating equal autonomy of others. However, recognizing the significance of living together requires more. The important fact that the standard idea of autonomy curiously leaves to one side is that no one is ever in a situation to set up a fully independent ensemble of rules for oneself. There is more to a person's life than internal reflections. We who live here and now are the persons importantly shaped by time-stretching narratives, which are individual and social, continuous and discontinuous, economic and political, as well as ethical and moral. Thus, autonomy cannot refer only to creating conditions for individual persons to make their life pursuits free of the interference of others: "An autonomous life implies not only a repertoire of possibilities but also actual involvement with the external world" (Spector 2013: 575). This is the relational approach to autonomy. Below I will try to show that it is neither communitarian nor relativist. It does not claim conceptual primacy of the 'social thesis', normative primacy of belonging, nor does it yield to determinism of a point of view allegedly created by a shared history and culture. Rather than being collectivist, the perspective remains liberal. However, the primacy of the individual perspective does not spring from the idea of an isolated individual true to her own volitions. It follows from the right perception of responsibility of a person engaged in different kinds of relationships.

I will return to the concept of relational autonomy. But let me point first to an additional important feature of autonomy that the standard approach fails to address properly. I believe that the concept of autonomy has to account for the substantive distinctions between right and wrong, and good and bad. It also has to explain the relationship between right and good. Finally, it has to explain the distinction between right and good, on the one hand, and one's preferences, on the other hand. Following this, we can distinguish among personal, ethical, and moral autonomy. Personal autonomy refers to individuals as the authors of their own lives, which includes both following one's preferences, and choosing which preferences to follow (or not to follow). The focus of personal autonomy is not on morality (Waldron 2005: 308). It simply assumes that a person is an independent judge of what she desires, or what she sees as advantageous for her. Ethical autonomy focuses on the shared conception of the good of an identifiable group. Moral autonomy points to moral obligation: a morally autonomous person reflects on universalizable principles of the right, to infer if her preferences and actions are admissible in the perspective she shares with her moral peers. Priority of the right over the good reads as the primacy of moral autonomy over personal and ethical autonomies. Put differently, universalizable responsibility that we have as moral agents takes primacy over our group-specific commitments and personal freedom of will. Of course, this is a big topic in moral philosophy, the analysis of which I cannot entertain here. Suffice to say that it can be read in widely different ways. Internalists can argue that they can still accommodate the claim, provided that the demand of primacy of morality is shaped as the procedural rule of fairness, which allows a person to freely follow her desires as long as she does not prevent others in the same pursuit. Joseph Raz would go in the opposite direction, to argue that even personal autonomy is not a matter of a person's free choice. Conditions of autonomy – mental ability, adequacy of options to choose from, and independence – should be directed at making it possible for a person to freely pursue the good (Raz 1986: 373). 'Free pursuit' refers to plurality of the conceptions of the good that autonomy requires. But, for autonomy to be worthy, the object of an autonomous thought and action has to be *the good*: "Autonomy is valuable only if exercised in the pursuit of the good" (Raz 1986: 381). Somebody who in freely choosing the direction of her life decides to become a killer, and proceeds to kill another person, is still an autonomous person, but his autonomy is not valuable, because he has opted for evil at the expense of plurality of the available choices of the good.<sup>5</sup> So, for Raz, two features of autonomy

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5 Note that there is still not much perfectionist is Raz's reasoning here. Perfectionism enters only later, when Raz proceeds to argue that – given that autonomy is valuable only if people choose valuable goals – autonomy principle "permits or even requires governments to create morally valuable opportunities, and to eliminate repugnant ones." Raz 1986: 417.

stand out. First, it is a substantive concept that makes sense only as an engagement with the good. Second, and following from the first, his outline of valuable personal autonomy points to its moral core: “Raz believes that a sense of justice is part of personal autonomy in the sense that a person who is personally autonomous would want to avoid doing things that are unjust” (Johnston 1994: 78; quoted after Waldron 2005: 322).

One classical objection against the substantive account says that making certain values the conceptual features of autonomy leads to excluding from the body of autonomous persons all those who reject those values (Christman 2015, internet). Additionally, once autonomy is presented as the basis of political liberalism, the critique extends to the claim that the substantive account violates the principle of state neutrality. While I will not engage with these arguments in any detail, I would like to reiterate that the internalist procedural approach wrongly assumes that substantive value commitments necessarily favor those who already accept those values, hence creating inequality, both among the persons, and in relations between persons and political authority. Also, making certain values the basis of autonomy does not necessarily violate political neutrality. We need to ask about the character of values and about their exact placement in the interplay among individuals, society, and politics in a liberal context. Which rules a person has to follow, and which attitudes and modes of behavior she ought to choose, to be autonomous? The response of the substantive approach does not require that values are included into the concept of autonomy as its internal features. It does not require that a person in the process of self-reflection discovers those values as the features of her own moral personhood, nor does it require that she accepts their authority on the basis of thus understood authenticity.<sup>6</sup> It is possible to understand values as antecedent and external reasons that any autonomous person has to consider when forming her preferences and acting. In other words, self-rule would consist in identifying and accepting reasons that are objectively authoritative. In this reading, the focus of autonomy is on recognizing and acknowledging reasons for action, rather than on a person freely creating such reasons:

Self-legislation, when it does occur, is an activity that takes place in the light of reasons that we must antecedently recognize, and whose own authority we therefore do not institute but rather find ourselves called upon to acknowledge. (Larmore 2008: 44)

To argue that autonomy consists in responsiveness to reasons implies that “any standards that reason is in a position to ‘determine’ – that is, to make

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<sup>6</sup> Of course, this implies rejecting Kantian approach to autonomy. I leave this insight to one side. Engaging in a detailed analysis of Kant’s reading of autonomy would go beyond both the ability of this author and the scope of this paper.

authoritative – are ones that there must appear to be good reasons to institute” (Larmore 2008: 46). Morality precedes autonomy. We become autonomous by identifying with, and accepting objective moral laws, and by thinking and acting in accordance with them. We do not become autonomous by establishing their moral authority in the process of our individual reasoning. In a situation that raises moral questions, my self-rule does not consist in me creating laws for myself, but in my identifying and choosing to follow what is morally right. Our moral personhood identifies us as autonomous agents who have the ability to judge right from wrong, and who are duty-bound to choose what is right.

## 2. Relational autonomy after moral fall

### 2.1. The setting: moral import of historic injustice

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I claimed that autonomy is relational and dependent on certain objective moral reasons. I opened defense of relational autonomy by arguing that human relations matter. Their interconnectedness can be of different kinds, and it can be conceptualized in different ways. In this reading, moral autonomy consists in developing and sustaining inter-personal relationships in accordance with the principles of the right. No single individual can be the creator or judge of those principles, neither in her self-reflection, nor in her relationships with other people. The principles precede concrete relationships, and we can perhaps think of them as moral standards. Moral standards are universally valid and context-independent guidelines we use to distinguish between right and wrong when founding and evaluating beliefs, attitudes, preferences, intentions, and actions. We all ought to be able to recognize such standards as valid, regardless of where we belong, what we prefer, or what constraints a particular context of choice imposes on us.<sup>7</sup> This is the core of moral autonomy.

But how does the claim of relational autonomy fit? One would expect relational autonomy to be context-sensitive, while the offered universalist account

<sup>7</sup> Introducing this category leads to additional questions. How do moral standards emerge, or what is their source? Why do people typically respect them, or what makes them authoritative? How do we know that moral standards themselves are right, or how are they justified as valid points of orientation for our behavior? There are two broad approaches to this set of questions. The first is supplied by moral relativism, which essentially denies any independence, or objective validity of universal moral reasons, putting a context-specific ethical good in their place. Second answer is provided by moral universalism. It argues that every mentally capable person – anytime, anywhere, and irrespective of a particular context of choice – ought to distinguish morally right from morally wrong. This identification of moral wrong is not founded on a group’s particular conventions, its distinct cultural identity, or the special duties and social roles individuals may have. I engaged with these two approaches in some detail in Dimitrijevic 2010: 134.

insists apparently on dependence on the universalizable reasons only. My introductory response is that the context has to be interpreted in the light of universalizable reasons. It is only seemingly paradoxical that the focus on universal morality is heavily context-dependent. To begin with, morality is intertwined with social relations (Walker 2007: 9). We act in a morally right or wrong way in real-life situations. The purpose of the moral standards is to orient us in the individual and relational contexts that involve moral questions. In this sense, moral standards are never merely abstract: they are social standards of meaning. They also stand in a relationship to the group-specific ethical standards. For the purpose of this paper, 'ethics' denotes the group-specific standards of the good life. 'Morality' denotes universal normative standards of right (Habermas: 1996: 95-100). The congruence between morality and ethics, shaped by the primacy of morality, is a mark of decent society.

However, this general claim does not suffice. Both society and individual identity are historical projects. While the meaning of historicity of identity clearly differs at individual and collective levels, both have to account for dynamics and changeability through time. How can a society become, remain, or recover the status of a decent society in face of many challenges? Also, how can an individual become, remain, or recover her status of an autonomous person, in face of possible challenges? Assume that to some of those challenges society and some of its members have not reacted in a morally required manner. The situation that interests me here is that of a society and its individual members confronted with historic injustice committed in the name of society, its underlying collective identity, and in the name of all its members, past, present, and future. 'Historic injustice' points to the past misdeeds committed against others: those who are not members, or those who are members of a discriminated group in society. The adjective 'historic' does not imply temporal long distance – it merely says that atrocities have stopped. Specifically, I am interested in the possibility of individual autonomy after historical injustice that can be identified as a collective crime. Collective crime is an action envisioned, organized, and performed by some members of a group, in the name of all members of that group, with the support of a significant number of the group members, and against individuals targeted on the basis of their belonging to a different group (Dimitrijevic 2011: 25).

The hard facts about this past cannot be changed. The dead cannot be brought back to life; harm cannot be undone. Still, this does not, or ought not to, translate into the claim that the recent tragic period is a simple given that remains fully beyond our reach. Mass crime is not a discreet historical practice that could be left isolated in the time that is no more, as a 'past that has passed'. We live among the legacies of the past. They affect our individual identities, culture, and the way we perceive of our future political constitution. The unjustifiable absence of those killed confronts the living with



many questions. What really happened, why did it happen, who did it and how, was it right or wrong, good or bad, just or unjust? Such analytical and normative questions tend to outlive the events that caused them.

The answers to these and related questions depend first on the character of the crime and its legacies. Second, the answers depend on who ‘we’ are. Different agents stand in different relationships to the crime and its legacies. Certain people are identified as victims, direct or indirect. Some other people are identified as wrongdoers, or as persons who are in important ways connected with wrongdoers. On both sides – victims’ and wrongdoers’ – we find shared identities. The identities are crime-specific. The persons who are ethnic Bosniaks or Serbs sometimes reflect on Srebrenica not simply as discrete individuals, but as members of these nations. If they say “We remember the genocide in Srebrenica,” the use of the first-person plural does not work as a simple point of ethnic identification; it tells about the context-specific relevance of the shared identity. Put differently, mass crime creates new identities by establishing at least three distinct communities: we who were the targets of the mass crime; we in whose name the mass crime was committed; we who belong to the human commonwealth.

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This introductory reference to the we-perspective does not suggest a communitarian stance. In the first step, it indicates only the relevance of certain empirical insights: killers acted as group members; victims were targeted as group members. The normative perspective I will try to defend is not communitarian either. It is liberal, in the basic sense that it remains focused on respect for autonomy and humanity of each person. It however assumes that the way of asking moral questions in the wake of mass atrocity has to rest on a particular interplay of personal and group perspectives: my personal attitude to wrongdoing ought to derive from the fact that wrongdoing was a collective practice, where the collective feature connects to my personhood in a non-trivial way. The legacies of mass crime create distinct moral entitlements and duties. Those who belong to the community of victims have the right to demand justice. Those who belong to the human commonwealth have a duty to remember what happened to the innocent persons, because the victims were as human as they are. The focus of this text is on the special duties of the members of the third community, composed of “us in the land of perpetrators.”<sup>8</sup>

## 2.2. The condition of heteronomy

The background thesis is straightforward. Crime is a moral fact, independent of the first-person (both singular and plural) points of view, which

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8 “Wir im Lande der Täter...” – I borrow this expression from Jürgen Habermas (Habermas 1997, internet).



“transcend[s] both the merely social and the merely personal” (Nagel 1997: 10). Killing, torturing, humiliating, or otherwise harming innocent persons is objectively morally wrong, irrespective of any particular reason that may be advanced towards an explanation of what happened, or why and how it happened. The crime is the breach of the moral law that binds all human beings. It violates moral norms that govern human commonality by denying to some people moral recognition everyone is entitled to. Its core moral feature is the suspension of the elementary distinction between right and wrong.

After the fact, at stake is the moral repair, understood as the re-establishment of the morally right relationships (Walker 2006: 23). The question assumes two related forms: first is the connection between historic injustice and legitimacy of today’s post-criminal political regime; second is the connection between historic injustice and personal, ethical and moral autonomy. While recognizing the interconnectedness of these two issues, I leave aside the problem of political legitimacy and related questions of transitional justice. Focusing on individual autonomy in the wake of atrocity, let me reiterate that it is a relational category in a special sense. At stake are individual autonomies of two types of actors, whose group-specific identities have been created by crime: the ethical community of those who share collective identity with victims, and the ethical community of those who share collective identity with perpetrators. After the crime, their relationships are shaped by moral inequality and all-pervasive heteronomy.

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Starting from the latter, recall that heteronomy denotes the human condition opposite of autonomy, the state of alienation and inauthenticity, in which a person is governed by forces she does not consider her own. The practical meaning of being in the heteronomous condition is different for the members of the two groups identified above. First, the condition of the members of the community of victims is shaped by prolonged vulnerability. People were killed, harmed, humiliated, denied recognition, and exposed to fear. The multitude of the forms of abuse amounted to a systematic process of the destruction of human and moral personhood.<sup>9</sup> In this regard, wrongdoing is

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9 “Once the moral person has been killed, the one thing that still prevents men from being made into living corpses is the differentiation of the individual, his unique identity... The methods of dealing with this uniqueness [...] begin with the monstrous conditions in the transports to the camps, when hundreds of human beings are packed into the cattle-car stark naked, glued to each other, and shunted back and forth over the countryside for days on end; they continue upon arrival at the camp, the well-organized shock of the first hours, the shaving of the head, the grotesque camp clothing; and they end in the utterly unimaginable tortures so gauged as not to kill the body, at any event not quickly. The aim of all these methods, in any case, is to manipulate the human body—with infinite possibilities of suffering—in such a way as to make it destroy the human person as inexorably as do certain diseases of organic origin.” – Arendt 1973: 453.

about denial of human worth of the targeted people: moral injuries are inflicted in a perverted one-sided communicative process that sends the message of the irrelevance of victims (Murphy 1988: 25). After the crime, the legacy of this humiliation continues to shape the survivors' existence. They are exposed to prolonged suffering today, in consequence of the wrongdoing they experienced yesterday. This transpires as the post-traumatic suffering, and it includes negative emotions that range from anger and contempt, to fear. In further consequence, the victims have a wide range of specific needs, which can be both material and moral.<sup>10</sup>

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Second, on the side of perpetrators we also find a continuity of heteronomy. Rich experience of different forms of denial in many post-conflict societies witnesses of the reluctance to face the truth about the past and its moral weight (Orentlicher 2008: 60; Dubil 2002: 31; Frei 2002: 27; Cohen 2001: 117; Moody-Adams 1994: 298). In the practice I call 'collective crime', the most drastic violations of human rights were made possible through broad endorsement of a perverted value system, and through the complicity, collaboration, or 'passive support' of many, ranging from those at the top of power to 'ordinary men' (Dyzenhaus, 2000: 473). The regime change does not turn the individuals who until yesterday voluntarily supported killing into decent persons. After the change, most of the bystanders remain caught in the same malady that defined them during the crime. This heteronomy can be referred to as the continuity of moral indifference, or the lost sense of justice (Allen 1999: 337). 'Lost sense of justice' is a descriptive category that refers to the widespread moral corruption, which is explicated through different patterns of tolerance and support for the crime, and which after the regime change transforms into different types of denial of one's knowledge and involvement. Yesterday's denial leaves as its most troublesome legacy a political culture in which there are too many people who remain incapable of distinguishing between right and wrong, just and unjust, and good and bad.

It follows that the relationship between two groups and their members is the one of inequality. Moral personhood of all members of the victimized group was denied in the cruelest possible way on behalf of the new understanding of the ethical position of all members of the perpetrators' group. Recall also that after the crime victims and members of their community know more about our group than about any other group; one core feature of their new identity is the knowledge of the fact that they were targeted on our behalf. Addressing this inequality in a morally appropriate way requires establishing harm-specific entitlements and duties. These duties are asymmetrical, pointing to the differing positions of the members of the victims' group, on

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10 For the distinction between material and moral needs of victims, see Elster 2004: 166. For a philosophical analysis of victims' moral needs, see e.g. Walker 2006: 6.

the one hand, and the perpetrators' group, on the other hand. Victims and their community do not have any special duties to perpetrators and their community. But they do have an entitlement, or right to demand a proper reaction from those associated with the criminal agency. On the other hand, the perpetrators and members of their group have harm-specific duties. Their moral condition urges appropriate responses from each of them. What is an appropriate response will depend on one's relation to the crime – whether one did wrong or not – but the core claim is that by changing the group-specific ethics, the crime compromises each member's moral integrity.

### 2.3. Special duties: why ethical considerations come first

Recognizing moral stakes in the post-criminal condition is the first step towards rebuilding moral equality. Heteronomous actors can reestablish their autonomies only if they identify – and accept as legitimate – entitlements and duties that transpire from the character of inequality and that aim to transform the current state of ethical relations in accordance with the demands of universal morality. We have to take stock of who we are as ethical and moral persons, and we have to identify ethical and moral contours that shape our society and polity. We are confronted with the questions. How should we live after such events? What should we think and how shall we feel about what happened? How should we perceive our place in the world? What should we believe? What should we do? How should we treat other people? These are the core questions for a theory of autonomy after the moral fall.

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The best theory will begin by explaining how it is that descendants of perpetrator groups possess special moral duties and will end by showing that it is by failing to meet these duties that descendants may compromise themselves. (Kovach 2010: 620)

The responses to such questions require revisiting the distinction between ethics and morality. My claim is that the condition after collective crime demands the primacy of ethics. In a nutshell, it means that we who share collective identity with wrongdoers have special duties. The special character of these duties derives from the moral fact of crime and the character of its legacies. To say that duties are special means also that they are exclusive to us, and that we owe them to clearly identifiable groups or persons:

In contrast to the universality of the general moral law, some people have special duties that other people do not. In contrast to the impartiality of the general moral law, we all have special duties to some people that we do not have to others. (Goodin 1998: 665)

For 'us in the land of perpetrators', to live well means to respond – as discreet persons and as a community – to the challenge that is only ours. We ought to

address the community of victims. If it were not for a certain ethical reading of our personal and group-specific identities, the dead would still be alive, and the survivors would not suffer today. We are indebted to them. This debt provides for the essence of the ethical relationship that is exclusive to the two groups and their members. Call this the argument of disrupted relationships (Stump 2004: 43). This is the first argument for the ethical duty to respond. Crime destroyed the moral community, and it created two ethical communities, whose relationship is shaped by exclusive legacies of what members of one group endured, and what members of another group did or failed to do. We stand in a thick ethical relationship with victims.

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Of course, this reference to the primacy of exclusive ethical duties does not mean that universal moral standards cease to be relevant for us. It is rather that responding appropriately to the crime-specific ethical duties remains the only avenue open for us to address the moral wrong committed on our behalf. Also, responding to ethical duties is the only way for us to become morally autonomous persons again. The situation is not standard. Assume I am an ethnic Serbian. Assume also that I have done nothing wrong during or after the Bosnian war: my attitudes, intentions, and actions have never been supportive of crime. Still, in light of the suffering some people suffered from Serbs only because they were Bosniaks, it would be inappropriate to argue that I should be exempted from the harmed people's negative evaluation. While I may feel as an autonomous person, I remain alienated and inauthentic, even if the standard features and conditions of autonomy are fulfilled. The one who refuses to take stock of wrongdoing committed in her name fails in autonomy. She fails to exercise control over her life. The point is that our lives are intrinsically linked to deaths of those killed and to lives of those who survived.

#### 2.4. Self-reflection as re-creation of identities

Second argument for the primacy of ethics is the duty of self-reflection of the members of the perpetrators' group. It principally originates from the group's failure to meet the general duty of sustaining universal moral standards. We depart from the insight that our belonging to an intergenerational social group – with all its historically induced contingencies, identity patterns and legacies – is not a matter of choice. But, when confronted with the legacy of the crime committed in the name of our shared identity, we have to address the question 'Who are we now?' The question is not simply what we as members of a post-criminal society have in common. The question reads: what we *ought to* have in common, or which values should we choose as the legitimate communal ties? The criminal past requires a clear, radically new moral foundation of the community – call this the requirement of

transformative justice (Allen 1999: 337). The object of transformation are patterns of beliefs, attitudes, and values that made the acceptance of the criminal ideology and practice possible. Following this moral fall, the objective of transformative justice would be to bring to everyone's attention a sense of the recent condition in which basic moral values were suddenly made irrelevant (Waldron 1992: 5). In positive terms, the aim of this reflection would be to reach a "change of mentality... which would reject yesterday's dominant self-perceptions as if they were useless ruins" (Habermas 1990: 17) Thus conceived, self-reflection is a strategy of ethical discontinuity based on the critical appropriation of the past.

Habermas' demand for the 'critical appropriation' of our moral failure may look moralistic, or too demanding. However, skeptical 'realism' has to confront the reality of atrocity. Once the unthinkable – ethically justified systematic mass killing of the innocent people – happened, the parameters of reality and of demandingness have changed for good: "What we ought to be seeking is an appropriately demanding morality" (Goodin 2009: 1). The burden of injustice done in our name provides us with a new identity. The bad past shapes three broadly understood levels of identity: personal, societal and communal-political. The latter two presuppose the intergenerational dimension, which is not merely temporal; it is also ethical and moral. The concept of identity refers to the sense of consistency of a person, group or community across time and through different changes (Norval 1998: 259). Still, while it is easy to agree that identity refers to selfhood rather than sameness, it is not immediately clear what 'consistency' means. Each of us is the author of his or her world; at the same time, each of us is situated into the world and into a particular society: historical, practical-political, ethical, and moral dimensions importantly feature in our personal autonomies. Dynamics of identity in the context of the life together leads to interpretative disagreements about our shared past, where the past is recognized as an important source of our present and future constitution. However, this interpretative openness should not be understood as a license for the relativist 'anything goes' claims. Rather than pointing to the free construction of the past and shared identities, interpretative openness denotes the duty of their right appropriation: "We give voice to the past, dispute it, forget it as something not made by us but that rather calls us, seeks to impose a duty to us" (Booth 2006: 69). It is true that, in identity terms, I was yesterday and that I am today, and that same holds for my intergenerational non-voluntary group, society, and political community. Still, when we find ourselves connected to especially disturbing past misdeeds that caused enormous suffering to a great number of people, the chronological concept of identity does not seem to suffice anymore. Identity always functions as "an ownership of the past, something that makes us co-responsible for it, and expectant to look

toward a future that we also see as ours” (Booth 2006: 16). Now, in the wake of atrocity, we have to consciously re-appropriate its responsibility feature.

## 2.5. Duty of memory

Ethical responsibility to appropriate our bad past works through the medium of memory. Memory is a particular type of knowledge, which preserves and (re-)evaluates the past, and which is focused on the integration of thus mediated past into the present. Typically, the knowledge appropriated serves to explain and justify the whole of our lives, and to help us make decisions and undertake actions the relevance of which extends into our future (Sutton 2012, internet). Personal and shared memories work in interplay. Each of us remembers more than she has experienced. On the other hand, the things one person has experienced are rarely a matter of his or her personal memory only. Memory is relational: the perception of the past is a matter of social communication (Assmann 2006: 211).

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My questions read: What shall we remember, and how? How should the memory of wrongdoing be created and preserved? Can we identify a set of the right attitudes to wrongdoings and a right course of remembrance? What, if anything, can we expect of a practice of memory: healing, catharsis, atonement, reconciliation, forgiveness? For the beginning, we have to keep the accounts straight: the past in which the innocent people are killed in our name is *our past*. Memories of it are “*our* collective memories, and so not substitutable; *our* obligations, past and future: these give the past and our memory of it their characteristic particularity” (Booth 2006: 69).

Memory is never a mere factual knowledge of the things, people and events past. While the past is given, our perceptions, evaluations, and narratives of it are not. When saying “we remember genocide in Srebrenica”, we do not reconstruct that particular event “as it really was”. We give it a meaning, by evaluating what happened then, and by assessing its relevance today. Not all meanings that we can assign to that event are justifiable. Habermas suggests that memory of crime should be understood as a specific learning process (Habermas 1998: 11). Learning is a practice of acquiring ‘critical self-consciousness’, which requires that members of the nation “focus the public interest on the darkest chapters of their national history, as a matter of their view of themselves today” (Habermas 1997, internet). Habermas’ point is clear: our collective responsibility goes beyond causality and blame for morally wrong attitudes and actions. We are responsible to reach a new ethical self-understanding by searching for a right answer to the question of “Who are we after the moral catastrophe?”. While we cannot change the facts about that past, we can give it a meaning different from the one that was used for the justification of crime. This is what Jeffrey Blustein calls “retrospective

construction of meaning” (Blustein 2008: 68). By explicating the moral fact of crime, suffering of victims, moral inequality imposed in the course of crime, new identities created by the criminal practice, and by acknowledging our co-responsibility, we appropriate the past in the ethically appropriate manner. We reject the institutionalized lie of the old regime, and we reject the core legacies of crime stabilized in the culture of silence and denial. In positive terms, such memory reveals a double truth: the truth about unjustifiable denial of human dignity and moral personhood, and the truth about ourselves, during the crime and today.

## 2.6. Acknowledgment as reappropriation of relational autonomy

Knowledge about crime is present in perpetrators’ society, as the facts that only need to be identified, or as the facts that are already known to many of the members of the group. Focusing on the positive normative argument, the question of practical ethics asks what to do with such knowledge. This is where I introduce the concept of public acknowledgment.

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Acknowledgment is not simply knowledge-based. It works against the background of endorsement of the general validity of the basic moral principle of equal moral value and standing of all persons. We first identify this principle; second, we establish, or recognize, its validity; third, we accept it as the motivation for action (Laitinen 2011: 329). But, the post-criminal predicament requires adjustment. In the second section, I argued that we in the land of perpetrators cannot directly endorse moral equality. Linked with crime and its agents, we have to choose the ethical path to re-establishment of our decency. In the first step, we recognize and accept validity of moral universals. In the second step, we look into our human condition, and we identify our special ethical duties; we accept them as valid guidelines for our action. Our ethically appropriate action unfolds as the process of acknowledgment.

One can distinguish between acknowledgment of the fact and normative acknowledgment. Acknowledgment of the fact is a process of responding to crime, whereby we publicly express and recognize our knowledge of the fact that killing and other forms of the most brutal harming of the innocent people happened in the recent past, and that these atrocities were carried out in our name. It is the public statement of the truth, which explicates the following: the crime happened; people were killed, humiliated, or harmed; survivors – direct and indirect victims, and the members of the targeted group – suffer today; we are connected to what happened and to today’s suffering; our involvement extends beyond causal participation in crime. Normative acknowledgment follows. At a minimum, it consists of explicating the following statements: the crime was wrong; it should not have happened; no argument can be advanced to justify it; we acted wrongly; the harm we



inflicted and the suffering we caused cannot be excused; wrongdoing and its consequences must not be denied; we commit ourselves to finding ethically and morally appropriate responses to it; our ethical stance to the crime and its legacies should demonstrate our effort to re-establish the authority of moral norms that we recently violated.

106 First, acknowledgment appears as a relational recognition: it requires communication of a particular quality between the perpetrators' community and the victims' community. In this regard, acknowledgment consists in accepting, explicating, and communicating to the offended our responsibility for the damaged human bonds. Victims need to know that we see crime and its legacies as unjustifiable. In order to regain their own voice, victims need the voice of all of us who are in different ways associated with wrongdoers. The moral norms and values that have been violated should be specified, to signal to the victims that we are ready to work towards reestablishing the authority of those broken norms and values. This comes close to communicating to the victims our feelings of sorrow and our apology. Each of us has a special duty to pay respect to victims, to recognize their suffering, to say that it was wrong, and to try to make lives of survivors better.

Still, acknowledgment is not always relational and consequentialist: it is not only about restoring relationships, rebuilding trust, or reestablishing as much of civilized normalcy as possible. Acknowledgment is not only about apologizing, reconciling, or making amends. When we acknowledge the crime, we do not have the right to expect anything from victims. We reach out to them, we are duty-bound to address them, to apologize to them, but we do not have the right to expect response from them. Victims are entitled not to communicate with us. This is the core of the post-atrocity moral inequality: we have only duties, and victims have only entitlements. Those who accept responsibility cannot expect either forgiveness or an offer of reconciliation. Regardless of whether the victims react or do not react to our acknowledgment, the crime remains our point of orientation. This holds even if we are forgiven, if our apology is sympathetically heard, or if something akin to reconciliation takes place. There is very little about the core fact of crime that we could amend – lives lost without reason cannot be restored or repaired. To repeat, our lives are morally impaired. Non-relational quality of acknowledgment consists in recognizing the moral fact of wrongdoing and the ensuing ethical relevance of my today's status – the way in which "who I am" has changed the world for worse.



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### **Liberalna autonomija u problematičnom kontekstu**

#### **Apstrakt**

Autonomija, shvaćena kao samovladavina, danas se gotovo rutinski prihvata kao jedan od temeljnih koncepata liberalne političke misli. Međutim, pojam i status autonomije su sadržinski i proceduralno kontroverzni. Prvi deo rada sumira osnovne teorijske sporove o autonomiji, nudi kritiku dominantnog „internalističkog“ pristupa, te pokušava da odbrani argumente za prihvatanje „relacionog“ razumevanja autonomije. Drugi deo rada analizira jedan konkretan tip situacije. Centralno pitanje tiče se mogućnosti i značenja individualne autonomije u društvu čija je prošlost obeležena masovnim režimskim zločinima, kao i značajnom podrškom „običnih ljudi“ takvim zločinačkim praksama. Osnovna hipoteza glasi da masovni zločin ostavlja u nasleđe stanje suprotno autonomiji. Zadatak post-zločinačkog društva sastoji se u ponovnom uspostavljanju autonomije za pripadnike dve grupe čiji grupno-specifični identiteti definisani zločinom: reč je o etičkoj zajednici onih koji dele kolektivni identitet sa žrtvama i etičkoj zajednici onih koji dele kolektivni identitet sa počiniocima. Izazovi personalne autonomije za pripadnike ove dve grupe su različiti.

**Ključne reči:** autonomija, povreda, moral, etika, posebne dužnoti, sećanje, priznanje.



STUDIES AND ARTICLES  
STUDIJE I ČLANCI

III



Kenneth R. Westphal

## Scepticism & transcendental arguments: Some methodological reconsiderations

**Abstract** Kant provided two parallel, sound proofs of mental content externalism; both prove this thesis: We human beings could not think of ourselves as persisting through apparent changes in what we (apparently) experience – nor could we think of the apparent spatio-temporal world of objects, events and people – unless in fact we are conscious of some aspects of the actual spatio-temporal world and have at least some rudimentary knowledge of it. Such proofs turn, not on general facts about (or features of) the world, but on appreciating various fundamental regards in which our finite human cognizance depends upon the world we inhabit. The ‘transcendental’ character of these analyses concerns identifying and appreciating various fundamental features of our finite form of human mindedness, and basic constraints upon, and prospects of, cognitive justification within the non-formal domain of human empirical knowledge. Such analyses and proofs have been developed in various ways, using distinctive strategies, not only by Kant, but also by Hegel, C.I. Lewis, Heidegger, Wittgenstein and Frederick Will. Here I examine and defend the methodological reflections required to understand, assess and appreciate such transcendental proofs, and why so few analytic epistemologists have found them persuasive or illuminating.

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**Keywords:** scepticism, transcendental proof, mental content externalism, Kant, Hegel, C.I. Lewis, Heidegger, Wittgenstein.

### 1 Introduction.

The problem of global perceptual scepticism appears simple to pose, yet devilishly difficult to resolve: As a mere point of logic, all of our experiences and beliefs can seem to us exactly as they do, and yet none be veridical (Stroud 1984, 549–50; 1989, 1994). Many analytic epistemologists have sought to rebut that logical possibility either with an especially cogent form of proof, or by citing some very basic, pervasive feature of the world (Stroud 1984, 549–50; cf. 1989, 37). Following Strawson’s *The Bounds of Sense* (1966), ‘transcendental arguments’ to counter global perceptual scepticism enjoyed rather a vogue. Such arguments purported to identify some necessary condition(s) for the intelligibility of the sceptic’s challenge, which is (or are) violated by posing that challenge; e.g., if human language is inherently public and social, and requires commonsense knowledge of one another and of our shared world, then ‘the sceptical challenge’ is paradoxical to the point of absurdity. However, those arguments were insufficient (Stern 2015); many focussed upon

issues of concept possession, whilst neglecting issues of any (cognitively) justified *use* of those concepts within any actual, genuine empirical knowledge (Westphal 2010a). Similarly, appeals only to ‘relevant alternatives’ (to any putatively justified perceptual claim), or instead to mental content externalism, appeared initially promising, except that they apparently commit a *petitio principii* against global perceptual scepticism. Scepticism appears to stymie epistemology, despite all the philosophical acumen marshalled against it. Is global perceptual scepticism a fundamental epistemological problem? Or does the problem rather lie in how we have conceived and addressed basic philosophical issues of empirical knowledge?

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When Kant introduced transcendental analysis and proof into philosophy, he also introduced a ‘changed method of thinking’ (*KdrV*, Bxviii, 704). Yet Kant’s methodological innovations have been neglected, in part because his key innovation has been regarded as his hallmark ‘Transcendental Idealism’. Transcendental Idealism, however, is a substantive view, primarily about space and time themselves being (Kant contends) human forms of sensory receptivity and nothing else (*KdrV*, A490–1/B520, B59–60). Kant argued that his transcendental method of analysis and proof requires Transcendental Idealism; hence Post-Kantian epistemologists typically regard Kant’s cure for global perceptual scepticism as equal to or worse than the disease.

Re-examining Kant’s *Critique of Pure Reason* by asking, What (if anything) do Kant’s premises, analyses and arguments in fact justify?, reveals that in several regards, Kant justified other, more important epistemological conclusions than he claimed, and that he did so independently of his Transcendental Idealism (Westphal 2004, 2006). Centrally important here is that Kant in fact provides two parallel, sound proofs of mental content externalism. These are proofs of this thesis: We human beings could not think of ourselves as persisting through apparent changes in what we (apparently) experience – nor could we think of the apparent spatio-temporal world of objects, events and people – unless in fact we are conscious of some aspects of the actual spatio-temporal world and have at least some rudimentary perceptual knowledge of it. Such proofs turn, not on general facts about (or features of) the world, but upon appreciating various fundamental regards in which our finite human cognizance depends upon the world we inhabit. The ‘transcendental’ character of these analyses concerns identifying and appreciating various fundamental features of our finite form of human mindedness, and basic constraints upon, and prospects of, cognitive justification within the non-formal domain of human empirical knowledge. Such analyses and proofs have been developed in various ways, using distinctive strategies, not only by Kant, but also by Hegel, C.I. Lewis, Heidegger, Wittgenstein and Frederick Will. These I return to below (§5, end); here I am



primarily concerned with the methodological reflections required to understand, appreciate and assess such transcendental proofs, and why so few analytic epistemologists – foremost amongst them: sceptics – have found them persuasive or illuminating.

## 2 Philosophical Method & the Advent of Cartesianism.

Kant is correct that understanding human knowledge (and morals) requires a ‘changed method of thinking’ (*‘veränderte Methode der Denkungsart’*; *KdrV Bxviii, cf. A676/B704*).<sup>1</sup> Speaking of changing one’s method of thinking may suggest merely changing one’s standards of proof, thus raising suspicions either of *petitio principii* or of simply dismissing the challenge of global perceptual scepticism. Issues about philosophical method and about styles of philosophical thinking have become more difficult to raise and address seriously, as the historical perspective of contemporary philosophers continues to contract. The notion persists that metaphysics as first philosophy amounted to no more than pipe dreams, that epistemology as first philosophy was a crucial step forward (though it landed us in global perceptual scepticism), and that finally the advent of philosophy of language – and especially semantic analysis – enabled us to dispel or resolve any genuine philosophical puzzles. However convenient, this notion obscures and occludes rather more than it illuminates. As Wilfrid Sellars realised, philosophical history is necessary for keeping one’s philosophical methods – even meta-linguistic methods – attuned to genuine issues.

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As a prelude to reconsidering the Cartesian problem of global perceptual scepticism, consider that ‘the’ mind-body problem is neither Ancient nor Mediaeval (Matson 1966; King 2007). Ancient and Mediaeval philosophers regarded the human body as percipient; our *nous* or *mens* (mind) was responsible only for conceptually articulate thought and action. When Descartes re-conceived the body as *machina* consisting solely in *res extensa*, sensory qualities had to be relocated into the mind, or at least the into the non-corporeal soul; perception – or its patently manifest aspects – moved upstairs too. Sensory qualities – colours, tastes, auditory tones, scents – cannot themselves be properties of physical particulars; they must involve ‘mental’ representations. Global perceptual scepticism soon followed in tow – though not without some portentous preparations. One preparation was the adoption of an indirect, representational theory of perception. The adoption of indirect theories of perception in the Seventeenth Century (C.E.) is surprising, in view of Sextus Empiricus’ (*PH* 2:74) decisive criticism of their Stoic predecessors: If our ‘direct’ awareness is solely of *mental* representations, which

1 On Kant’s changed method in moral philosophy, please see Westphal (2016a).

presumably (in favourable circumstances) are occasioned by surrounding objects or events, we cannot possibly prove that we perceive any such worldly surroundings. Once hatched, the problem of global perceptual scepticism appears to burden any advocate of a direct theory of perceptual awareness (e.g., critical realism) with *petitio principii*. Is this a philosophical *cul de sac*, or a symptom of more fundamental, methodological problems?

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The symptomatic character of this apparent philosophical stand-off is revealed by two further methodological questions of historical philosophy: How, why and when did Aristotle's model of philosophical knowledge (*epistēmē*, to the Mediaevals: *scientia*) – generally based upon Euclidean geometry, though tailored to the exactitude afforded by any domain of inquiry – become the strict deductivist model requiring infallibilist justification, familiar since Descartes, Locke and Hume? Why was Descartes, if only as the initially ignorant narrator of the *Meditations*, not guilty of heresy merely by suggesting in the first Meditation that perhaps the divine omnipotence might deceive him, or allow him to be deceived (AT 7:14, 15)? Both questions have a single, precise answer. The divine omnipotence can do anything which is not logically self-contradictory, including bringing about any event, even without its typical natural causes. This has two crucial implications. First, this holds also of those events we generally regard as perceiving our surroundings. Second, philosophers can do no more, and no better, than to propose merely possible explanations of phenomena (whether natural or psychological). Strictly speaking, knowledge requires ruling out any and all logically possible alternatives; only that counts as *scientia*. All else is a matter either of faith or of inherently fallible conjecture and belief. Exactly these views and implications were pronounced in March 1277 by the Bishop of Paris, Étienne Tempier, upon authority of the Roman Pope (Piché 1999). The problem of global perceptual scepticism simply waited in the wings for Descartes to generalise an implication recognised by Chatton and Ockham, which they regarded as an occasional, entirely incidental, merely theoretical possibility: the divine omnipotence or a dastardly spirit can interfere in human perception, though the divinity does not, and here on Earth dastardly spirits are fortunately rare. The Parisian condemnation of 220 neo-Aristotelian theses in 1277 made mere conceivability a mainstay of philosophical method, argument and (dis)proof (Boulter 2011). Well-known to Mediaevalists, it has remained widely neglected even by specialists in 17<sup>th</sup> Century philosophy (Westphal 2016b, §6.2).

These notable events in philosophical history and method raise the issue of the character and status of mere logical possibilities within philosophy, especially epistemology, and in connection with global perceptual scepticism. So long as appeal to the merely conceivable logical possibility of one or another

global sceptical ‘hypothesis’ is regarded as sufficient to undermine or to defeat the justification of any claim to perceptual knowledge, or of any claim to provide a sound theory of empirical knowledge, global perceptual scepticism will continue to appear irrefutable, insoluble and abysmal.

### 3 Changing our Philosophical Method of Thinking.

Kant’s ‘changed method of thinking’ concerns first and foremost how we can pursue philosophy constructively, if appeal to merely conceivable logical possibilities is not the solution, but instead a central problem within philosophical problems. For several reasons, Kant’s methodological reconsideration of merely conceivable, logical possibilities has again become germane to philosophy. Over-specialisation, undue influence of Quine (Westphal 2015), abbreviation of graduate training, continuing contraction of historical perspective and absurd demands to publish regardless of quality or cogency, have fostered wide-spread neglect of four points, both methodological and substantive.

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3.1 *Conceptual Analysis: Method or Madness?* Properly speaking, conceptual analysis purports to provide the necessary and sufficient conditions for the proper use of the concept, phrase or principle in question, and thereby to specify fully and adequately its meaning. This aspiration confronts a serious dilemma, the Paradox of Analysis: How can an analysis of a concept (*etc.*) be both informative, and recognised to be successful? Recognising the success of a conceptual analysis requires recognising that it completely, adequately and correctly analyses the content or meaning of the concept in question (the *analysandum*). Such recognition requires prior and independent comprehension of that *analysandum*. Such prior and independent comprehension, however, entails that the analysis (the *analysans*) cannot be informative. This Paradox holds independently of concerns about synonymy, though pessimism about synonymy may have contributed to the eclipse of the Paradox of Analysis; hotly debated through the 1980s,<sup>2</sup> it is neglected by Borchert (2006). Nevertheless, philosophers still often claim to provide an ‘analysis’ of this, that or the other concept, term, phrase or principle – or more recently of ‘our conceptual practice(s)’, as if some of our practices were somehow aconceptual.

Solving the Paradox(es) of Analysis, like solving the *Meno* Paradox of Learning (*Meno* 80d), requires appeal to partial understanding, yet in a way (or ways) compatible with partial understanding being genuine albeit incomplete understanding, and compatible with some tenable account of our competent use of criteria of adequacy. The best solutions to the Paradox of Analysis replace (if implicitly) conceptual analysis with conceptual explication

2 E.g.: Black (1944), White (1948), Linksy (1949), Chisholm & Potter (1981), Fumerton (1983), Ackerman (1990).

(*cf.* Hare 1960). Conceptual explication does not aspire to completeness. Instead, conceptual explication aspires to *selective* (partial, incomplete) specification of the content or meaning of an important concept, term, phrase or principle (the *explicandum*), sufficient for the purposes of one or another indicated investigation, whilst also aspiring to *improve* upon the explicandum within its original context of use. This link to the original context of use affords important criteria of adequacy for any explication (*explicatum*). This context of use will not be simply a manner of speaking, but a manner of speaking developed, adapted and adopted to facilitate some activity, within some specified natural or social context.

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It is striking and significant that both Kant (*KdrV*, A727–30/B755–8) and Carnap (1950a, 1–18) distinguished terminologically and methodologically between conceptual analysis and conceptual explication, using just these terms, for very much the same reasons and to the same effect, namely: modest, cautious corrigibility as well as tenability of their resulting explications. Though Carnap would have been loath to admit it, Kant welcomed the implication that conceptual explication involves a significant measure of semantic externalism, insofar as successful explication must be context-bound. This is significant, both methodologically and substantively: The adequate explication of any explicandum, and the appropriate use of its explicatum, is a function of possible contexts of its *actual* use, *not* of merely imaginary contexts of its (allegedly) possible use! This suffices to restrict the relevance of philosophical appeals to merely imagined logical possibilities, though exactly how and how much it restricts such appeals must be specified within the context(s) relevant to any actual explication.

3.2 *Conceptual Explication & Philosophical History.* Translating philosophical questions, puzzles or problems out of the material mode of speech (about, *e.g.*: things, events or persons) into the formal mode of speech about terms, sentences and syntactic or semantic rules, was supposed to provide ways to either resolve or dissolve those original questions, *etc.*, in part because the formal meta-language was supposed to have a perspicuous, manageably simple structure, with no obscure corners in which devilish problems might lurk. Though often helpful, recourse to formal modes of speech proved not to be quite the expected philosophical expedient, either because the formal meta-linguistic resources were too restrictive, or if sufficiently generous, allowed too much slack for philosophical preconceptions and predilections to contaminate the procedures and their products (such as Quine's 'preference' for ontological 'desert landscapes').

Conceptual analysis requires an untenable semantic atomism (or views quite close to it); conceptual explication rightly accommodates moderate ('molecular') semantic holism. The untenability of semantic atomism is the Achilles

heel of Carnap's empiricist semantics, because the meaning of even the simplest observational predicate is not only a function of whatever sensory quality or circumstance it properly designates, but also of the syntactic form(s) of the observation reports in which it can occur; these forms are set by the formation rules of the linguistic framework to which they belong (Westphal 1989, 60–3). These points about philosophical explication were explicated by Wick (1951), regrettably without due notice.

Wilfrid Sellars was particularly explicit and conscientious about what his, unfortunately now passing, generation of Northern European analytic colleagues took for granted: effective recourse to any formally regimented meta-language requires carefully examining the specifics of the philosophical history of the relevant issues, so as to comprehend, assess and benefit from (as it were) the ordinary language of *philosophers*, past and present, so as to avoid or to minimise potentially misleading terms or formulations, and to note proper precautions wherever they cannot be avoided without cumbersome complexity. These philosophers further recognised that 'relevance' must be construed broadly, not narrowly, because resolving any one (set of) philosophical issues inevitably has implications for the proper formulation, assessment and resolution of others. In short, resolving philosophical perplexities requires systematic philosophy, and philosophy can only be sufficiently systematic by also being deeply historically and textually informed philosophy (*cf.* Scharff 2014).<sup>3</sup>

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3.3 *Domains of Inquiry: Formal & Substantive.* Much philosophical ingenuity has been expended developing formalised languages for syntax, semantics, modality, proof theory and logical deduction. The use of these formal resources, however, has not often been sufficiently self-critical. A very important recent finding (Wolff 2009) is that, strictly speaking, the one formal domain – *i.e.*, the one domain within which sentences are demonstrable solely due to their *form* – is a carefully reconstructed Aristotelian square of logical oppositions (without conversion). All other domains involve existence postulates, including semantic postulates. The adequacy and relevance of these semantic or existence postulates cannot be established by formal, deductive means alone; their adequacy and relevance always require additional considerations. Many such domains can be defined, constructed and evaluated rigorously, but the relevance of the *use* of any such formalised logistic system *to* any domain of inquiry requires assessment of the adequacy and

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3 Just after drafting these lines reached me of the unfortunate passing of both Abner Shimony and Jaakko Hintikka, both of them paragons of broadly and deeply informed, rigorously incisive philosophy. Allow me to pay tribute here to some, in these regard exemplary philosophers who are very much alive and active: Andreas Bartels, William Harper, Geert Keil, Wolfgang Künne and Holm Tetens.

suitability of that logistic system to the selected domain of use. Only within strictly formal domains is justification constituted by deduction, *i.e.*, by provability. Within any non-formal, substantive domain, justification cannot be equated with strict deduction or provability. Due to the semantic or existence postulates involved in any non-formal, substantive domain, justification in such domains always requires more than logical deduction alone (Lewis 1929, 298; Carnap 1950b); justification in these domains also requires assessment of the relevance and appropriate use of the domain's semantic and existence postulates. This is no fault; it is a fact. Fault lies only in failing to appreciate this fact and its significance for the justification of any claims within non-formal, substantive domains.

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3.4 *Explication, Justification & Specifically Cognitive Reference.* Charles Travis (2006, 2008, 2013) has rightly emphasised that two distinct uses of descriptions have too often been conflated in recent philosophy. One use of a description is to explicate the meaning or the content (intension) of a concept, sentence or proposition. A different use of a description is to identify what some specific person said or thought on some particular occasion in those particular circumstances about whatever particular topics (persons, things, events, structures) *S/he* thought or spoke. The first use of a description can (*à la* Quine) prescind from any particular instances of the predicates or referring expressions which may occur within that description. The second use cannot so prescind from mentioning *those* particulars about which *that* Someone thought or spoke. In this important regard, Travis sides with Austin, Evans (1975) and 'direct' theorists of reference – and with Kant and Hegel.

The contrast between specifying the meaning of some sentence or proposition, and using a sentence to make a statement or claim, has an important epistemological corollary, which Kant first recognised – when prompted by Hume, Leibniz and Tetens. The conjoint implication of Kant's 'Transcendental Aesthetic' and 'Amphiboly of the Concepts of Reflection' is what I call his Thesis of Singular Cognitive Reference.<sup>4</sup> It pertains to the non-formal, substantive domain of empirical knowledge; it can be formulated, *mutatis mutandis*, in terms of judgments, statements, beliefs or claims; it allows one or several particulars as objects of one's claims; it allows a range of precision or approximation; it is independent of the scale of the designated individuals; and it allows for approximations, provided they suffice (in context) to localize and individuate relevant individuals and some of their features.

KANT'S THESIS OF SINGULAR COGNITIVE REFERENCE: To make even a candidate cognitive claim requires ascribing some characteristic(s) to some particular individual(s) one has localised within space and time.

4 On Kant's cognitive semantics, see Melnick (1989); Westphal (2004), (2013b); Bird (2006).

Part of Kant's justification of this Thesis is identical to Evans' (1975): To use a predicate to ascribe a characteristic to some particular requires delimiting the aspect of that particular (of whatever kind or scale) which exhibits that characteristic, thus differentiating that aspect from other aspects of that (or those) particular(s), and thus (at least partially) differentiating that (or those) particular(s) from other surrounding regions and particulars. Accordingly, the spatio-temporal delimitation of particular(s) and the ascription of specified characteristic(s) to it (or to them) are conjoint, *mutually interdependent* proto-cognitive achievements. These achievements require appropriate, sufficiently accurate use of these concepts: 'space', 'spatial region', 'time', 'temporal period', 'particular individual' and the predicates (concepts of characteristics, classifications) in question. Using these concepts in such a referential, discriminatory way also requires competent use of the first-person pronoun 'I', to partially specify the relevant spatio-temporal points of reference, and to distinguish one's own claim(s) in that circumstance on that occasion from claims made by others, or from one's own claims on other occasions.

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Kant's Thesis of Singular Cognitive Reference, together with a justified true belief account of basic constituents of empirical knowledge (belief, truth and justification), justifies the following set of epistemic distinctions between description, ascription (attribution), sufficiently accurate ascription, cognitively justified ascription and sufficiently cognitively justified ascription:

1. Description (as in the first use of a description identified by Travis);
2. Ascription (attribution of some characteristic(s) to some individual(s));
3. Sufficiently accurate ascription (to avoid error or serious mischaracterisation);
4. Cognitively justified sufficiently accurate ascription (reasonable belief);
5. Sufficiently cognitively justified sufficiently accurate ascription (knowledge).

Only the last (5.) counts as empirical knowledge of the feature(s) of the individual(s) in question.<sup>5</sup> The resources of philosophy of language and philosophy of mind extend no further than the first two proto-cognitive achievements (1., 2.).<sup>6</sup> The first two are only *proto*-cognitive because they prescind from accuracy and from cognitive justification, though they are necessary for cognition of any particulars. Philosophy of language and philosophy of mind may contribute to, or augment, epistemology, but for these reasons

5 'Cognitive justification' may appear redundant, but recent discussions have injected other sorts of justification into doxastic matters, clouding the epistemic waters.

6 (3.) is relevant to philosophy of language in Donnellan's (1966) criticism of descriptions theories of reference, which supports distinguishing (2.) from (1.).



they cannot supplant it – despite persistent claims to the contrary.<sup>7</sup> Achieving (2.) – making some specific attribution to some particular(s) one has located (however approximately) within space and time – is necessary to make so much as a *candidate* cognitive claim: one which can have – and can be assessed for – truth, accuracy, sufficient approximation and also its kind or extent of cognitive justification.

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An important feature of Kant's Thesis of Singular Cognitive Reference is that it holds regardless of whatever theory of meaning (or of conceptual content, intension) one may espouse, and independently of the linguistic meaning or conceptual content of Someone's claim. Kant's Thesis concerns our securing *reference* to localised particulars, and that securing reference to localised particulars is a necessary (though not sufficient) condition for empirical knowledge. Kant's Thesis thus achieves one key aim of verificationist theories of meaning – eliminating experience-transcendent cognition of particulars (*i.e.*, metaphysics) – *without* invoking verificationism, nor any other theory of *meaning*. Like Carnap, Kant regards predicate concepts as classificatory, and in this sense, as having 'intension', however specific, generic or complex these may be. His semantic, referential point accords with Austin, Evans, Donnellan and Travis: No matter how specific a description (intension) may be, and regardless of whether it contains putative singular referring terms or phrases (such as 'the' or 'the one and only'), descriptive intension alone cannot secure singular reference, because that descriptive content may either lack any referent (and so be referentially empty) or it may happen to describe two or more individuals (and so be referentially indefinite). This is precisely Kant's point, against Leibniz, illustrated by two qualitatively and quantitatively identical, though numerically distinct drops of rain.

#### 4 Reconsidering Global Perceptual Scepticism.

Kant's Thesis of Singular Cognitive Reference and the set of epistemic distinctions it justifies has direct implications for global perceptual scepticism.

4.1 Consider first that the challenge of global perceptual scepticism is, in effect, to demonstrate *a priori*, on the basis of sheer logic and various 'appearances to oneself', that our actual cognitive capacities are adequate to any logically possible environment, prior to trusting our actual cognitive capacities within our actual environment (*cf.* Stroud 1989, 34, 36; 1994, 301–4). That challenge is surely insoluble; is perceptual scepticism an epistemological problem?

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<sup>7</sup> For a critical rejoinder, *e.g.*, to Brandom in this regard, see Westphal (2017c), §5; *cf.* Westphal (2016b).



4.2 Note next that global perceptual sceptical ‘hypotheses’ – whether evil spirits, extra-terrestrial supercomputers stimulating brains in vats, experience machines, vivid life-long dreams or putative experience-inducing drugs – are no more than logical possibilities: they all extend no further than (1.) above (§3.4); they cannot be referred by anyone in any specific way to any specific particular(s). (This is not a point about belief or attitude ascription 2<sup>nd</sup> person, but about 1<sup>st</sup> person lack of cognitive reference *to* any particulars whatever.) Global perceptual sceptical hypotheses are ‘hypotheses’ in name only; they do not form even *candidate* cognitive claims. If they achieved that candidacy (by advancing at least to 2.), they would be subject to empirical investigation and assessment. This insight undergirds Bouwsma’s (1949) brilliant critique and parody of Cartesian scepticism.

4.3 Third, the observation that all of our beliefs and experiences might logically be just as they appear to be, and yet be non-veridical, amounts to no more than the observation that, because empirical knowledge concerns spatio-temporal individuals (of whatever kind or scale), empirical knowledge is a non-formal domain, in which cognitive justification in principle is *not* constituted by logical deduction alone (*per* above, §3.3). To regard the *logical* possibility of global perceptual scepticism as a fundamental problem for *epistemology* is to follow Descartes in following Bishop Tempier by insisting that nothing short of logical deduction suffices to justify any claim to know anything whatever (above, §2). What could justify the claim to know that only strict logical deduction suffices to justify any claim to empirical knowledge? Scepticism has long been used by fideists to assert the superiority of faith over reason, even after scientists (unlike philosophers) figured out how to gain knowledge of (*e.g.*) atoms (Chalmers 2009) or distance forces (Harper 2011). However, the programmatic hope, that achieving deductively infallible justification would certainly suffice to achieve empirical knowledge, should long ago have been jettisoned by epistemologists. Most epistemologists now espouse fallibilism. Nevertheless, infallibilist presumptions often pervade contemporary epistemology in the guises of presuming that mere logical possibilities suffice to block cognitive justification (*e.g.*, van Fraassen; see Westphal 2017b), that we need concern ourselves with no more than our ‘conceptual practices’, that mounting a ‘serious’ objection to one’s own view must identify within it a flat contradiction, or that ‘But couldn’t s/he say ...?’ counts as a significant philosophical rejoinder – as if merely saying something sufficed to state a philosophical view or criticism.

4.4 The only two prospects for rebutting global perceptual scepticism by no more than conceptual analysis and appeal to one’s own apparent experiences are Descartes’ foundationalism and Carnap’s logical reconstruction

of the world.<sup>8</sup> As responses to global perceptual scepticism, neither is sound. Descartes' *Meditations* are vitiated, not by one, but by five distinct vicious circularities (Westphal 1987–88). If indeed the divine omnipotence can do anything which is not logically self-contradictory, then the divine omnipotence (or the evil deceiver) may have given to Descartes exactly the same innate ideas of simple natures – including his idea that only God could be the ultimate cause of his idea of God, or his idea that one of God's perfections is that within the divine omnipotence all perfections are simply and solely one and the same – whilst so arranging the rest of creation that only Descartes' idea of his own mere existence is true.<sup>9</sup>

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The empiricist alternative: to reconstruct the public, empirical world on the basis of nothing but experiences of simple sensory qualities and modern logic, is impossible. The problem is not merely that Carnap did not define 'Quality  $Q$  is at  $x, y, z, t$ '; his constuctional programme *cannot* define those indexical parameters without obviating any and all basis of temporal ordering. This is because Carnap first chose 'Recollection of Part Similarity' ( $R_s$ ) as his 'basic relation',<sup>10</sup> expressly in order later to specify the temporal order of anything experienced or investigated scientifically, though in between to 'complete' his reduction he substitutes for instances of  $R_s$  instances of 'Part Similarity' ( $P_s$ ) – a symmetrical relation – thus obliterating any basis for specifying the temporal order in which any experiences, natural phenomena or scientific investigations occur: an irreparable problem in principle (Westphal 1989, 230–2).

4.5 These are unfortunate though instructive results – provided we carefully reconsider the problems of and prospects for epistemology. This requires more care than Richard Rorty (1989; rpt. 2009) and his tribe of loyalists expend on understanding and assessing historical philosophy. The comparatively recent rise of various anti-Cartesian forms of externalism in response to Gettier (1963) still has much to gain from reconsidering the original and still one of the most penetrating forms of anti-Cartesian epistemology, the kinds of transcendental examination and proof inaugurated by Kant (Westphal 2007). It is no accident that Gettier's critique of justified true belief as a conceptual analysis of empirical knowledge would prompt varieties of justificatory externalism: *all* of Gettier's counter-examples turn on contextual

8 Note that 'apparent experiences' are specified; Moore did not so restrict his claims about his own hands, or about his knowledge of them.

9 Recent defences of Descartes – e.g., Broughton (2002), Secada (2004), Cuning (2010), Wagner (2014) – fail to grasp the full significance of Descartes' vexatious problems: his *Meditations* are vitiated by five distinct, vicious circularities; see Westphal (1987–88).

10 The relevant 'parts' are qualitatively similar aspects or portions of perceptual *Gestalten*; Carnap's example of construction in the *Aufbau* is not a sense data theory, though because it focusses upon qualitatively similar (manifestly uniform) 'parts' of perceptual *Gestalten*, it is an exact counterpart to a sense data analysis.

factors unknown to their hapless Subject, Smith; *i.e.*, they turn upon cognitively relevant circumstances of which Smith cannot be aware by simple reflection – they are thus ‘external’ to Smith’s so-called ‘epistemic perspective’ on the world and on his own beliefs about it. One central theme in ‘externalist’ approaches to cognitive justification is that human cognition is a finite, dependent capacity. To this Descartes testified that he and his clear and distinct ideas were all entirely dependent upon the divine omnipotence. The problem is to ascertain how, specifically, human cognition depends upon the world, and to do so in ways which illuminate philosophical issues about empirical knowledge. Solving this problem likewise requires a cogent account of whether or how we are able to solve it philosophically – why epistemology is not simply replaced by cognitive psychology. One important result is already at hand.

Kant’s Thesis of Singular Cognitive Reference shows that achieving (2.) is required for any statement or thought to be a *candidate* cognitive claim. Because global perceptual sceptical ‘hypotheses’ fail to achieve (2.) – they stop with (1.) – they are not even *candidate* cognitive claims; in principle they altogether lack any justificatory status. Consequently, they do not and cannot serve to defeat or to undermine the cognitive justification of any candidate claim to empirical knowledge (2.). Kant’s Thesis of Singular Cognitive Reference thus shows that *in principle* global sceptical hypotheses are *irrelevant* to the assessment of any and all knowledge of particulars.

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## 5 Thinking Transcendentally about Scepticism, Perception & Empirical Knowledge.

5.1 A further significant point about Carnap’s failure to reduce or to reconstruct the temporal order of the world (or of anyone’s experience of it, scientific or otherwise), is this: the concepts ‘time’ and ‘period of time’ cannot be defined or learned on the basis of, nor in accord with, the strictures of concept empiricism. Indeed, aside from descriptive predicates, *none* the concepts required for and involved in any instance of Singular Cognitive Reference (above, §3.4) can be defined, learned or otherwise acquired on the basis of, nor in accord with, concept empiricism because competent use of those concepts is required to locate and identify any spatio-temporal particulars (and their aspects), on the basis of which alone any concepts can be defined, learned or acquired empirically.

This result can be demonstrated by critical re-examination of Hume’s *Treatise*. The relevant concepts are all (merely) determinable concepts, concepts the significance and scope of which can only be specified within the context of their determinate use on any occasion; these include: ‘space’, ‘region of space’, ‘time’, ‘period of time’, ‘spatio-temporal individual’ (or: ‘particular’ – of whatever kind or scale; Hume wrote of ‘body’), ‘characteristic’, demonstrative

or indexical terms, including ‘I’ and ‘that’, and ‘word’. At most, Hume’s official ‘copy theory’ of sensory impressions and ideas, together with his three official ‘laws’ of psychological association (apparent qualitative similarity, contiguity, 1:1 correlation<sup>11</sup>) can only define specific sensory qualities and their kinds – classifications as fine-grained as one can perceptually discriminate, and as generic as one may notice as a sensory, qualitative similarity. Hume recognised, indeed insisted, that we also use – without problem or confusion – a host of merely determinable concepts, highly abstract concepts (such as ‘government’) and also meaningful words (in contrast to senseless vocalisations or mere marks). Yet for these cognitively crucial capacities and their exercise only Hume’s ever-ready ‘imagination’ could account, yet for these capacities and functions of human imagination Hume can provide *no* empiricist account: that account is exhausted by the copy theory and three forms of psychological association (Westphal 2013a; *cf.* Turnbull 1959). Hume unwittingly provides all the resources required to demonstrate that those determinable concepts are *a priori*, insofar as they cannot be exhaustively defined, specified or learned solely on the basis of elementary sensory experiences, logic, or their combination(s).

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Kant (*KdrV*, A195–6/B240–1) further noted that Hume’s concept empiricism shows that the concept ‘cause’ is *a priori*, because we so very often observe only a (putative) cause or only a (putative) effect, without observing both members of the alleged pair. By Hume’s account of customary association, this phenomenon should either prevent or strongly hinder the development of any particular beliefs about any particular (putative) causal relations, thus preventing our ever devising the general concept ‘cause’ (Beck 1978, 121–9).<sup>12</sup>

5.2 Kant realised, however, that mere possession of *a priori* concepts settles no epistemological issues. To address epistemological issues requires showing that we are entitled to *use* those concepts in cognitively justifiable – and indeed also in cognitively justified – judgments. This requires – *per* Kant’s Thesis of Singular Cognitive Reference – that we can localise within space and time relevant *instances* of those *a priori* concepts. Localising and identifying relevant instances of concepts Tetens (1775) called ‘realising’ (*realisieren*) a concept; Kant adopted both this term and the key issue it identifies from Tetens. Kant developed this issue in connection with this further insight: ‘whatever I must presuppose in order to know an object at all, I cannot

11 That Hume happens to call 1:1 correlations ‘causal’ (*En* 3.2) does not show that they *are* causal; rather, he contends that all we can know or conceive of causal relations amounts to no more than 1:1 correlations, coupled only by our expectations become habitual.

12 There has been renewed interest in *a priori* knowledge, but in focussing on such (putative) knowledge, recent discussions have neglected these basic, antecedent issues regarding the content, status and use of basic categorial concepts. On Kant’s identification of our basic logical forms of judgment, see Wolff (2016), (forthcoming).

itself know as an object (*Object*)' (*KdrV* A402). Modern empiricism denied there are any such presuppositions, but the fundamental problems (noted above) with Hume's concept empiricism and with logically (re)constructing the world on the basis of purported sense-data undermine that denial: Empiricism is not a tenable theory of *human* knowledge or experience. The problems, then, both methodological and substantive, concern how to identify – accurately, informatively and justifiedly – relevant preconditions for human knowledge of any object. With care, such conditions can be identified by philosophical reflection; in part they concern our capacities so much as to understand and use any argument, evidence or analysis whatever. The aim of transcendental analysis and proof (or demonstration) is identify basic, pervasive externalist conditions regarding mental or semantic content (intension) or justification, such that these conditions must be satisfied by anyone who is able to consider her or his present thoughts or experiences. The aim is to demonstrate that and how the possibility of episodes of human self-conscious experience (apperception) is rooted in actual episodes of conscious human experience of our worldly surrounding (perception), without lapsing into psychologism – it is possible (*cf.* Guyer 1989). Such transcendental proof or demonstration is non-formal; accordingly the justification involved is fallible, as in all non-formal domains. Yet by that very token, mere logical possibilities do not undermine the justification of such transcendental proofs. 'Fallibilism' regarding justification is the view that justification sufficient for knowledge does not entail the truth of what is known. Fallibilism about justification is entirely compatible with our knowing necessary truths, say, in mathematics – or also in transcendental philosophy, *e.g.*, about necessary features of rational human judgment and our capacities to integrate sensory information through time and space. The 'fallibility' of the justification of any claim does not require that the claim might be false; it allows that any claim or its justification may be revisited and perhaps revised – though revisions may make it more precise, or its justification may be further corroborated or strengthened! That there is no finality to rational justification in non-formal domains, does *not* entail that we err, nor that we lack sufficient accuracy or justification.

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5.3 Kant identified at least three key points which ultimately justify mental content externalism and block the sceptical generalisation from the universal possibility of perceptual error to the alleged possibility of universal perceptual error. (Exactly how and how well Kant's points succeed in these regards cannot be detailed here; see Westphal 2004.) One point is that the putative 'whole' of anyone's perceptual experience is itself neither an object of perception nor a perceptual episode; it is a theoretical construct (*KdrV* A483–4/B511–2). Hence it is neither cause nor occasion for scepticism about the objects of human *perception*, nor about our perceptual episodes.

A second point is that Hume's ironic reply to Leibniz, that on Hume's view of customary habituation there occurs (as it were) a preestablished harmony between the natural order and the order of human experiences (*En* 5.21, 8.5), is not nearly radical enough. Rather, if there were not (at least) some minimal, humanly detectable regularity and variety amongst the qualities of sensations, amongst the contents of percepts or perceptual episodes, or likewise amongst the objects and events we perceive (Kant argues in parallel for each case), we would be altogether incapable of using any concepts to identify and localise any particular (putative) objects or events whatsoever. At most we might be inundated by a senseless mass of sensory stimulations, though no even putative awareness of ourselves *as* putatively aware of any individuals whatever. (This is the upshot of Kant's examination of the 'transcendental affinity' of the sensory manifold.)

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Kant's third point is that causal judgments are discriminatory: We are only able to identify any one kind of causal change by determining that the other two causal possibilities do not obtain (in some one specific regard; several relevant causal relations may be involved in any observed process or event). These causal possibilities are: 1) One substance persists through a change of one characteristic to another; 2) One substance and its features persist through a merely apparent change due to local motion relative to the perceiver; 3) Two or more substances interact causally, producing either changes of state, orientation or location in each other. Only if we can and do make at least some of these kinds of causal discrimination and identification through perceiving our surroundings can we reconstruct and identify any objective order in which events occur, as distinct to the order in which we happen to observe those events (even when these two orders coincide). Hume's empiricist epistemology is insufficient for his own effortless reconstruction of the order of events when a porter knocked upon the door to Hume's upper-storey apartment, to enter when beckoned, to open the squeaky door and to come into view only as he reaches the letter out to Hume sitting before his fire. This commonsense sequence can only occur if the door to Hume's apartment, the stairs up to his storey and the walkway from the post office to Hume's apartment building continue to exist, largely unchanged, whilst unperceived by Hume – all of which Hume knows and reports perfectly well (*T* 1.4.2), though his empiricism cannot account properly for his own reliable empirical beliefs and perceptual reports. In sum, Kant shows that Hume was not nearly sceptical enough, not even about his own empiricist account of his own mental capacities and activities.<sup>13</sup>

Now Kant's three key points favouring mental content externalism are not obvious, much less self-evident; they require detailed examination and

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13 For concise discussion of Kant's discriminatory account of causal judgment, see Westphal (2016c).

assessment – as do our own epistemological preconceptions about the relevant or proper parameters of epistemological inquiry and assessment. No die-hard sceptic can be refuted to his or her own satisfaction. That, however, is no reason for epistemologists to despair about human cognition, nor our philosophical examination of it, nor of our fundamental capacities for it.

5.4 Transcendental reflection upon and examination of empirical knowledge and our human cognitive capacities can take forms other than Kant's.<sup>14</sup> Independently, Hegel defended Kant's Thesis of Singular Cognitive Reference,<sup>15</sup> and in his subtle internal critique of 'Lord and Bondsman' explicated how our biological dependencies upon our surroundings likewise reveal some of our basic cognitive capacities for learning about, coping with and knowing some about our surroundings – including that we are amongst other human beings, whose points of view on the world and upon ourselves we *in principle* cannot and do not constitute (Westphal 2009b, 2011).

In *Mind and the World Order* (1929), C. I. Lewis developed an analysis very much like Kant's analysis of the transcendental affinity of the sensory manifold, which Lewis deployed against Kant's Transcendental Idealism, and in support of his pragmatic realism (Westphal 2010a, §2).

In *Being and Time* (1927, §43.a), Heidegger countered Kant (*KdrV*, Bxxxiv), contending that the scandal of philosophy lies, not in the lack of a refutation of scepticism, but in the continued demand for any such refutation. Instead, Heidegger sought to make evident to us that posing the epistemological issue of whether global perceptual scepticism holds, presupposes that we are alive and engaged in and with the world (both natural and social), in ways which belie the merely theoretical possibility of global perceptual scepticism (Scharff 1992; Dahlstrom 1994, esp. 385–433).

In sections often neglected in his *Philosophical Investigations* (§142; Part II §xii), *Remarks on the Foundations of Mathematics* (I, §§5, 140) and *On Certainty*, Wittgenstein proposes we consider (*e.g.*) unusual rulers which radically expand and contract upon slight changes in ambient temperature. For our actual world,

14 The alternative transcendental reflections on human cognition mentioned here are examined in Westphal (2017a).

15 Hegel argued – soundly, I submit – for Kant's Thesis of Singular Cognitive Reference in his 1807 *Phenomenology of Spirit*, chapter 1, altogether independently of Transcendental Idealism (or any similar view), by *reductio ad absurdum* of both aconceptual 'knowledge by acquaintance' and of knowledge merely by description (*per* §3.4, Nr. 1.); see Westphal (2010b). Hegel further argued by strictly internal critique of Hume's empiricist analysis of our concept of and belief in the existence of physical objects (*T* 1.4.2), that the relation 'thing/property' can neither be reduced to, nor replaced by, the relations 'one/many', 'whole/part', 'product/ingredient' or 'set/member'; hence the concept 'physical particular' is *a priori* and yet non-formal, as Hume himself all but admits (Westphal 1998).



such rulers would be useless, though they might be exactly what we would need in a world containing many objects with similar dimensional characteristics. Wittgenstein's wildly counter-factual examples take on a transcendental cast when he proposes we consider that such exceptional cases were instead typical, and our typical cases of manageable regularity instead were rare exceptions. In just this connection, Wittgenstein notes that were such irregularities typical, we could neither speak or think at all (Westphal 2005).<sup>16</sup>

In 'Other Minds' (1946), J. L. Austin considered a goldfinch perched in plain view in his garden, which is observed to behave just like a goldfinch for some period of time. He remarks:

If we have made sure it's a goldfinch, and a real goldfinch, and then in the future it does something outrageous (explodes, quotes Mrs. Woolf, or what not), we don't say we were wrong to say it was a goldfinch, we don't know what to say. Words literally fail us .... (Austin 1979, 86)

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Reflecting on Austin's example, and on Waismann's (1945) case for the 'porosity' or open-texture of all empirical concepts, by which they (or our use of them) are in principle always subject to correction by unexpected occurrences, Frederick Will (1969) argued that the porosity of our empirical concepts is considerable evidence for semantic externalism, and that Austin is correct that, in the imagined case of the outrageous goldfinch, 'words literally fail us', *because* thought itself, thinking itself, fails us. The relations between features or aspects of the world and human thought – indeed: our very capacity to think – may be manifold, various and highly indirect, though nevertheless we human beings cannot think at all without relying upon guidance afforded by the world we inhabit. Will's point is transcendental, not incidental (Westphal 1997, xvii–xxiii).

## 6 Conclusions.

Insofar as 'transcendental arguments' are conceived within the Cartesian-empiricist framework which persists into the present day – witness the enormous difficulties lodged against Burge's (1979, 2010) efforts to counter it – they and philosophical responses to them are fit subjects for philosophical diagnosis, in service of more sensitive and sensible philosophical reflections upon empirical knowledge and our capacities for it. Descartes was correct in this regard: The proper philosophical response to global perceptual scepticism lies in identifying, examining and appreciating the implications of our fundamental, manifold cognitive dependencies upon our

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<sup>16</sup> Wittgenstein's critique of the possibility of 'private language' also has anti-sceptical implications, and perhaps a transcendental character. In these regards, the best reconstruction of Wittgenstein's account is Wright (2001), 223–90.



worldly (natural and social) environs. That he failed to identify and to exploit our human forms of cognitive dependency and interdependency to epistemologically sound effect is unfortunate, though no reason for philosophers to persist in neglecting our cognitive dependencies and their epistemological examination and assessment. Descartes himself was not the Cartesian his successors forged out of the problem putatively posed by the evil deceiver (cf. Ferrini 2016). Infallibilists, strong internalists and other advocates of the justificatory relevance of mere logical possibilities should consider whether they slumber dogmatically; too much epistemology has been, as Kant said of metaphysics (*KdrV*, Bxv), ‘a mere groping, and what is the worst, a groping among mere concepts.’<sup>17</sup>

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17 This holds, too, of popular ‘causal reliability’ views, which appeal to alleged causal relations they do not (remotely) identify or justify; see Westphal (2016b).

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Kenet R. Vestfal

### Skepticizam i transcendentalni argumenti: metodološko razmatranje

#### Apstrakt

Kant nam nudi dva paralelna i valjana dokaza eksternalizma mentalne sadržine, koji dokazuju tezu: kao ljudska bića, mi ne možemo misliti o nama samima kao postojećim u sklopu promena koje iskušavamo – niti možemo uopšte misliti prostorno-vremenski svet objekata, događaja i ljudi – ako nismo svesni nekih aspekata postojećeg prostorno-vremenskog sveta, i ako nemamo barem osnovno znanje o njemu. Ovi dokazi se okreću, ne ka opštim faktima o svetu, već ka razumevanju raznih fundamentalnih načina na koje naše ljudsko saznanje zavisi od sveta kojeg nastanjujemo. 'Transcendentalni karakter' ovih analiza se tiče identifikovanja i razumevanja različitih temeljnih svojstava konačne forme ljudske razumnosti i temeljnih ograničenja kognitivnog opravdanja u okviru neformalnih domena ljudskog empirijskog saznanja. Takve analize i dokazi su razvijeni na mnogo načina, i sa različitim strategijama, kod Hegela, Luisa, hajdegera, Vitgenštajna i Frederika Vila. U ovom radu ću istražiti i braniti metodološke refleksije potrebne da se razumeju takvi transcendentalni dokazi, koje samo mali broj analitičkih epistemologa smatra ubedljivim i prosvetljujućim.

**Ključne reči:** skepticizam, transcendentalni dokaz, eksternalizam mentalne sadržine, Kant, Hegel, K.I. Luis, Hajdeger, Vitgenštajn

Predrag Krstić

## Thinking identity with difference: Society and theory

**Abstract:** The first part of the article notes the sudden and conspicuous interest for the problem of identity at the turn of the 21st century. It presents Modern and postmodern conceptualizations of collective identity of social theorists. In the second part, the text draws on the legacy of philosophical speculation of the same period. The article aims to show that many of the dilemmas faced by latter-day humanities in their efforts to articulate their thinking of identity as well as difference still have a relevant “pre-game” in the structural and dialectical interrelatedness thematized by philosophers of classical German idealism and the “philosophers of difference.” The text concludes that such “metaphysical” reflection comprises an unavoidable element, which can only be ignored by social theory at its own peril, even if it is not bound by the reflection’s findings.

**Keywords:** identity, difference, sameness, otherness, social theory, philosophy

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Since the last decade of the twentieth century, the term “identity” has noticeably shifted from being a technical term used in philosophic literature into well-nigh the framework of all intellectual debates (cf. Jenkins 1996: 7-8). Suddenly, sociologists, anthropologists, psychologists, geographers, historians, political scientists, each in their own register, have something to say about identity: from discussion about its constitutionality for the Modern age, to its postmodern repudiation, to various feminist attempts to deconstruct gender conventions of society, to the muddled resurrection of nationalisms and ethnicities as significant political forces. Nor were scientists the only ones to raise the topic; rather, journalists, politicians, writers, lawyers, along with experts in marketing, consumerism, and PR, piped up as well. All the while, the matter at hand became less and less a *factum brutum* that could be patently recognizable. There is talk of identity as changing – emergence of new, resurrection of old and transformation of the existing – to the point of creation of “politics of identity.”

This could be symptomatic, if it were indeed the case, as Stuart Hall says emphatically (Hall 1996: 2), that concepts are problematized only when they lapse into crisis. To which Kobena Mercer adds, “[i]dentity only becomes an issue when it is in crisis, when something assumed to be fixed, coherent and stable is displaced by the experience of doubt and uncertainty.” (Mercer 1990: 43). For his part, Zygmunt Bauman thinks that the very notion of “identity” could only appear as the problem of identity, that is, we only begin

to think about it when we are no longer certain where we belong. “Identity’ is a name given to the escape sought from that uncertainty:” it is a “critical projection of what is demanded and/or sought upon what is; or, more exactly still, an oblique assertion of the inadequacy or incompleteness of the latter” (Bauman 1996: 19).

Thus, responsible contemporary thought regarding identity had to auto-historicize. When it comes to the humanities, they usually register the way in which the crisis of identity and its pursuit decisively mark a new era. What is it that caused this change and what does it comprise?

### Modern Times

The story is as follows. Rapid changes have always characterized the Modern period, but the late Modern has seen a vertiginous acceleration, making it difficult to maintain a single, unified and confident sense of one’s self. Where once upon a time, allegedly, identity was chiefly influenced by the belonging to a larger social group, usually class or nation, identities have become more varied and unstable. Processes of industrialization and urbanization, increased social and geographic mobility, breakdown of earlier social formations, the rupture of close-knit homogenous communities that rigorously passed down established mores and values from generation to generation – have all weakened the influence of inherited rules and conventions, opening new spaces and sources for personal identity.

The usual culprit for this is taken to be globalization. The ease and frequency with which people traverse the world, along with increased communication, have resulted in the creation of a “cultural supermarket.” People are no longer forced to build their identities on the ground on which they reside; rather, they can chose from a wide palette of myriad identities. They might adopt a form of speaking or dressing, values and lifestyles of their choice. On the other hand, the globalized consumption of ubiquitously found products could lead to ever greater homogenization and sameness in people. Globalization, therefore, contains contradictory tendencies, all of which, however, jeopardize existing identities. The unification of the global consumer threatens identities rooted in belonging to specific social groups. The greater choice of identity, on the other hand, means that even people living next to one another, or even belonging to the same social group, could have entirely different identities.

The Modern era, which saw the bankruptcy of traditional signposts bring us face to face with a litany of choices for one’s self and condemn us to recurring reconstitution and vigilant protection of our identities, is thus the birth-place of the very problem it is currently problematizing (see Giddens 2010;



Hall 1992). The “postmodern” cardinal dissolution of identity and its nostalgia-free undermining will only push Modernity’s burgeoning crisis of identity towards paroxysm, mercilessly sealing the probate hearing documents.

Perhaps the most illustrative distinction between the Modern and “postmodern condition,” regarding identity comes from Zygmunt Bauman. According to him, the typical representative of the Modern is the “pilgrim,” the Weberian protestant, following a clearly marked, measured, manifest path towards an equally clear goal. Life is a pilgrimage, a patient ambling toward this goal, and a deferment of pleasure with this aim in mind (Bauman 1996: 22-23). The postmodern world, however, is entirely different, and “inhospitable to pilgrims.” Here any notion of path and goal is lost, whereas both time and space are comminuted. All endeavor is shorn of the temporal: “cut the present off at both ends,” in an attempt to achieve a “continuous present” (Bauman 1996: 24). The imperative of the times is avoidance of all binding ties to people or locations, avoidance of responsibility and loyalty. In lieu of searching for identity, one is concerned with none “sticking” too strongly: “The hub of postmodern life strategy is not identity building, but avoidance of fixation,” given that “well constructed and durable identity turns from an asset into a liability” (Bauman 1996: 24).

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Typical representatives or “life strategies” of the postmodern are the stroller, the vagabond, the tourist, the player. All of which existed before, but have shifted from being marginal minorities to the majority, thus changing their meaning. “All four intertwining and interpenetrating postmodern life strategies have in common that they tend to render human relations fragmentary and discontinuous; they are all up in arms against ‘strings attached’ and long-lasting consequences, and militate against the construction of lasting networks of mutual duties and obligations.” (Bauman 1996: 33)

In general, postmodern practice has established a pluralist (dis)position, and corresponding theory has expanded the ensuing consequences onto the intellectual life of the West, therein including the humanities (cf. Alexander 1995). It proclaims – with as much hope as abandon – that the new epoch can yet represent a dawning and not the dusk of emancipation, if only it could liberate itself of universalist tendencies of identity logic inherited from the Modern (see, for example, Bauman 1995; Seidman 1991). Such “emancipation,” however, even if possible, has turned out to be neither linear nor easily executed.

In the absence of a “main” or arch-identity that in Modern times acted as umbrella for different identities and oriented political struggles, the sixties and seventies of the last century saw people begin to organize into “new social movements” that deal with a diversity of interest and self-identification.



Identity was no longer simply determined by class or ethnicity; it was now based in gender, religion, age, relation toward ecology, etc. Accordingly, feminism, minority rights struggles, anti-nuclear, ecology and other movements assumed their place on the political stage. With the advent of new social movements, identity itself became a political question (cf. Spasić 2003). Indeed, what emerges is a “politics of identity” that deals – only at first glance paradoxically – with *differences* between groups of people and opportunities of individuals to express these differences, emphasizing the importance of alternate voices, in particular those of subjugated groups.

### Feminisa(c)tion

The aporias of efforts to create deflection from what appears to be unappealable identification with narrow and immutable identities is perhaps best illustrated through the history of feminism. Organized in the mid sixties, the movement for the liberation of women resulted, albeit with delayed effect, in significant social and political changes, which, however, served to reinforce a gender neutral model of society. The concept of gender difference was at the time still de-emphasized by focusing on equality, given that women struggled above all to gain the right to full participation in all areas of society. Social justice demanded that gender not be presented as difference. Expectations ran high: women would achieve freedoms heretofore unavailable to them and sexism would vanish.

However, with everyone being poorer and more desperate after eighties Thatcherism and Reaganism, the women’s movement was at a loss to say whether anyone was liberated. With their confidence shattered, certain women activists abandoned the fruitlessly compromised calls for equality and social reform. Giving up on the “utopia of social change,” many found a privileged haven in certain culturally and ideologically victimized identities (ethnic minorities, religious groups, LGBT and disabled persons). The defensive pessimism that marked Second-wave feminism gave birth to “identity politics” – emphasizing a strong collective identity of a group as the basis of political analysis and action.

In short, identity politics understands activism as righteous separatism, as a beneficent return to one’s self, and focusing of political aims on group self-affirmation. The cost of the psychological relief provided by such a strategy was the impossibility, or limited ability, of broadening the movement and giving it larger social engagement. Fear of erosion of imperiled identity prevents or at least discourages nearly any public contact outside the strictly defined group. Seen thus, identity politics is defeatist and desperate, the politics of selfishness and pessimism. In the name of advancing the interests of one’s own group, refusing to engage with society at large, identity politics accepts

the status quo and satisfies itself with “conservation:” protection and celebration of a given collective identity.<sup>1</sup> It could even be said that with the growing awareness of crisis of “minority utopias,” the crisis of the idea of politics (to use Deleuzian language) of “minority-becoming,” a figural mirroring of the opponent was revealed: identity politics has turned out to be “another visage of national hegemony and its ‘normalizing’ function.” (Balibar 2003: 80)

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Identity has thus, according to Paul Gilroy, experienced an “essentialization” when it was least expected: at the very moment it was recognized as a result of cultural history. In one fell counter-attacking swoop, identity moved from its historical origins and landed in the empire of things primordial: it became something prior to history and culture, something fundamental and disinclined to mutation, part of our fixed being, resistant to time and transformation. Fixed, primordial, immutable identity, after all, renders politics itself irrelevant, since it confronts forces more fundamental than that: biological and cultural heritage, kinship, fatherland – all of which are said to regulate human life.<sup>2</sup> It has, and has always had, but one main, corruptive and compromising threat: difference. Life with difference is seen as none other than “life endangered,” securing the safety of its own collective identity only through separation or carnage (Gilroy 1997: 310-311, 313; see Gilroy 2005: esp. 3, 67).

On the other hand, identity politics – in its best, although most incoherent version – could, in an auto-reflexive move even (try to) escape its own destiny of representing a struggle between “natural subjects.” Jeffrey Weeks offers the argument that one of the main contributions of identity politics was precisely the construction of the politics of difference that subverts the stability of biological categories and the construct of binary opposites (Weeks 1994: 12). New social movements were successful in historicizing experience and outlining differences of marginalized groups as an alternative to the oppression of the “universal.” Finally, it was above all feminism that pointed out, at the latest with H el ene Cixous and her “Sorties” (Cixous 1989), the unequal distribution of dichotomous opposites, nature/culture, body/spirit, passion/reason, that valued and empowered one (the male) sex. It was feminism that insisted on the possibility of circumventing the inevitability of these oppositions, particularly as a source of inequality, arguing for male and female sexuality to be seen as different, not opposed (see, for example, Irigaray 1985; Moore 1994).

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1 On the futility – nay, counterproductivity – of feminist identity politics even when it comes to its archenemy, sexism, see Carver 1996: 15 and further; Mandel 2004; Meyers, 2010; cf. Jaggar 1992: 366.

2 Gilroy finds the antidote to this reaffirmation of identity in the concept of diaspora, which he considers subversive of essential and absolute identity, securing the concept of a more complex, ecologically sophisticated and politically effective identity than offered by the current options of genealogy and geography (Gilroy 1997: 304, 339; cf. Woodward 1997: 28).

Nevertheless, the dialectics of identity and difference asserts itself. Difference was thought as a constitutive companion marking the sexualized other (woman), racialized other (indigene), and the naturalized other (animals, environment). These others, however, are constitutive insofar as they are expected to confirm the selfsame Subject in its epistemologically privileged position. Feminists were hasty in adopting a model of epistemic violence inherent in the dialectic, one that inevitably turned out to be another metaphysical compensation and reproduction of the Subject. “Let’s spit on Hegel” (Lonzi 1974) became the rallying cry of an entire generation. The notion of difference as insult thus continued to strike out from the very heart of the history of philosophy, like some “metaphysical cannibalism” of European thought, compiling contributions to its own history of lethal exclusions and fatal disqualifications (Braidotti 1991). In the paradox of the simultaneous globalization and fragmentation, so characteristic of the late Modern, the notion of difference has become still more antagonistic (Benhabib 1999).

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All of which could be put as follows. Through questions of production of the gender subject, feminism initially politicized identity. Then it replaced the thesis that everyone has the same identity “humanity,” with the thesis that men and women were different, thus calling for a unification of “sisters” around sex as “the main identity.” Finally, “feminism of difference” decided to apply the same method and perform microsurgery to point out differences between women. “Intersectionality” became the dominant feminist metaphor for complex identities that, coupled with gender, (once again) comprised race, ethnicity, class and sexual orientation, origin, social status and role (Meyers 2010). This metaphor was a colorful signaling of a theoretical shift, first in outlook and then in mechanism. Initially seen as having some kind of *essential* core that marks a group, identity is now more commonly seen as *contingent*, a product of intersection of various components, political and cultural discourses, and histories.

Interiorized, contingent identity, a dis-unified, plural, *unitas multiplex* of “multi-identitary beings” becomes a unified “familial and local, regional, national and transnational, and eventually confessional and doctrinaire identity” (Morin 1990: 154; see also Morin 2001; cf. Maalouf 2001). However much, though, its experience seemed liberating, it placed these social movements as political projects before new problems, both conceptual and regarding the basis of solidarity of its members (see Rorty 1989: esp. 23-43; also Levinson 1997). Whether it was used to deny a fixed identity of “race,” class, gender or sexuality, thus subverting biological determination, or to establish a new primacy of other essential categories (Woodward 1997: 28), identity appeared as signifying difference. It is necessarily shaped with reference to other identity, that is, in relation to that which it is not, most often precisely in its extreme

form of binary opposition that Saussurean literary theory and recent critical social theory considers essential for the production of difference (see Hall 1997a; Hall 1997b). Difference can be celebrated as a source of diversity, heterogeneity and hybridity, where the affirmation of change and variety is seen as achievement; but it can also at the same time exclude and marginalize those “others” or “outsiders” (Bradley 1997: 214; Woodward 1997: 35). It can symbolically represent a given (id)entity, while at the same time contribute to its social exclusion. Either way, it turns out that “identity, then, is not the opposite of, but *dependent on* difference” (Woodward 1997: 29; author’s emphasis).

### Retrospec(ula)tion

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It is, however, difficult to escape the feeling that the dilemmas faced by contemporary humanities in their efforts to articulate the concept of collective identity are a repetition of the speculative philosophical tradition’s intentions and dilemmas in its own thinking of identity. Operating on the plane of social theory, contemporary humanities’ endeavors testify to the necessity of a discursive conception of the notion and principle of identity in its logical effect and heuristic fruitfulness, but perhaps even more, within its limits and internal contradictions that, as we realize ever anew, put it into play with its necessary constitutive double: difference.

Leibniz wonders, in what seems to be full awareness of the alternating or even terminologically interchangeable mirroring, about both at once: “What identity or diversity is?” (Leibniz 1982: 229). In a way that is not free of equivocation, he draws on the Scholastic tradition of determining one fixed being, unique to each time and place. The discreteness that follows from the principle of individuation prevents their simultaneous spatial coexistence,<sup>3</sup> meaning that it prevents the existence of two examples of any one thing, whether angel or droplet of water or milk (Leibniz 1982: 306): “An ingenious gentleman of my acquaintance, discoursing with me, in the presence of her Electoral Highness the Princess Sophia, in the garden of Herrenhausen, thought he could find two leaves perfectly alike. The princess defied him to do it, and he ran all over the garden a long time to look for some; but it was to no purpose.” (Leibniz 1982: 244)

“Happy times for metaphysics those, when it was practiced at court and no greater effort was called for to demonstrate its propositions than to compare

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3 Put more precisely and mathematically, Leibniz’s “principle of indiscernability of identity” (*principium identitatis indiscernibilium*) by shifting the focus of the position of identity ( $A=A$ ) proves that there are no two things in the world that would be absolutely identical, that each individual is a world onto itself: if something is identical to itself, then each thing is identical *only* to itself; if this is the case, then each thing is different from all other things, that is, there could be no two identical things (Leibniz 1982: 230-231).

the leaves of trees!" (Hegel 1970: 53 / Hegel 2010: 366 (II 271)). Early on in "The Objective Logic", Hegel develops Leibniz's intuition regarding identity and difference by placing the two in a dialectical relationship. Thought as "internal reflection," identity, self-equation, appears as essence, as "immediacy of reflection," as "construction of the self as unified," as "pure production of one's self from the self." Such "essential identity" is in no way similar to that "abstract identity" that would "regenerate from something other," nor did it come about through "relative negation" that would unfold outside of it, rendering difference separate from identity, leaving it, as before, external. Because thought that holds before it this abstract identity and "difference as apart and separate from it," remains superficially reflexive, never reaching the knowledge of identity.<sup>4</sup> "The concept of identity, a simple negativity that refers itself to itself, is not the product of external reflection but derives from being [*Sein*] itself. Contrary to this, the identity that stays distant from difference [*Unterschied*], and the difference that stays distant from identity, are the products of external reflection and of an abstraction that arbitrarily clings to this point of indifferent difference [*Punkte der gleichgültigen Verschiedenheit*]." (Hegel 1970: 40 / Hegel 2010: 357 (II 261)).

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Hegel is particularly keen to show that what is considered the first law of thought, the law of identity ( $A=A$  in its positive expression) and the law of noncontradiction ( $A$  cannot at the same time be  $A$  and not  $A$ ), is "not at all a law of thought, but, on the contrary, the opposite of such a law." Hegel would like to show that on closer consideration, these propositions contain more than is meant by them: their own opposition as "absolute difference" (Hegel 1970: 44-45). What is expressed in this contentless and shortsighted principle of identity is "empty tautology," turning identity into "a one-sided determination that as such contains no truth," or rather contains naught but "a formal, abstract, incomplete truth." As long as this inert, "empty identity" refuses to see that in the very claim not to be difference, but its opposite, it is precisely asserting that it is something different, a difference to difference,

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4 "In its opinion, reason is no more than a loom intertwining warp (say, identity) and woof (say, difference [*Unterschied*]), joining them externally; or, if it turns to analysis, now specifically pulling out identity, and at the same time also obtaining difference alongside it; now a comparing [*Gleichsetzen*], and also a differentiating [*Ungleichsetzen*] at the same time – a comparing in that it abstracts from difference, and a differentiating in that it abstracts from the comparing. – One must completely dismiss these assertions and these opinions concerning what reason does, since they are, as it were, of merely historical interest; it is rather the consideration of all things that are that reveals, in them, that each is self-unlike [*ungleich*] and contradictory [*widersprechend*] in its equality with itself [*Gleichheit*], and each self-identical in its difference [*Verschiedenheit*], in its contradiction [*Widerspruche*]: that everything intrinsically is this movement of transition of one of these determinations to the other, and that everything is this transition because each determination is itself, within it, the opposite of itself" (Hegel 1970: 39-40 / Hegel 2010: 357 (II 261)).

and that it is in its very nature, in itself, and not only external to it – to be different. Truth will be complete only when the correct but abstract law of identity is revealed and recognized “in unity of identity with difference.” In order for this to occur, it is necessary to perceive that the very utterance of identity intending to be “in itself the truth and absolute truth” contradicts itself, and that it is indeed the opposite of truth. Identity is not the inert simplicity it claims to be, but rather, “the going beyond itself in dissolution of the self.” Finally, the formal principle of identity that claims a simple, abstract identity, hides “the pure movement of reflection in which otherness immediately disappears.”<sup>5</sup>

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Similarly, and to perhaps an even greater degree, this movement holds true for contradiction, according to which A is not at once equal to not A: the pure other of an A appears only to vanish. The different A and not A refer to one and the same A: identity is shown as “difference in one relation or as simple difference within,” and expressed as the negation of negation. Neither the law of identity or contradiction are thus simply analytical in nature; they are synthetic, with the first containing “a vanishing of the otherness” (*Verschwinden des Andersseins*), and the second holding “absolute inequality, contradiction in itself” (*absolute Ungleichheit, Widerspruch an sich*) (Hegel 1970: 45).

Just as there is a dialectic of identity, there is a dialectic of difference. By which is meant not only Hegel’s statement that difference is “expressed in a particular world,” and that just like identity “it stands for itself regardless of the other.” Even less does it mean the progression from “indeterminate difference” of the proposition that all things are different one from another, to the “determinate difference” of the proposition that arouses bafflement to the unspeculative mind: that there are no two things entirely alike (Hegel 1970: 53). Rather, this is a reference to the movement that appeared after and against Hegel, although perhaps as no more than overemphasis or completion of one of his “moments” – that of critique of abstract identity and (re)affirmation of difference. Identity itself will fall victim to ill repute, becoming impossible, contrary to itself, perhaps even sooner or later “rigid” and fatal (not only, or even not primarily, when it comes to thinking); whereas the salvation of suppressed Differences becomes beneficial. “[I]dentity, which strictly would be identical with nothing more than with itself, annihilates [*vernichtet*] itself. If it no longer goes forth to an other, and if it is no longer an identity of something, then, as Hegel saw, it is nothing at all.” (Adorno 1997a: 512; Adorno 1973: 140)

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5 “A is’ is a beginning that envisages a something different before it to which the ‘A is’ would proceed; but the ‘A is’ never gets to it. ‘A is... A’: the difference is only a disappearing and the movement goes back into itself” (Hegel 1970: 44 / Hegel 2010: 360 (II.264)).

## (Re)Capitulation

Hegel's incrementally subversive critical path of denouncing abstract identity will be traced further, with the addition of some of Nietzsche's insights, by French "philosophers of difference." Except that they will beat Hegel with the rod he himself used on Schelling for the proposal of an indifferent "philosophy of identity," as well as the fatal conspiracy of his total system and terror. They too become single-mindedly against the identical, while at the same time constituting themselves ambivalently against it: certainly against everything in-different or willingly blind to difference, willing to swallow and digest, to exile and erase, to conceal and suppress difference. "Difference" itself is the "other" to thinking and acting based on (self-)identifying. It is that which is suppressed and relegated lest it vengefully reconstitute the logos of domination; rather it would self-affirmatively affirm the alternative to masterful and glutinous logic of identity. The practical consequences of the latter, the expulsion of even the smallest "otherness," of anything that deviates even in the slightest from the Canon, is recognized straight away in the discursive regimes characterized by "fundamentalist" exclusion, all-powerful watchfulness and zeal for integration or at the very least control of the "unintegrated." The very "pretension to the universal," this pattern of systemic violence of the Same, the tyranny of resolving Projects and absolute Knowledges, must therefore be declared fatal, and its closed and coherent, unified and totalizing structure can no longer – should no longer – be legitimized by seeking its foundation.<sup>6</sup>

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When it comes to Difference, unlike the foundationalists who, prone to final grounding and ultimate solutions, demand of it submission and disappearance, the anti-foundationalists hold that Difference must never remain entirely diffuse and occasionally allow it to acquire the figure, or perhaps just a sketch, in the shape of nature, woman, the body, the Jew, the homosexual, the colored, the homeless, the marginalized... All of which are examples of entities that draw the "rage against difference"<sup>7</sup> of standardization-seeking and program-oriented conquistadors, delegated to competent institutions that house knowledge of the One, Unchanging, Eternal, Single, Universal, and reproduce epistemological and geographical, symbolic and real scars, colonizing all Other and Different. The "philosophy of decolonization" is in that sense the most direct offspring of the more general movement of discursive (self-)score-settling with Western bad conscience. The most immediate problem of this movement, however, is precisely identity: as part of its own constitution, it at once must and can never profile itself positively.

6 For representative contemporary challenges to foundationalism in this vein, see: Foucault 1971; Rorty 1980; Lyotard 1984.

7 *Wut auf die Differenz* – Horkheimer and Adorno 1997: 233.



Adorno stopped at “critical utopia,” evoking the Jewish “graven image prohibition” and the appropriately negative-dialectical concept-that-resists-to-be-conceptualized of “non-identical” (see Horkheimer and Adorno 1997; Adorno 1997b). In an attempt to establish the priority of difference in relation to all identity, even the desirability of endless proliferation of difference, and certainly the necessity of veto of all identifying self-sedimentation, the philosophers of difference reach for, let us say, a reflected difference as non-indifference. It can be expressed, as it is in Levinas, as the infinite Other in thinking the original difference (Levinas 2011a; Levinas 2011b). Or, in the case of Deleuze, as a more or less explicit privileging of difference in relation to identity (Deleuze 1994). It can also be expressed as the invitation to an adventure of difference, no longer concerned with the irruption of external reality, but a lack of self-knowledge and identity, no longer the otherness of factual entities, but ourselves as undefined beings open to the unknown (Sloterdijk 1988). Also, it can be expressed as Difference metastasized into *différend* in Lyotard, an unbridgeable gap standing at the foot of any reasoned solution and speculative resolution to age-old antagonisms (Lyotard 1988). Finally, it can be expressed as *différance* in Derrida, in that game of presence and absence, that would not rule, govern, ever have authority over anything: “Not only is there no kingdom of *différance*, but *différance* instigates the subversion of every kingdom.” (Derrida 1982: 22).

It could be said that much like Deleuze, Jacques Derrida developed a philosophy of difference; but also, and in contrast to Deleuze, he did not present it as an alternative to the dialectical philosophy of identity. In that sense, Derrida’s philosophic explorations open a double front: they attempt to show, on the one hand, that the operation of the principle of identity always rests on an unacknowledged or unknown game of difference, and on the other, that not even Difference stylized to the absolute can serve as a principle on which one could construct a new philosophical project (see esp. Derrida 1982b; Derrida 1973; Derrida, 1998). It seems that any program based on difference thus understood would already be its own betrayal, that it is precisely thought of as subversion of programmatic thought and projection, and that it would not even like to assume the role of counterbalance. Rather, it would prefer internal movement, dislocation within and by itself, dissolving and reconstituting itself, undermining unstable entities, decoding traces as signs of other traces without final referent. Finally, it seeks escape from theoretical articulation and subversion of its own concepts at the very moment of their establishment. In Derrida therefore, much like in nearly all philosophers of difference, philosophical argumentation acquires a self-negating status, terms become perishable, the reader is presented with paradoxes and metaphors, claims are inverted or their traditional meaning is suspended as soon as it is introduced. In this way, even while other loyalties are being



eschewed, one remains faithful to the highest order: avoid reduction of difference to the logic of Identity, that is to self-identification.

This Other than the self-conscious and always self-identical subject evades not only objectification and reification, but also its own systemic and methodological subjectivization. It willingly abandons attempts to grasp itself conceptually. Aware of the impossibility of holding a position from which the principle of identity could be critiqued, yet not determining such a position, Derrida prefers to use the term “deconstruction” rather than “critique” to describe his efforts. The deconstruction of the principle of identity not only demonstrates the impossibility of the critique of identity in the name of any other Otherness, but it salutes this impossibility, implying that the “self” can never be separated from (its own) other. Philosophy cannot reveal the pure I or the pure Other, but this impossibility itself can no longer be resolved in a Hegelian manner, giving the subject a mandate to mediate through the other. Yet it is also impossible, according to Derrida, to simply reject the Hegelian move and once again suppose, propose or postulate the entirely Other. Such an Other does exist for Derrida, but never in the determinations of identity and presentness. “Every Other is Entirely Other”<sup>8</sup> – this significant and suggestive phrase gestures precisely towards the aporia of the reflective movement of identity we have traced: affirmation of radical, incommensurate and irreducible Otherness is also a radical affirmation of identity, that is, both the no longer authoritative own and the ungraspable other.

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Finding its confidence and justification for all encompassing behavior in the repetition of self-referentiality (however errant), this conceited self-awareness has ended up in the paradox of “philosophical autism.” Beginning on the level of formal semantics, it belies the necessity of invocation of the one it sought to escape.<sup>9</sup> The foisting of Otherness, however, has also turned out to be paradoxical, given that it inevitably leads towards a tautological affirmation of identities. To think – yet not abandon the inquiring temptations provoked by wading through these paradoxical positions – remains the mark of that (Hegelian) matrix, within which moves Modern and contemporary thought/practice of personal and social identification.

## Conclusion

Let us, however, be fair: not everything proposed about identity has been the repetition of a theme set by Hegel. Although often a consequence of improper

<sup>8</sup> *Tout autre est tout autre* – Derrida 1994: 82.

<sup>9</sup> For various places and approaches to this same problem of self-awareness shaken by self-reflection, see, among others, Ameriks and Sturma 1995; Bermudez 1998; Castañeda 1989; Cook 2007; Frank 1991; Henrich 1970; Kapitan 1999; Shoemaker 1968; Beer 2014; Giesen and Seyfert 2016.

or lack of understanding of the speculative philosophical tradition, the compositions of contemporary social theorists certainly have not always been unreflective and inarticulate regarding this tradition. This can in particular be seen when argumentation concludes with the pacification of emphatic fascination with identity of recent scholarship and a kind of diagnosis that there has been “much ado about nothing.”

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Jenkins, for example, is very reserved toward the fact that identity has become the “standard” of the times. He reckons that popular focus on identity is to a large extent a reflection of insecurity caused by the impression that our social map no longer fits our social landscape: we are meeting others whose identity and nature are not clear to us, we are growing insecure before our own selves, the future no longer seems as predictable as it did to previous generations. But confrontations of language, tradition, ways of life, the transformation of division of labor, demographic fluctuation, catastrophe and looming apocalypse – none of these is in any sense “modern” (Jenkins 1996: 9). It was only hubris of Western Modernity that elevated reflective self-identity to an exclusively modern social phenomenon.

“Identity crises” can be traced as far back as the early modern witch hunts or Medieval expulsions of heretics, Jews, lepers and homosexuals. Going even further back into the past, “ontological insecurity” drew reactions already in the times of religions of salvation (Giddens 2010: 53). Buddhism and Augustine’s *Confessions* testify to projects of reshaping and reformation of the self. Typical social identities at the turn of the twenty-first century are, of course, to a degree historically and culturally specific, much like their situational context and the media through which and in which contemporary discourses of identity find their expression (cf. Benhabib 1992). But there is nothing new in acquiring self-awareness of social identity, the ensuing insecurity in that respect, or in discovering its importance. To suggest otherwise, Jenkins concludes, means to “risk a conceit that consigns most of human experience to a historical anteroom, and to reinvent ethnocentrism and historicism under the reassuring sign of postmodernism’s break with both” (Jenkins 1996: 10; cf. Jenkins 2008: 52-53).

One thing is certain. There is no insouciant, nor perhaps even an uncontradictory thinking of identity – indeed there might have never been – as soon as difference is thought as well. “[W]hen one remains within the established field of identity and difference, one readily becomes a bearer of strategies to protect identity through devaluation of the other; but if one transcends the domestic field of identities through which the other is constituted, one loses the identity and standing needed to communicate with those one sought to inform. Identity and difference are bound together. It may be impossible to reconstitute the relation to the second without confounding the experience

of the first.” (Connolly 1991: 44; cf. Lemke 2008) However, it is possible to critically consider their operative interrelatedness, whether “abstract” or “determined,” speculative or experienced, self-satisfied or resigned – either way – as well as to judge whether it is at all possible or desirable to think outside or beyond that logical, dialectical and (in)differential endeavor already undertaken, but ventured ever anew.

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## Predrag Krstić

### Kako misliti identitet s razlikom: društvo i teorija

#### Sažetak

U svom prvom delu ovaj članak detektuje iznenadno naglašeno interesovanje za problem identiteta na prelazu dvadesetog u dvadeset prvi vek i izlaže moderne i postmoderne konceptualizacije kolektivnog identiteta društvenih teoretičara. U svom drugom delu, članak se oslanja na baštinu filozofske spekulacije istog razdoblja. Namera je da se ukaže da mnoge dileme s kojima se suočavaju recentne društvene nauke pri nastojanju da artikulišu mišljenje identiteta i razlike, imaju svoju i dalje merodavnu „predigru“ u tematizaciji motiva njihove neizbežne strukturne i dijalektičke sa-upućenosti koju su formulisali filozofi klasičnog idealizma i „filozofi razlike“. Zaključuje se da od takve „metafizičke“ refleksije društvena teorija može da apstinira samo na vlastitu štetu i da ona ostaje njen nezaobilazni element i kada se ne obavezuje njenim nalazima.

**Ključne reči:** identitet, razlika, istost, drugost, teorija društva, filozofija

Todor Kuljić

## O pravima sa kojima smo rođeni

### Radikalno prirodno pravo i socijalna pravda od Karla Marksa do neoliberalizma

**Apstrakt:** Prirodno pravo je nadempirijski pravo koje dignitet ne duguje zakonu nego urođenim osobinama čoveka. Reč je o delu onih normativnih struktura koje krče put razvoju društva i iz kojih društva uče. U radu je pokazan različit hijerarhijski položaj prirodnog prava u kritici kapitalizma od K.Marksa do danas i njegovo različito akcentovanje kao nadpozitivnog okvira pravde. Analitički je razdvojeno (1) misaono traženje socijalne pravde u filozofiji prirodnog prava (K.Marks, M. Veber, G.Radbruh, L.Štraus, E.Bloh, Lj.Tadić) od (2) prepoznavanja odnosa moći koji su omogućavali ili sprečavali socijalnu pravdu u praksi. Analiziran je istorijski različit odnos pozitivnog i radikalnog prirodnog prava u epochalnoj svesti socijalno zgnusnutog 20. veka i današnjoj neoliberalnoj, poređena je uloga prirodnog prava u kapitalizmu i socijalizmu i razmotrena razlika između socijalne pravde odozgo i socijalne pravde odozdo. Prva je darovana, paternalistička i dozirana, druga se osvaja i radikalna je. Razvijena socijalna pravda izvan okvira kapitalizma viđena je kao radikalno prirodno pravo. Zaključak je da je danas prirodno-pravna kritika socijalne nepravde bezuticajna, ali ne i anahrona.

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**Cljučne reči:** prirodno pravo, pozitivno pravo, socijalna pravda, kapitalizam, socijalizam

Da li je socijalna pravda centralni kriteriji procene uspešnosti svake vlasti samo zato što je pravednost apsolutna vrednost koja se ne može izvesti ni iz kakve druge vrednosti (Radbruh 1980: 45)?<sup>1</sup> A o zadnjim vrednostima, zna se, nema rasprave. Nije li sa istog razloga i u politici pravda nezamenljivi borbeni pojam uprkos tome što se shvata na različit način? Interesi su u pojmu skriveni, a uz pomoć borbenog pojma svako se bori za svoje interese. Važno je u „marketingu vrednosti“ osvojiti pojam pravde, nametnuti mu poželjno značenje i osigurati hegemoniju. Koliko god da je u politici upotreba pravde dugo usavršavana, ne manje je u misli o društvu uloženo oštroumnosti i dubokomislenosti da se definiše i razjasni ova aktivnost. Prirodnom pravu se ne može lako povratiti aktuelnost, ali treba podsetiti na to da je jedan važan napor za jednakošću centriran oko ovog pojma bio klasična, ali i hegemon

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1 Članak je nastao u okviru rada na projektu „Društveni akteri i društvene promene u Srbiji 1990-2010“, br.149005 koji finansira Ministarstvo nauke i zaštite životne sredine Republike Srbije.

okosnica teorije o socijalnoj pravdi u kratkom socijalnom 20. veku. O kakvoj klasici i o kakvoj hegemoniji je reč?

Ako parafraziramo Niklasa Lumana (Luhmann) možemo reći da je klasična samo ona teorija koja stvara određeni sklop iskaza koji u istovetnoj formi više nisu mogući, ali su ipak aktuelni, a katkad i nedostaju kao još neistrošeno, ali korisno sredstvo objašnjenja. Drugim rečima to jesu one teorije koja otvaraju problem, nagoveštavaju hipotezu, ali ne sugeriraju zaključke, nego samo pružaju okvir, dovoljno jasan, ali i dovoljno elastičan za operacionalizaciju i za istoričnost istraživanja. Kada je u pitanju socijalna pravda, da li je klasična teorija za nju ponuđena još u klasičnom prirodnopravnom učenju ili tek u konkretnijoj Marksovoj klasnoj teoriji? Za pravdu nije, ali za socijalnu pravdu Marks jeste bio prekretnica, bez obzira na to što je Marks izvan prirodnopravnog diskursa, ali je s njim tesno povezan (Breuer, Internet) i nezavisno od toga što je njegova kritika nejednakosti izneta u političkoj ekonomiji, a ne u etici. Upravo stoga je, slažući se sa Ralfom Darendorfom (Dahrendorf), Ljubomir Tadić u „Filozofiji prava“ 1983. godine konstatovao da Marksova teorija prava počiva na jednoj ontološki relevantnoj koncepciji pravde (Tadić 1983: 206).

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„Na jednoj, ali ne na jedinjoj“, dodali bi danas teoretičari koji pluralizuju i relativizuju pojam pravde. Iako se može pomisliti da je ova ograda pre svega sazajne prirode, više je indikativna u istorijsko-epohalnom smislu. Da li postoji jedna ključna ili više ravnopravnih verzija socijalne pravde, to zavisi od hegemonije epohalne svesti u kojoj se iskazuju interesi vodećih društvenih grupa. Koliko god bila ontološki i sazajno relevantna, teorijska uticajnost zavisi od društvenih uslova i odnosa snaga čijih se interesa teorija dotiče. Pogotovo teorije o socijalnoj pravdi jer je ova jezgro poželjne vizije društva. Osigurati joj hegemoniju unutar epohalne svesti je, naravno, nešto sasvim drugo od teorijskog uveravanja. Globalni kontekst doba u kom je prirodno pravo relativno dugo opstajalo kao priznata osnova nerelativisane pravde nije činila samo blokovska ravnoteža straha nego i ravnoteža zakavženih pravdi u 20. veku. Habermas (Habermas) je u ovom dobu pisao o svetskom građanskom ratu koji je bio krhko zapečaćen atomskim patom (Habermas 1980: 232).

Danas su odnosi moći drugačiji. Kapitalizam je lišen alternative. Koliko god bila valjana i prodorna, i naučna gledišta mogu biti marginalizovana ukoliko iza njih ne stoji dovoljno moći i sile u svetskim razmerama. Reč je o hegemoniji koja je, po Antoniju Gramšiju (Gramsci), kulturna i intelektualna organizacija kojom se pogled na svet koji odgovara načinu života građanske klase i njenoj funkciji u društvenoj produkciji i reprodukciji širi na podvlašćene klase. Drugim rečima, uopštava se tako da je ovi prihvataju i poštuju i upravo na taj način bivaju podvlašćeni (Demirović, Internet). Stvara se natklasni



diskurs kao rezultat hegemonije naročitih kompromisa. Kada se kaže da je neoliberalizam danas hegemon, to znači da isti stvara nove obrasce ustupaka i uopštavanja i uspešno prikazuje interese posedničke klase kao opšte. Nije to nikakva nova i originalna ideologija nego je, samo zbog vlastite nadmoći, ogoljena buržoaska ideologija koja otvoreno i bez zamagljavanja ističe vlastite ekonomske ciljeve: neograničeno tržište i neograničeno privatno pravo na sredstva za proizvodnju. Time, kako zaključuje savremeni frankfurtski pravni filozof Aleks Demirović, socijalnu pravdu pomera na pravdu učinka i šansi, pa je to posedničko individualistička verzija koja pokušava da vlada bez ustupaka podvlašćenima (Demirović, Internet). Dakle, hegemonie sile globalizacije ignorišu prirodno-pravnu kritiku pozitivnog prava zato što nisu prinuđene na ustupke podvlašćenima. Da li su savremeni odnosi globalne moći dovoljan dokaz da je prirodno-pravna kritika kapitalizma anahrona i da opstaje samo kao hrabri nesavremeni nastavljac prosvetiteljstva?

Nisu, jer prirodno pravo, čak i kada nije delatni, jeste stalni moralni korektiv pozitivnog prava. Refren skoro svake kritike društva da su prirodna prava neotuđiva ne iščezava nego se samo manje ili više uspešno potiskuje. Odavno je konstatovana načelna različitost interesa koji se kriju iza pojmova prirodno i pozitivno pravo. Kod prvog su to najčešće interesi podvlašćenih, čije revolucije ono pravda. Ali nakon svake velike revolucije izvedene u ime prirodnog prava, ono samo lagano nestaje kao žrtva procesa „razaranja i relativisanja svih metapравnih aksioma“, kako je to bez većeg žaljenja konstatovao Maks Veber (Veber 1976, I: 699). Pozitivno pravo nove vlasti se učvršćuje pre svega kao tehničko sredstvo kompromisa interesa i gubi onu nadpozitivnu legitimnost koju je revolucijama pružalo prirodno pravo. Otuda prirodno pravo teško može biti režimski okvir socijalne pravde. Više je vezano za pokret nego za sistem. Da li to onda znači da je *fata morgana* moralne svesti i samo deo mistične patetike utopije?

Nikako, jer socijalna istorija prirodnog prava pokazuje periode njegovog oživljavanja i zamiranja: mnoge revoltirane manjine su u svojim efemernim bunama prizivale prirodno pravo sve dok isto nije postalo moćno oružje revolucionarnog radništva u organizovanoj i osmišljenoj marksističkoj kritici kapitalizma 19. i 20. veka. I danas se prirodno pravo koristi u politici kao sinonim osnovnih nepovredivih ljudskih prava, ali se lišava subverzivne anti-kapitalističke komponente. Nebesko prirodno pravo su tražili jeretici i seljaci još u srednjem veku. Ono je tada bilo jednako važno sredstvo moraliziranja njihove pobune, kao što je i danas sredstvo ideologizacije globalizovanog kapitalizma u obličju teorije o ljudskim pravima. To što se uvek prirodno suprotstavlja poniženom, ograničenom, potisnutom, nebitnom i otuđenom ne znači i da nema zloupotrebe ove antiteze. Iako je najčešće neuhvatljiva kategorija, prirodno pravo kao kriterij ipak ima, bar verbalno, bezuslovno

važnje. Otuda je i istorija prirodnog prava protivrečna. Svuda je ovo pravo u sebi hijerarhijski pojam u kom se suprotstavlja ono prirodno onome drugome što ga ograničava. Habermas je uočio da je prirodno pravo deo onih normativnih struktura koje krče put razvoju društva i iz kojih društva uče. U ovom kritičkom smislu, ono jeste sve samo nije ideologija, drugim rečima, segment je onih „idealnih realnosti“ koje su konstitutivni deo produkcionih odnosa (Breuer 1983:18). Zato nije dovoljno samo reći da je atribut *prirodno* antiteza *važjećem*, nego treba dodati da je i antiteza *nametnutom* pravu, pa je kao takvo dijalektički činilac prava bez obzira na to da li se prirodno trudilo da se nametne nasilnim delanjem ili pasivnom upornošću. U propisanom se uvek stiče *važće* i *nametnuto*, u prirodnom logično i normalno. Nema pozitivnog prava lišenog nasilja, niti prirodnog prava lišenog pretnje nasiljem nad nasiljem. Ako pozitivno pravo legalizuje oteto, prirodno pravo se pravda kao otimanje otegot. Jezik prvog je hladan, otpor drugog je uokviren emotivnom borbenom retorikom. Ovo i stoga što su jusnaturalisti više moralni kritičari nego pozitivistički sistematičari. Ali nije reč o maglovitim emocijama i hilijazmu, niti je u središtu radikalnog prirodnog prava zavist koja hoće da ima ono što i drugi imaju ili neće da trpi zato što drugi ima ono što on nema (Radbruch 1980: 135). Radi se o konkretnom zahtevu da se dobije nezakinuta vrednost stečena vlastitim radom. Rečeno jezikom krivičnog prava, otimanje otegot jeste neka vrsta prava na nužnu odbranu, a koje ima za cilj da osigura odbijanje napada na vrednost svoga rada. Upravo ono što je Habermas nazvao pravom na materijalnu moralnost (Habermas 1980: 90-91) jeste prirodno pravo koje pripada napadnutom. Sociološki gledano, ovde nije teško uočiti antikapitalizam, naravno ne verbalni, nego praktični sa organizovanim akterom promene. U radu bi trebalo pokazati hijerarhijsku ulogu prirodnog prava u kritici kapitalizma i njegovo različito akcentovanje kao nadpozitivnog okvira pravde.

## 1.

U razvoju prirodnog prava mogu se uočiti tri faze: (1) nerevolucionarno klasično prirodno pravo do Francuske revolucije koje je nasilni otpor vlasti pravdalo iz kontinuiteta starog božanskog večnog prava kao restauraciju, obnovu ili kao reformaciju jedne narušene pravne tradicije (Habermas 1980: 89); (2) moderno svetovno revolucionarno prirodno pravo koje nastaje sa kapitalizmom u kom svaki građanin, oslobođen kataloga feudalnih dužnosti, kao privatno lice može egoistički da sledi ciljeve maksimiranja koristi. To je revolucionarnost buržoazije koja je emancipovala građanina, ali ne i čoveka; (3) Materijalno revolucionarno prirodno pravo sa novom sadržinom koje se pokušalo ostvariti u socijalističkoj revoluciji „pomoću despotskih zahvata u građanske proizvodne odnose“. Slična ovoj je i trijada Alfa Rosa (Ros) koja prirodno pravo politički raščlanjava na konzervativno, evolucionističko ili

revolucionarno (Ros 1996: 297). Sve razvojne faze su povezane sa nasiljem, ali i sa pozitivisanjem prirodnog prava u novim državnim porecima. Kod klasičnog prirodnog prava je reč o nasilju buna lišenih projekata, kod modernog svetovnog o republikanskoj oružanoj revoluciji i rušenju feudalizma i monarhije u Francuskoj, a kod materijalnog prirodnog prava o rušenju kapitalizma u 20. veku. Unutar ovih faza bilo je zamiranja (pozitivisanja) i oživljavanja pomenutih verzija prirodnog prava.

Formalno gledano, prirodno pravo je u međunarodnim dokumentima iznova oživelo odmah posle Drugog svetskog rata u Proklamaciji UN o ljudskim pravima donetoj u Parizu 1948. Zajemčena je nepovredivost ljudskog dostojanstva nadpozitivnim pravom čiji su izvori priroda, čovek i um. Ali pravo nije oživelo samo zbog sloma fašizma i nove Deklaracije UN. Novi ideološki odnos snaga obeležen ekspanzijom socijalizma u svetu bio je još važniji činilac koji je oblikovao hegemonu epohalnu svest. Premda staljinizam započinje zajedno s pobedom jurističkog pozitivizma u publicističkoj jurisprudenciji (Tadić 1967: 98), i premda je obračun s „jurističkim iluzijama“ u sovjetskom društvu izvršen pod zastavom javnog prava minus subjektivna javna prava (Tadić 1967: 93), evropski razvijeni socijalizam jeste, svemu tome uprkos, kao autoritarna strana hegemone epohalne svesti levice u 20. veku, hrabrio jusnaturaliste zato što je izvanlagerski prirodnopravni rukavac bio druga čvrsta osnova kritike kapitalizma i socijalne nepravde. Solidna idejna, ali ne uvek i praktična spona socijalističke pozitivističke državne s jedne i prirodnopravne nedržavne levice s druge strane je, uprkos žestokim međusobnim osporavanjima u 20. veku, bio antikapitalizam. Da je praktični rezultat ove veze bila socijalna država u kapitalizmu kao izraz straha od socijalističke revolucije postalo je jasno tek kada je ista nestala nakon urušavanja evropskog socijalizma. Koliko god misao bila nerazdvojna od bića, trebalo bi analitički razdvojiti (1) misao traženje pravde u filozofiji prirodnog prava od (2) prepoznavanja odnosa moći koji su omogućavali ili sprečavali socijalnu pravdu u praksi.

To nije nimalo lako jer je prirodnopravno stanovište bilo neposredno ili posredno utkivano u materijalno pravo službenog socijalizma 20. veka, ali i u socijalnu misao raznih struja levice pre nastanka i nakon sloma evropskog socijalizma. Premda njeno prisustvo nije bilo ravnomerno u svim sferama, a ni podjednako snažno u svim razdobljima od Francuske revolucije do danas, radikalna prirodnopravna antiteza nepravdi kapitalizma je teorijski ponajviše osmišljena u raznim strujama marksizma, jer se, kako je 1960-ih pisao Ernst Bloh (Bloch), u kolenici marksizma nalazi ne samo partijnost za izmučene i opterećene, već i prirodopravna partijnost za ponižene i uvrijeđene (cit. prema Tadić 1967: 99). Ove struje najčešće navode kao princip komunističke pravde i pravedne raspodele misao iz Marksovog posthumno (1891) objavljenog spisa „Kritika Gotskog programa“: „U višoj fazi komunističkog

društva, kad nestane ropske potčinjenosti individua podeli rada, a s njome i suprotnosti između intelektualnog i fizičkog rada; kad rad postane ne samo sredstvo za život nego i prva životna potreba; kad sa svestranim razvitkom individua porastu i produkcione snage i kad svi izvori društvenog bogatstva poteku obilnije – tada će tek biti moguće sasvim prekoračiti uski buržoaske pravni horizont i društvo će moći na svojoj zastavi ispisati: Svaki prema svojim sposobnostima, svakome prema njegovim potrebama!“ (Marks 1950: 15). Iako Marks nije izričito vezivao ova gledišta za prirodno pravo, pa ni za pravdu, Bloh će upravo ove njegove postulate nazvati radikalnim subjektivnim prirodnim pravom (Bloh 1977: 224) ili poslednjom normom objektivnog prava, solidarnošću (Bloh 1977: 209). U kom smislu? Ako se složimo sa Radbruhom (Radbruch) da je pravda odvojena od države (koja pre svega štiti pravnu sigurnost građana), ali je država naknadno uključuje u svoje svrhe (Radbruch 1980: 234), onda treba skrenuti pažnju i na spoj klasno-utralne i klasnoaktivne uloge države. Pozitivizam, naravno, ističe prvu, a jusnaturalizam drugu ulogu. Razdvajanje ovih funkcija države nije ni danas besmisleno iako je manje aktuelno. Što se više ističe klasna priroda države to je veza države i pravde vidljivija, a što se više klasna strana potiskuje to je i ova veza skrivenija. Ako socijalna pravda i jeste vandržavna norma, ova ipak više obavezuje državu u socijalizmu nego u kapitalizmu. U kapitalizmu je više filantropske, a u socijalizmu nefilantropske socijalne pravde. Uzgred rečeno Marksova načela nefilantropske pravde su pre svega ekonomski, a ne etički obrazložena. Kritikujući Ferdinanda Lasala (Lassalle) zato što je verovao u državu, Marks je napisao: „Najamni radnik ima samo dozvolu da radi za svoj vlastiti život, tj. da živi ukoliko on izvesno vreme radi džabe za kapitalista (prema tome i za njegove saučesnike u gutanju viška vrednosti)“ (Marks 1950: 20). Da je, dakle, sistem najamnog rada sistem ropstva, bez obzira na to da li radnik dobija bolju ili lošiju platu (Marks 1950: 20). O kakvom ropstvu je reč?

Formalno gledano, osnova i pozitivnog i radikalnog prirodnog prava jeste ugovor i obaveznost, ali je kod drugog prinuda u ozakonjenom društvenom ugovoru niža jer je ograničeno privatno vlasništvo nad sredstvima za proizvodnju. Ugovorne strane nisu ni u socijalizmu ravnopravne, ali je u kapitalizmu u radnom ugovoru prisutna prinuda druge vrste koja izvire iz uslova proizvodnje. Ovde ugovor čini jake još jačima, a slabije slabijima (Ros 1996: 287). Zato što je svaka raspodela sredstava potrošnje samo posledica raspodele samih uslova proizvodnje, zato se ni distribucija ne može posmatrati i tretirati kao nezavisna od načina proizvodnje (Marks 1950: 16). Isto gledište još direktnije je izneto u Marksovom oštrom distanciranju od filantropa koji poriču nužnost suprotnosti: „Filantropi žele da održe kategorije koje izražavaju buržoaske odnose, ali da izostave antagonizam koji čini suštinu tih odnosa i koji je od njih nerazdvojiv. Oni uobražavaju da se ozbiljno bore

protiv buržoaske prakse, a više su buržuji nego ostali“ (Marks 1946: 169-170). Upravo je, dakle, neraskidivi spoj proizvodnje i raspodele kriterij razlikovanja Marksovog humanizma od raznih verzija filantropije. U suprotnom, ako su *proizvodnja* i titular njenih vlasnika legitimni i za procenu pravednosti nevažni zato što su nedodirljivi, a samo je *raspodela*, koju određuju isti oni koji i nadziru kriterije pravednosti, podložna kriterijima pravednosti, onda je kapitalizam bezalternativan. U prvom slučaju sistem se može menjati, u drugom samo oplemenjivati.

Trebalo je na samom početku istaći razliku između filantropije i humanizma da bi se jasnije uočile granice savremenog hegemonog diskursa o pravdi koji kritikuje neoliberalnu brutalnost konkurencije i indiferentnost tržišta prema pravednosti raspodele. Isti diskurs moralizuje kritiku jer se ne bavi uzrocima nego samo žrtvama (Creydt 2005). Radi se o filantropskom hegemonom pojmu pravde koji je u osnovi formalan jer se bavi samo nepravednom raspodelom, a ne i strukturom proizvodnog odnosa, pa samim tim ne dovodi u pitanje hijerarhije. Marksovski rečeno, ne može se pojmom pravde ni moralizmom dovesti u pitanje kapitalistički sistem. Sistem se uspešno napada tek kada se pokaže podela na one koji stvaraju vrednost i na one koji ga prisvajaju. Dok su filantropi upućeni na pojam pravde jer kritikuju nejednakosti na nivou raspodele, humanisti, pak, nejednakost vide dublje, na nivou proizvodnje. Prvi se kreću u bespomoćnom krugu žrtava i manje ili veće pomoći žrtvama, a krug pitanja da li se strukture mogu prevazići je izvan njihove perspektive. I hrišćanstvo spada u prvu struju jer je tu pravda ponajviše utopljena u milosrđu. Pravda je ljubav prema bližnjem, božja milost ili kaznena odmazda Strašnog suda (Radbruch 1980: 269-270).

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Pre nego se definiše druga, nefilantropska perspektiva treba sadržinski odrediti strukture proizvodnje. Kada se ove jasno definišu kapitalizam ne ispada nemoralan nego sistem koji stvara antagonizme, nepomirljive suprotnosti, koje ne treba *a priori* moralizovati. Sam Marks se ne poziva ni na moral ni na pravdu (Tadić 1975:132 ; Marks 1950: 14-15). On samo kaže da se „u toku radnog procesa, uprkos ugovoru jednakopravnih subjekata, stvara vrednost koja u nadnici nije naknađena. Ugovor o radu, pa samim tim i pravo, prikriva stvarni odnos eksploatacije i potčinjavanja radnika. Tako se odnos razmene ekvivalenata pretvara u puki privid jednakosti“ (Cit.Marks, prema Tadić 1975: 135.). To što se danas ove ocene zaboravljaju jer pravdu diktiraju antiegalitaristi, koji klasni gnev tumače kao zavist gubitnika, kao i to što su propali ciljevi socijalističkih revolucija službeno proglašeni zločinima pa je klasna pravda relativizovana, nije saznajnoteorijski nego ideološkokritički argument. Sociološki gledano, kada je reč o zakavženim pravdama, ne radi se o prolaznom moraliziranju pravičnosti nego o moćnim ideološkim strukturama koje počivaju na tvrdim klasnim interesima.

U filozofiji prirodnog prava je pravda uvek zauzimala centralno mesto (Ros 1996: 302), dok je pravni pozitivizam bio i ostao najčešći okvir relativizacije pravde. Pozitivisti rado dodaju da je prirodno pravo metafizička konstrukcija, da se nadzakonska pravednost ne može jasno odrediti nego može samo pravo, tj. autoritarno ozakonjena pravda. Pošto nauka ne može odgovoriti šta je pravedno, taj zadatak se poverava volji i moći, i otuda pravna sigurnost prethodi pravdi (Tadić 1975:146). Na delu je sila zakona manje ili više lišena vrednosti prirodnog prava. Najekstremniji pravni pozitivizam sa načelom „naredba je naredba“ bili su bespogovorno i bezsavesno sprovedeni zločinački zakoni nemačkog fašizma. Svim verzijama pozitivizma je zajedničko to da umesto pravde i jednakosti treba istaći sigurnost kao najviše načelo prava.

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Sigurnost pruža država, a da je samo veza sile i prava sticala filozofska obrazloženja ne bi u moru pozitivnog prava ni bilo istorije prirodnog prava. Međutim, nije bilo tako. Razvijajući Marksovu misao da je buržoasko pravo po svojoj sadržini pravo nejednakosti kao i svako pravo, jedna struja prirodnopravnih pisaca je u kritici kapitalizma isticala drugo načelo – da je prirodno ili umno pravo jače od svakog propisa. Ovim je zaoštrena napetost između pravnog idealizma i pravnog formalizma, uprkos nespornom stavu da bez pravne sigurnosti nema ni pravde. Premda su jasno izdvajali osnovnu pravdu, ni svi jusnaturalisti ovu nisu akcentovali na isti način. Ali su se slagali u tome da ni Marks nije branio strogi egalitarizam nego slobodu i individualizam, a sve to izvan kapitalizma – sistema prividne slobode. Ovde će biti prikazana prirodnopravna gledišta Lea Štrausa (Strauss), Ernsta Bloha i Ljubomira Tadića koja su nastala u hladnoratovskom periodu ravnoteže između leve i desnice jer se suština ovih teorijskih nastojanja može najbolje sagledati ne samo tamo gde je najsistematičnije razvijena nego i tamo gde je bila aktivni deo hegemonije epohalne svesti leve. Da li je ista danas anahrona, samo zato što je manje uticajna?

## 2.

Nikako, i ne samo zato što anahronost prirodnog prava nikada ne treba postovećivati sa njegovom manjom moralnom uticajnošću. O anahronizmu prirodnog prava bi se moglo govoriti samo u slučaju da su iz temelja promenjeni društveni odnosi kapitalizma. Ali nisu, a ponajmanji dokaz za to je upadljiva razlika između istorijskoepohalne hegemonije retorike 20. veka, koja je bila centrirana oko stava da je kapitalizam izgrađen na organizovanoj pohlepi i beskonkurentskog govora 21. veka koji ponavlja da isti sistem počiva na samoinicijativi preduzetnika čije motive ne treba moralizovati. Kapitalizam je ostao kapitalistički, nije izmenjena čak ni njegova osnovna ocena, ali je izmenjena hegemonija ove ocene. Drugačije rečeno, ono što je nekada bila manje normalno danas je daleko normalnije. Danas se ističe samoregulacija

(sigurnost ulaganja), a pohlepa se planski zaboravlja, za razliku od prošlog veka u kom je više pažnje privlačila ocena da je od Loka (Locke) do savremenih liberala egoizam u središtu morala i buržoaske pravde. Danas je, pak, cilj raznih antiegalitarista i utilitarista regulisati sapostojanje raznih egoizama, neutralizovati pojam pohlepe i relativizovati pojam objektivne pravde koja, kako je hladno upozorio Gustav Radbruch, ne označava moralnost pojedinca nego odnos među ljudima.

Menja se i antropološko pravdanje nejednakosti, pa tako, za razliku od raznih konzervativaca koji su pisali o lenjoj i glupoj većini, savremeni antiegalitaristi pišu o nejednakoj raspodeli sposobnosti. U jezgru neoliberalizma stoji apologija antiegalitarističke preduzetničke i menadžerske profitabilne spretnosti i obrazaca umirujuće distributivne pravde koja bi rečenu spretnost sistemski štitila od destruktivnog nezadovoljstva i uverila mase ne u pravednost sistema nego u normalnost nejednakosti. U prošlom veku zakavženih hegemonih epohalnih socijalnih pravdi ovaj napor bi bio okvalifikovan kao ogoljeni buržoaski egoizam koji jača apetite za sticanjem materijalnih dobara i novca. Sve to uz oštro razdvajanje razuma koji se svodi na kalkulaciju i isplativost od umnosti koja brani solidarnost. Danas normalizovani pojam profitabilnosti spaja i zamagljava oba pojma. Zato je malo reći da su današnje osude egoističnih motiva znatno blaže. Treba dodati da je iste ranije osude tranzicija pretvorila u pohvale.

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Kod analize ovog radikalnog preobražaja socijalne pravde treba se najpre osvrnuti na to kako je kritika socijalne nepravde obrazlagana u kratkom 20. veku koji je bio gusto vreme u socijalnom pogledu. Upravo je nerazdvojjivost prirodnog prava i socijalne pravde nametala socijalnu gustinu minulom stoleću, odnosno pokušaju da se na državnom nivou svladaju klasne razlike. Trebalo bi pokazati zašto su tadašnji jusnaturalisti u kritici pozitivnog prava pre svega sporili Maksa Vebera? Ali pre toga valja nešto reći o tome kako je sam Veber video prirodno pravo i zašto mu je početkom 1920-ih u svojoj kazuistici prava posvetio nesrazmerno kratak, ali sažet odeljak u prvom tomu „Privrede i društva“ (Veber 1976, I: 690-700). Pored istorijskoepohalnih, ovde bi trebalo skrenuti pažnju i na neke gnoseološke činioce relativizacije prirodnog prava.

Iako u pomenutom odeljku ne pominje Karla Marksa, Veberovu odredbu prirodnog prava bi malo koji marksista izričito negirao: „Prirodno pravo je skup normi koje preeminentno važe, nezavisno od svakog pozitivnog prava i nasuprot njemu, i koje svoj dignitet ne duguju samovoljnom ozakonjenju već, naprotiv, legitimišu obaveznu moć pozitivnog prava. Dakle, norme koje su legitimne ne zahvaljujući tome što vode poreklo od legitimnog zakonodavca, već zahvaljujući svojim čisto unutrašnjim kvalitetima“ (Veber 1976, I: 692). Stoga je prirodno pravo specifični oblik legitimisanja poredaka stvorenih



revolucionarnim putem (Veber 1976,I: 692). Slično Marksu, i Veber se bavi vezom prava i ekonomije, ali je za njega sloboda ugovaranja bitan element prirodno prava, a dobrovoljni racionalni ugovor je „jedan od univerzalnih formalnih principa konstrukcije prirodno prava“ (Veber 1976,I: 693). Ne čudi što su za „klasno svesnog buržuja“, kako je sebe Veber nazivao, „većita nezastariva prava na slobodu“ upravo sloboda ugovaranja, svojina i slobodna konkurencija (Veber 1976,I: 694). Za Vebera je to Ustav SAD, a za isti dokument iz 1793. i Habermas vezuje građansko prirodno pravo koje štiti sigurnost ličnosti, prava i imovine (Habermas 1980:110). Zanimljivo je da ni Veber ni Habermas kod komentara ove slavne američke konstitucionalne povelje ne pominju sigurnost poseda robova koju je ista neslavno štitila. Teško je verovati da je u pitanju omaška. Zato Veberu i Habermasu nasuprot treba reći da je, uprkos svetlim načelima, građansko prirodno pravo u SAD sve do 1870-ih teško svrstati u moderno prirodno pravo. Nije to bio tvrdi egoizam običnih građanskih privatnih interesa, nego robovlasničkih, a što je, naravno, nespojivo sa jusnaturalizmom moderne koji je proklamovala Francuska revolucija. Iako polazi od toga da su „materijalna merila za ono što je legitimno, sa stanovišta prirodno prava ‘priroda’ i ‘razum’“, Veberu nije smetalo da isto prepozna u SAD, uprkos robovlasništvu. Ali je zato nešto drugo sasvim jasno raspoznao. Unutar prirodno prava jasno i oštro je razdvojio formalno racionalističko prirodno pravo od materijalnog prirodno prava (oba su povezana sa klasama), a ovo zadnje „pretežno za socijalističke teorije o isključivoj legitimnosti sticanja sopstvenim radom“ (Veber 1976,I: 695). Radbruh ovu podelu prirodno prava pripisuje Emilu Lasku (Lask), nemačkom filozofu prava (Radbruh 1980: 28), koga Veber takođe u pomenutom odeljku uopšte ne pominje. Pravdajući kapitalizam Veber realistično upozorava da se kod socijalističkih teorija „odbacuje ne samo nezarađena dobit, stečena na osnovu nasledno prava ili zajemčenih monopola, već i formalni princip slobode ugovaranja i načelna legitimnost svih na osnovu ugovora stečenih prava, jer se za svako prisvajanje materijalnih dobara sada materijalno mora ispitati i koliko se ono zasniva na radu kao osnovi za sticanje“ (Veber 1976,I: 695).

Ni gornja podela prirodno prava nije ostala bezuticajna, premda je, kako to obično biva kod klasičnih ideja, na različit način tumačena. Radbruh je ovu podelu dodatno relativizovao u svojoj pregnantnoj studiji „Filozofija prava“ iz 1930-ih kada je pisao o „prirodno pravu sa promenljivom sadržinom“ (Radbruh 1980: 28) i upozorio „da se pitanju o ‘pravednom’, tj. ispravnom pravu može priznati opšte važenje, ali svakom odgovoru na njega može priznati važenje samo za neko dato društveno stanje, samo za jedno određeno vreme i jedan određeni narod“ (Radbruh 1980: 27-28). Rečeno jezikom Ernsta Bloha, veliki delovi prošlog su neprolazni, za razliku od njihove osnove (Bloh 1966: 142). Bilo bi prestrogo kod relativističkih tumača prirodno prava (Veber, Radbruh) tražiti pre svega pozitivističku aroganciju prema



nadempirijskom kao normativnom pravnom merilu, a zanemariti gnoseološki novokantovski skepticizam koji je u njihovoj osnovi. Nije, naime, svaki relativizam ove vrste etički cinizam. Pravni relativizam i različita skepsa prema prirodnom pravu su kod struja koje su se oslanjale na novokantovstvo izvirali iz u različitoj meri istaknute nepremostive suprotnosti između stvarnosti i vrednosti. Što se više u saznavnom pogledu razdvaja stvarnost od vrednosne procene, to su naravno i nadempirijska merila socijalne pravde manje uverljiva.

Dok je Radbruch video Vebera kao pravnog relativistu (Vračar 1980: XXIII), Horst Drajer (Dreier), savremeni nemački filozof, pak, sledeći Radbruha, vidi razliku između pomenute dve Veberove verzije prirodnog prava u tome što pozitivisti operišu sa dvostrukim pojmom prava, dok jusnaturalisti imaju monističko rešenje (Dreier 2007: 145; Radbruch 1980: 28). Prvi mogu relativisati i pluralizovati pravo, drugi znatno manje. Prvi razlikuju realno i normativno, ali su uz to i vrednosno neutralni, drugi su strožiji i više vezani za vrednosti i za pravdu (Radbruch 1980: 28). Kod prvih je pravda relativna i pluralna, kod drugih je napetost između prava i pravde u prvom planu. Još više od toga, drugi nemoralnom pravu poriču i pravni karakter (Dreier 2007: 145). Nije teško uočiti da pozitivisti odvajaju pravo i moral, dok jusnaturalisti moraliziraju pravo. Kod drugih je vidljiva napetost između pravne sigurnosti i pravde, kod prvih iste napetosti nema, jer nema ni moralizacije pravde. Otvoreno je pitanje ima li pravde bez pravne sigurnosti, ali i ono ima li države bez pravde?

Ni Veberu ova pitanja nisu promakla, uprkos tome što se uzdržavao od vrednovanja. Iako ignoriše Marksa, Veber, slično njemu, prilično jasno uočava da je materijalno prirodno pravo u stvari pravo na rad, na minimum egzistencije, „pravo na potpuni proizvod sopstvenog rada“, dodajući da je u kapitalističkim uslovima isto nemoguće zbog tržišta: „A uopšte, gde god je dobit određena time što se vrednost proizvoda izvlači na tržištu sa slobodnom konkurencijom, sadržaj pomenutog prava pojedinaca neizbežno gubi smisao individualnog ‘rezultata rada’ koji više uopšte ne postoji, i može očuvati smisao samo kao kolektivni zahtev onih koji su svi zajedno u istom klasnom položaju“ (Veber 1976, I: 697). Samo se naizgled, u odnosu prirodnog i pozitivnog prava, Veberovo realistično priznanje podudara sa Marksovim. Međutim, ocene ispadaju potpuno oprečne ako se ima na umu da je kritičnost prema kapitalizmu bitno drugačija, kao što je uostalom i vizija poželjnog društva kod ova dva klasika različita. Sa istog razloga nije ni kritičnost prema Veberu ista kod svih jusnaturalista. Dok su marksisti, Bloh i Tadić, kritikovali Vebera zbog apologije kapitalizma, Leo Štraus ga je napadao zbog opštije vrednosne ravnodušnosti. Uprkos razlikama, sva trojica su u Radbruchovom smislu dosledni jusnaturalisti.

Odmah treba dodati da je i realistični Veber u prirodnom pravu uočio oruđe kritike nejednakosti, ali on ovu kritiku u vrednosnom pogledu nije razdvajao od „patrijarhalne kritike postojećeg odozgo, kao što je slučaj kod istorijskih škola običajnog prava“ (Veber 1976, I: 692). Veber vidi uticaj „dogmi prirodnog prava“ u tome što su „jačale sklonost ka logički apstraktnom pravu, a uopšte, moć logike u pravnom mišljenju“, ali i priznaje „da mu je i materijalno uticaj bio svuda značajan“ (Veber 1976, I: 697). Pri tome nije nezanimljivo njegovo traženje razumnog u mešanju prirode i logike. Premda i pozitivno pravo traži vlastitu legitimnost u razumnosti, pobude prirodnog prava su ipak daleko dublje od golih imperativa vlasti. U odeljku o prirodnom pravu ni Veber, kao uostalom ni Marks, ne pominje pravdu, ali je na poseban način omalovažava kada piše o materijalnom prirodnom pravu lišenom racionalističkog karaktera. Koliko god bili realistični, sve što je neracionalno (proračunljivo, predvidljivo) jeste za pozitiviste norma nižeg ranga. Sam socijalizam je, po Veberu, još više neracionalan jer ništi i samo prirodno pravo: „Nastanak socijalizma značio je pre svega dominaciju dogmi materijalnog prirodnog prava u glavama masa, a još više u glavama njihovih teoretičara iz slojeva intelektualaca. Pod uticajem ovog antimetafizičkog radikalizma eshatološko očekivanje masa je tražilo oslonac u proroštvima umesto u postulatima. Usled toga je u sferi revolucionarnih pravnih teorija evolucionistička dogmatika marksizma uništila učenje o prirodnom pravu“ (Veber 1976, I: 698). Veber to bez šireg obrazloženja naziva napadom materijalnih postulata odozdo u ime socijalnih ideala.

Ali glavni razlozi slabljenja prirodnog prava su, po njemu, opštije prirode. Veber ih vidi i u tome „što svi metajuristički aksiomi podležu neprekidnom razlaganju i relativizaciji, dok je delimično za to kriv i juristički racionalizam, a i skepsa modernog intelektualizma uopšte“ (Veber 1976, I: 699). A zbog kompromisa interesa nezadrživo prodire pravni pozitivizam i ruši nadempirijsko dostojanstvo prirodnog prava i slabi njegovu metajurističku utvrđenost. Drugačije rečeno, nadempirijsko dostojanstvo prirodnog prava je vrela poluga samo u trenucima promena, revolucija, kada ova parola postaje nužno patetična snaga, a kasnije ga razjeda kompromis interesa. Po Veberu je, dakle, prirodno pravo ne samo neracionalno nego i efemerno. A kakvo bi inače bilo kod pisca koji je kapitalizam shvatao kao sudbinu?

### 3.

Pa ipak, možda je donekle shematski reći da je kritičnost prema prirodnom pravu bila veća što je kapitalizam više shvatan kao sudbina. Postoje i drugi razlozi odbrane prirodnog prava, ali i drugačije kritike Vebera čija odbrana pozitivizma nije bila na visini njegove opšte teorijske kazuistike prava. Koliko god da je rečena Veberova pozitivistička nekritičnost smetala Blohu i Tadiću,

ista nije bila ključna u Štrausovoj kritici Vebera. Štrausu je više smetao opšti-  
ji Veberov nihilizam od njegove apologije kapitalizma. Nihilizam se ogleda  
u Veberovom odbacivanju i relativisanju pravde, a sve u ime potrebe razli-  
kovanja činjenica i vrednosti, a ne njihovog povezivanja. Nisu sve vrednosti  
istoga ranga, niti su, kao što je Veber mislio, etički imperativi isto toliko su-  
bjektivni kao i kulturne vrednosti (Strauss 1971:45). Veber je „relativizirao“  
etiku, izričito je Štraus ustvrdio (Strauss 1971:45), i to tako što je uzimao za  
gotovu stvar to da ne postoji nikakva hijerarhija vrednosti, da su sve vred-  
nosti istoga ranga (Strauss 1971: 63). Ova relativizacija je važan uzrok tome  
što i savremeni liberali sa olakšanjem odbacuju prirodno pravo – a to vodi  
nihilizmu (Strauss 1971:12; Tadić 1971: 278). Za prirodnopravne filozofe,  
pak, pravda nije samo ugovor nego je više od toga – deo prirode: „Teza da  
su pravo i pravda ugovorni podrazumeva da se ne temelje na prirodi, da su  
joj potpuno suprotni i da, eksplicitno, proističu iz samosvojnih odluka za-  
jednica. Pravo i pravda nemaju drugi temelj izuzev jedne vrste sporazuma,  
a sporazumom može da se stvori mir, ali ne i istina“ (Strauss 1971: 18-19).

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Kritika Vebera bila je polovinom 20. veka okosnica i Štrausovog osporava-  
nja relativizma antiegalitarista. „Ako kažemo“, nastavlja Strauss, „da je prav-  
da dobra, onda o njoj moramo da razmišljamo kao o nečem što se potpuno  
razlikuje od zakona. Zato ćemo pravdu da definišemo kao običaj da se sva-  
kome da ono što mu po prirodi pripada“ (Strauss 1971: 129). Ovo je ključna  
prirodnopravna antiteza pravnom pozitivizmu. Dakle, ništa što šteti drugi-  
ma ne može biti pravedno, ili pravednost je pravilo da se drugima ne nanosi  
šteta (Strauss 1971: 129). Dvadesetak godina docnije Tadić je bio još izriči-  
tiji: „Klasično prirodno pravo u svojim fundamentalnim stavovima antici-  
pira načela modernog socijalizma kao pravednog društva“ (Tadić 1971:280).  
Premda se disidentu Tadiću ne može pripisati boljševizam, ovi njegovi sta-  
vovi su bili i normalni i prosečni u dobu kada je hegemonia epohalna svest  
bila levičarska, a to je bila okolnost koju je omogućavala struktura u senci,  
moćni Sovjetski Savez. U Hladnom ratu je na delu bila svojevrсна dijalektika  
autoritarnog i pravednog. Senke pripadaju napretku, zaključivao je Bloh, a u  
usponu kapitalizma ono progresivno bilo je mračno progresivno (Bloh 1966:  
138). Dijalektički gledano, napredak nije uvek bio ugodan, a razvoj prirod-  
nog prava je bio neravnomeran. A to što su danas isti stavovi u manjini, tj.  
jesu i dalje verbalno normalni, ali nisu u realnosti prosečni, rezultat je slo-  
ma pomenute moćne strukture. Skoro pola stoleća pre ovog sloma Štraus  
je pisao da se pravda i prinuda uzajamno ne isključuju: „U stvari ne bi bilo  
pogrešno opisati pravdu kao jednu vrstu dobročiniteljske prinude. Pravda  
i vrlina uopšte nužno predstavljaju jednu vrstu moći“ (Strauss 1971: 117).  
Tačnije, bez moćne zaštite nema realne pravde. Nije li Leo Štraus u svojim  
predavanjima odmah nakon Drugog svetskog rata nagovestio otklon od li-  
beralnog kanona da bez pluralističke slobode nema pravde?

Ako je ova tvrdnja možda i preterana, sasvim je izvesno da je u radovima prirodnopravnih pisaca, najpre kod nemarksiste Štrausa, a desetak godina kasnije i kod marksista Bloha i Tadića, jasan otklon od pozitivizma u izričitim ocenama da je pravda običaj ili pravilo, a ne i zakon. „Pravedan je onaj čovek koji ne daje svakome ono što možda besmisleni zakon određuje, već ono što je dobro za drugog, tj. ono što je po prirodi dobro za drugog“ (Strauss 1971:129). To je teško postići, to mogu samo mudri ljudi, ograđuje se Strauss (Strauss 1971:129). Upravo su oni zaslužni za otkriće prirode, ili za fundamentalno razlikovanje prirode i konvencije, koje je još u antici bilo nužan uslov za pojavu ideje o prirodnom pravu. Još je Heraklit beležio da temelj pravde nije nadljudski, a Aristotel je u Nikomahovoj etici pokazao da je moguće priznati prirodno pravo, a da se ne veruje u božansku pravednost (Strauss 1971: 84-85).

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Na neantički način prirodno pravo osporavaju građanski pozitivistički pravnici tvrdeći da je sloboda u smislu zakonski regulisanog pluralizma osnova demokratije kao i savremeni antiegalitaristi koji prirodno pravo ne smatraju važnim kod definisanja pravde. Zašto? Zato što prirodno pravo (koje ako se prihvati mora biti prioritarno) potkopava relativizam kod tumačenje pravde i postulat o simetričnom pluralizmu pravdi. Lako je pojmljivo da čim se pravda pluralizuje slabi kritika kapitalizma, tj. bleđi ključna nepravda skrivena u samom produkcionom odnosu. Antiegalitaristi dobro znaju da onaj onaj ko polazi od prirodnog prava ne pluralizuje, a samim tim ni relativizuje mnogo pravdu. Naprotiv, deterministički gledano, markirajući osnovnu nepravdu oko prisvajanja viška vrednosti jasno hijerarhizuje izvore nepravde.

Koje su granice pravde u pomenutim pravama nagoveštene? Šta je u prirodnom pravu prirodno, a šta je prazan moralizam? Težnja vrlini jeste gornja granica antičke prirodnopravne ideje. Znatno radikalnije će ovaj nalog u 20. veku obrazložiti Ernst Bloh. On je ideju ljudskih prava centrirao oko ljudskog dostojanstva i prevazišao antičku vezanost prirodnog prava za vrlinu. Bilo je dovoljno samo nešto drugačije akcentovati Marksovu ideju „da nema ljudskog dostojanstva bez nestanka bede“ (Bloh 1977: 197). Socijalna utopija teži ukidanju bede, a prirodno pravo ukida poniženja. Pri tome Bloh povezuje socijalnu utopiju sa prirodnim pravom zato što „oboje pripadaju plemenitoj moći anticipacije nečeg boljega od onog do sada postalo“ i zato što oboje ističu iz „carstva nade“ (Bloh 1977: 197; Tadić 1967: 99). Nije naodmet dodati da u ovim gledištima nada nije puka terapijska ugodna i nerealna iluzija koja snaži optimizam, nego je delatna sila u kojoj je prisutna težnja ka dostojanstvu. Suvišno je dodavati da te sile nema ukoliko se puki lični ponos shvati kao sinonim dostojanstva. Ne, to je strukturno osigurani humani ponos utemeljen pravnom sigurnošću i prirodnim pravom koje teži ukidanju poniženja (Bloh 1977:195; Tadić 1967: 99). Snaga koja leži u pomenutoj težnji za uspravnim hodom nije goli ponos, nego je osmišljeniji grupni napor,

ako se ima na umu koliko je kod Bloha važno isticanje „utopijsko-konkretnih sadržaja obećanja na koje se oslanja stvarna revolucija“. Saznajnosociološki to je još 1789. bilo sadržano u revolucionarnom upozorenju: „Veliki nam izgledaju velikim samo zato što smo na kolenima... Podignimo se“ (cit. prema Tadić 1967: 274). Dakle, autentična pravda stiže odozdo, a ne odozgo. Habermas će dodati da je revolucija istina sa novom sadržinom (Habermas 1980: 119). Umesto pravde koja dolazi odozgo, kao patrijarhalna milost ili kao Strašni sud, Bloh ističe pravdu odozdo, socijalističku revoluciju, revolucionarni tribunal koji je, doduše, nužno zlo, ali se bez njegovog kratkotrajnog udarca ne mogu instalirati ljudska prava (cit. prema Tadić 1967: 97; Bloh 191-193). Ali, da bi se ista ostvarila potrebno je napustiti „žablju“ perspektivu, sa veće visine sagledati strukturne antagonizme i umesto praznih romantičarskih sanjarenja spoznati logiku društvenog razvoja.

Sledeći Marksa, Bloh i Tadić su pravdu tražili unutar ljudskih prava, ali s onu stranu kapitalizma: „Sloboda jednakost, bratstvo, prokušana ortopedija uspravnoga hoda, muževnoga ponosa, ljudskog dostojanstva ukazuju daleko preko građanskog horizonta“ (Bloh 1977: 165). Ideja uspravnosti postoji još kod Hegela, a Bloh će podvući njen individualistički karakter: „Prirodnopravna težnja bila je i jest *ono uspravno kao pravo*, tako da se ono poštuje na *osobama*, osigurava u njihovu *kolektivu*“ (Bloh 1977:197). Koliko antropološko načelo „ne ostani ono što jesi, već postani ono što još nisi, ali *možeš* postati“ (Tadić 1967: 76) sistemski osigurava kapitalizam? Pruža mu ograničene šanse, ali ga sistemski neosigurava. Zato je kod Štrausa pravda oslovnjena na klasičnu tradiciju prirodnog prava, a kod Bloha i Tadića je slična ideja izričito posredovana Marksovom kritikom pozitivnog prava. Sva tri pokušaja pripadaju istoj prirodnoj struji, ali sa različito naglašenim antikapitalizmom.

#### 4.

Kraj svega rečenog treba imati na umu i jednu specifičniju stranu prirodnog prava i socijalne pravde kao trajnih gnoseoloških pitanja, a ne kao definitivnog odgovora i postulata. Ako pođemo od Kantovog upozorenja da um nije skup odgovora nego je skup onih pitanja i kategorija koje su u stanju da tek primenom na neku građu omoguće sudove, onda socijalnu pravdu treba centrirati oko „utopijski tolerantne ciljne tačke“ kao misaonog oslonca za ustanovljenje najvažnijih kriterija istinske jednakosti. Prirodno pravo i socijalna utopija su, blohovski rečeno, izrasli iz rđavog stanja, potiču iz carstva nade i streme ukidanju bede i poniženja. Na kom nivou se traži uzrok rđavog stanja i bede jeste glavno pitanje čiji jasniji i delatni odgovor može pružiti diskurs o radikalnom prirodnom pravu i utopiji. Dijalektički gledano nije istina ono što jeste, nego ono što tek može biti. Ukoliko ova bitna

istina nije još ostvarena onda smo svesni otuđenja, a ako već jeste, onda smo odista otuđeni i lišeni utopije. Utopija nije prazan san ni obična kritika postojećeg. Nije to čak ni banalno posredovanje napetosti između fakticiteta i normativiteta ni izmaštani deo prakse koji menja društva, nego je više od toga. Kod konkretne utopije, kako zapaža nemački filozof Hans-Diter Bar (Bahr), delovati ne znači samo posredovati napetosti, nego ih i stvarati (Bahr 1969: 132). Osmišljavaju Blohovu zamisao konkretne utopije kao ontologije još nenastalog, Bar dodaje da ova mora i stalno uzmicati pred mogućim ostvarenjem, pa čak i sebe shvatati kao iskrivljenu svest (jer je i sama deo stvarnosti), ali ne i kao deo iskrivljene svesti vladajuće ideologije. Zato i nosi u sebi klicu vlastite moguće propasti u formi praktične utopije (Bahr 1969: 140). Važno je imati na umu pomenute crte konkretne utopije jer jasnije markiraju razliku između prirodnog i pozitivnog prava. Potonje nije kadro da otvori viziju boljeg jer zbog društvenointegrativne prirode kod njega nema kritike realnog. Nema utopije tamo gde je u jezgru pravde pozitivno pravo.

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Ovako uokvirenoj viziji radikalnog prirodnog prava upućivani su različiti prigovori. Kontrafaktički gledano, pravda ovde nije realni proces nego je puki san i utopija rezervisana samo za onoga ko ne prihvata nesavršeni svet. Bloh je uzvraćao da je konkretna utopija san na javi, a ne sanjarenje niti fakticističko gmizanje. To je obećanje objektivnog, realnog i mogućeg, humana vizija, dimenzija budućnosti koja i nakon nas dalje vredi, jer što se nikada i nigde nije dogodilo, to jedino nikada i ne zastareva (Bloch 1966: 112-117). Na drugi način su konkretnu antikapitalističku utopiju pokušali da relativišu oni filozofi pravde koji su polazili od više ravnopravnih pravdi trudeći se da neutrališu postojanje temeljne nepravde u produkcionom odnosu savremenog kapitalizma. Ovakve tvrdnje je sporio Habermas, tvrdeći da se socijalna pitanja danas regulišu pregovorima i kompromisima, a ne postupkom racionalne argumentacije i upozorio da nije valjano razlikovanje između pravila diskursa pravde i postupka usaglašavanja interesa koji se svodi na pogađanje oko pravde (Cit Habermas prema Dornheim, u. a. 1999: 14-15). Kritički diskurs o pravdi koji stoji izvan njene relativizacije i bezobalne pluralizacije jeste danas nemoćan zbog novih odnosa realne moći, pa mu se lagodnije prigovara i to da odstupa uvek od logike situacije i da sledi indeterminističku aproksimativnu teoriju pravde sa premisom „trebati umesto moći“. Drugim rečima, da je danas odveć normativan i nedovoljno realan. I da umesto toga treba prihvatiti pluralističku teoriju pravde, pri čemu današnji pluralisti slede Poperovo pravilo koje traži toleranciju prema svima koji nisu netolerantni i koji ne propagiraju netolerantnost. Naravno, ne osvrću se na Markuzeovu tezu o represivnoj toleranciji, jer i ovu opasku drže za netolerantnu. „Tolerancija koja je životni element i zalag slobodnoga društva nikada se neće dobiti od aktualnih moći. Pod prevladavajućim okolnostima tiranije većine, moguće ju je osvojiti jedino trajnim trudom radikalnih manjina koje

su voljne slomiti tu tiraniju i raditi na pojavi slobodne i suverene većine – netolerantne prema manjinama i militantnim praksama, neposlušne prema pravilima ponašanja koja tolerišu destrukciju i ugnjetavanje“ (Marcuse, Internet). Antiteza između nekadašnjih savremenika Popera (Popper) i Markuzea (Marcuse), tj. između tolerancije samo prema tolerantnima i represivne tolerancije, tj. netolerancije prema ugnjetavanju, pregnantno iskazuje različitu ulogu pravde kod pravdanja i kod kritike kapitalizma. U Hladnom ratu je ova antiteza iskazivala dve hegemonne zakavžene pravde. Što je kao klasik preživeo Karl Poper zaslužan je nepredvidljivi nestanak jedne njene institucionalne verzije, ali to nikako ne znači da je nepredvidljivost razvoja alibi i nade u njenu obnovu.

I drugi saznanoteorijski postulat relativizacije i pluralizacije pravde je poperovski. Uvećati sreću jeste manje hitno nego sprečiti nesreću, jeste takođe argument koji traga za pravdom koja stiže odozgo i u okviru postojećeg. Bezalternativno, ali plemenito. Filantropski, a ne humanistički apel. Poper kaže da etički postulat treba negativno formulirati, i to tako što treba uklanjati nesreću ali ne i tražiti sreću. Analogno načelu da treba eliminirati pogrešne teorije, a ne tragati za potpuno utemeljenim istinama (Cit Poper prema Dornheim, u. a. 1999: 16). Ako bi se kod razilaženja oko prirodnog prava i pravde unele još neke važne nijanse i istovremeno ova tema pokušala svesti na pregnantne formule onda bi se iste mogle potražiti kod još starijih klasika. Dovoljno je sažeto naznačiti razliku između Hegelove (Hegel) i Veberove sumnje u prirodno pravo. Pri tome rešenje nije goli izbor između antologijskog Hegelovog stava, koji se može označiti kao vrednosni automatizam, da ono što je umno jeste i stvarno, a ono što je stvarno jeste i umno (stav koji negira kritičku ulogu prirodnog prava jer opravdava svaku realnost) s jedne i Veberovog vrednosnog neutralizma, tj. razdvajanja vrednosti i normi (koje na drugi način negira prirodno pravo osporavajući mu moć kritike propisanog prava sa vrednosnog stanovišta) sa druge strane. Izlaz bi moglo biti nešto treće: kritičko selektivno materijalno prirodno pravo koje, odbacujući veberijansko pozitivističko načelo da je traženje pravne vrednosti nenaučno, sasvim namerno vrednuje pravo i pravdu, ali i odbacujući hegelijansku logiku automatizma, umnost ne nalazi u svakoj, nego samo u čovečnoj realnosti. Šire gledano, dakle, kritika pravnog uma jeste samo ona teorija saznanja koja uključuje i kritiku pravne vrednosti, a time i pravne ideologije. Lišena sadržaja, kritika koja spori samo formalnu proceduru zastaje na pola puta. Nešto uže gledano, vrednosna kritika jeste kritika manje ili više površno shvaćene socijalne pravde.

Da li su prosvetiteljska moralna vrednosna stanovišta baš toliko zastarela u složenom 21.veku da ih treba relativizovati pluralizmom poželjnih moralnih ponašanja unutar užih društvenih segmenata? I da li u skladu sa istim valja načela „velikih“ pravdi zaboraviti jer su tobože teleološka, nasilna i



totalitarna? Ako je relativizam ove vrste prihvatljiv onda je zlostavljanje životinja u SAD jednako nepravедno koliko i brutalna eksploatacija rudara u Africi. Pozitivisti uporno tvrde da su zbog snažne funkcionalne diferencijacije društveni podsystemi u osnovi amoralni. Nije, kažu, danas prevaziđena samo srednjevekovna spona morala i religije nego i ona docnija između prirodnog i pozitivnog prava. Zato i ne treba tragati za opštom saglasnošću niti za ključnom društvenoekonomskom nepravdom koja određuje ostale. Ova uzdržanost bi bila demokratska da nije apologetska. Reč je o fizičkom, a ne o moralnom argumentu. Naime, uz sva uvažavanja rasta složenosti raznih segmenata društva, teško je novom nepreglednošću pravdati anahronost prioriteta prirodnog prava kao osnove, ali ne formalnopravne nego sadržinske, društvenoekonomske saglasnosti unutar koje se može, doduše, tolerisati pluralizam sekundarnih načela pravde. Nisu sve pravde jednako važne koliko god 21. vek bio složeniji od 19.veka. I tada i danas je kapitalizam okvir njihovog susretanja. Istini za volju i kapitalizmi se razlikuju, pa se nehijerarhijski pluralni liberalni kanoni pravde (jednake slobode, prava i šanse) ne mogu kruto koristiti kao nepromenljiva skala. Korisniji je kontekstualni univerzalizam, koji istorično opominje da različite srazmere ovih vrednosti odgovaraju različitim društvima i različitim vremenima. Treba ih analitičko-realistički prilagođavati raznim društvima i raznim sferama društva. Na taj način se donekle može sačuvati operativno jezgro pravde (Dornheim, u. a m. 1999: 23), ali i njena višeslojnost.

## 5.

Može li nešto (kao pravda) što je u pozitivističko-pravnom i tržišnom smislu fikcija biti uopšte poništeno? Da li je zbog ove fikcije danas nestala i priroda čoveka kao mera socijalne pravde? Najposle, ne negira li materijalno prirodno pravo isuviše odlučno, izvana, neoliberalni pozitivizam i ne dovodi li u pitanje njegove kapitalističke osnove u toj meri da se isto pravo uopšte ne može odmereno ocenjivati unutrašnjim merilima neoliberalizma? Apologete režima ne mogu valjano ocenjivati svoje kritičare jer antikapitalizam nije gnoseološka nego egzistencijalna kritika. Socijalna pravda radikalnog prirodnog prava direktno negira kapitalizam. Dakle, sa istog razloga sa kog se ateizam ne može kritikovati unutrašnjom logikom teoloških dogmi, nego se samo može anatemisati, i neoliberalizam jednostavno ignoriše i demonizuje prirodno pravo.

Doduše, isto pravo jeste u socijalizmu bilo manje ili više otuđeno od svoje svrhe i uprkos vladajućoj komunističkoj ideologiji samo nepotpuno ostvareno, ali u neoliberalizmu nije čak ni otuđeno, nego je odstranjeno zato što ne pripada svrsi kapitalizma. Konkretnije rečeno, savremeni neoliberalizam nije eutanazija svakog, nego materijalnog prirodnog prava i ne osporava svaku, nego samo socijalnu pravdu. I to ne pravdu koja je plod filantropske



dobronamernosti bogatih, nego onu drugu koja ističe iz gneva siromašnih koja traži pravednost sistema.

Gnev mora biti organizovan, pa se odmah otvara pitanje aktera koji su kadri da traže pravednost sistema, odnosno klasnih odnosa moći. Za organizovanu i osmišljenu težnju za distributivnom pravdom nije dovoljna samo svest o asimetriji (nepravdi) nego je potreban i subjekt koji teži njenoj izmeni. Stvari bi bile jednostavnije da asimetrična raspodela i nejednakost nemaju svoja sistematska opravdanja koja zamagljuju neravnopravne odnose. Ali ih imaju, a od odnosa moći zavisi da li se sistem legitimisati pozivajući se na vlastitu pravdu ili to može činiti i bez ove nužno moralne kategorije. Još se Platon zapitao da li je pravedno ono što koristi jačem ili je pravedno ono što jači misli da mu koristi? Ako neoliberali kažu da da pravdi nema mesta na tržištu, onda je i gornje Platonovo pitanje suvišno. Nakon sloma evropskog socijalizma nezauzimati stav prema vrednostima nije nehajni pravnofilozofski relativizam nego arogancija moći.

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Svest o potrebi socijalne pravde još uvek nije iščezla, ali je protivrečnost između brojnih naučnih i medijskih debata o pravdi s jedne i dramatičnog rasta nepravde s druge strane vrlo upadljiva. U poslednjih 25 godina o slabljenju prirodnog prava npr. svedoči neaktivirani antagonizam između nezaposlenih i bankara. Slabljenje jusnaturalističke retorike pokazuje takođe i hegemoni govor o društvu radne snage, a ne o radničkoj klasi. Tamo gde je iščezao antagonizam iščezli su klasa i prirodno pravo. Nakon retoričke neutralizacije i decentralizacije subjekata nezadovoljstva preostaje tržište, nacionalna homogenost i saradnja slojeva. Ako i ima otpora reč je o masovnom nestrpljenju, nezadovoljstvu i bunama lišenih projekta. Nema revolucije između ostalog i otuda što kod procena socijalne nejednakosti radikalno prirodno pravo više nije kriterij. U prekarnoj kulturi nema produktivnog prirodnopravnog moralizma nego nekanalisanog rasutog revolta, apatije i rezignacije. Najposle zbog slabljenja prirodnopravnog argumenta obezvređena je i sama reč nepravda.

Bez pritiska odozdo ne bi ni u prošlosti bilo napretka u pravdi, a iz istog razloga je nema ni danas. Moralisti kapitalizma se prepoznaju upravo po tome što brane socijalnu pravdu koja stiže odozgo. To je legalna pravda koja se dozira i nameće isključivo kroz dobro kontrolisanu proceduru. Moralisti priznaju pravo na nezadovoljstvo sve dok ovo ne prevaziđe napetosti koje se mogu ublažiti i kontrolisati, ali ne priznaju bunt koji je došao do svesti o antagonizmu i koji se ne da razrešiti bez temeljnih promena strukture. Ovo drugo je izvan kontrole, eksplozivno je i zarazno konfliktno. Jer čim se bar deo napetosti i nejednakosti rastumači kao posledica antagonizma, tj. nepomirljivih a ne izgledljivih suprotnosti, automatski se mora priznati legitimnost i neinstitucionalizovanoj pravednosti odozdo, tj. pravu na revoluciju, a ne samo propisanom pravu na štrajk. Kod današnje vanklasne pravde

nije reč o etici nego o moralizmu, što je potpuno suprotno onome što Bloh naziva radikalno prirodno pravo koga nema bez promene odnosa prema sredstvima za proizvodnju i bez „nastojanja za institucionalnim ukidanjem vlastite koristi, toga amoralnog zakletog neprijatelja“ (Bloh 1977: 227). Ako opštost prava znači da su svi jednaki pred zakonom, opštost socijalne pravde podrazumeva sistemski osiguranu nezakinutu naknadu koja odgovara vrednosti rada. Nije to pravičnost koja u pojedinačnom slučaju odgovara prirodi stvari nego distributivna pravda javnog prava (Radbruch 1980: 47), na isti onaj način na koji je filantropija vrlina i dobra volja davanja, dok je socijalna pravda objektivna i na nivou proizvodnje osigurana pravедnost.

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Tu leži glavna razlika radikalnog prirodnog prava od praznog skepticizma koji samo verbalno negira liberalizam, a prećutkuje njegov nihilizam koji se sastoji u odsustvu socijalne pravde. Danas nema organizovanog prirodnopravnog otpora savremenom tržišnom pozitivizmu globalizacije. Zašto je prirodno pravo prognano sećanje i uspešno sprovedena planska amnezija od strane pravnih pozivista? Svakako ne samo otuda što je iz progresivne istorijske antiteze prvi jednostavno izbačen, niti zato što drugi prvog uspešno ignoriše, nego i zato što se drugi prvome čini isuviše moćnim. Ove obeshrabrujuće iluzije nije bilo u antitezama između Marksa i Prudona (Proudhon), Štrausa i Vebera niti kod one između Markuzea i Popera. Treba se nadati da ni danas planski nametnuta iluzija o nesavladivoj moći pozitivnog prava neće još dugo biti prihvatana nego da će biti sistematski prepoznata kao važan delatni faktor slabosti prirodnog prava. Još je Fridrih Šiler (Schiller) zapazio da onoga ko zapoveda velikim čini samo onaj ko je poslušan. Kako svladati iluziju o nepobedivosti neoliberalizma jeste prirodnopravno pitanje našeg veka.

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Todor Kuljić

### About the rights with which we are born

The radical natural law and the social justice from K. Marx up to neoliberalism

#### Summary

The natural law is a overempiric law that does not owe his dignity to the legal norm than to the intrinsic qualities of a human being. This paper presents a different hierarchical position of the natural law in the critics of capitalism from K.Marx to our days and its different intonation as a superpositive framework of justice. One should analitically differentiate between (1) theoretical search for social justice in the philosophy of the natural law (K.Marx, M.Weber, G.Radbruch, L.Strauss, E.Bloch, Lj.Tadić) and (2) empirical identification of power relations that allowed or hindered social justice in the reality. The paper provides analysis of historically different relationships between positive and radical natural law in both the compressed 20th century epochal concience and today's neoliberal

one. In addition, it compares role of the natural law in capitalism and socialism and differentiates between social justice from above and social justice from below. The first one is gratuitous, paternalistic and limited, the second one is radical and has to be conquered. Radical natural law should express itself as a fully developed social justice liberated from capitalism. Critic of social injustice from the viewpoint of natural law has no practical effects in our days, and in spite of it, it is not anachronistic.

**Key words:** natural law, positiv law, social justice, capitalism, socialism.

INTERVIEW  
INTERVJU

IV



Aleksandar Matković

## There is great disorder under the heavens

Interview with Wolfgang Streeck

Wolfgang Streeck is the Director of the Max Planck Institute for Social Research in Cologne and Professor of Sociology at the University of Cologne. More than that, he is well-known for his decades-long work on areas ranging from institutionalism to varieties of capitalism theories to his essays on the end of capitalism, which sparked debates and exchanges across various movements and disciplines. One of these debates was the seminar “Why the Euro Divides Europe?” organized on October 21<sup>st</sup> 2016 by the Institute for Philosophy and Social Theory in Belgrade in dedication to Streeck’s work<sup>1</sup>. Prof. Streeck, who was in attendance, delivered a lecture dedicated to the topic, followed by an intense discussion. What follows is an interview with prof. Streeck done in the wake of the seminar and theoretical engagements which emerged thereof.

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Aleksandar Matković: First, several questions regarding your theoretical approach. You have previously worked with Robert Boyer and sometimes touch upon regulationist issues. To what extent do you see the influence of the *école de la régulation* on your work?

Wolfgang Streeck: It was a great encouragement to see how seriously economists of this caliber can take institutions and history. Also, their analysis of Fordism as a historical configuration was eye-opening to me, as it was to many others. The same applies to the seminal idea that there are different institutional spheres in an economy that must be connected in a particular way for the economy to “work”.

AM: You have been very critical towards the novel varieties of capitalism theories, emphasizing the need for more research on the ‘commonalities’ of divergent capitalisms rather than their discrepancies. What do you see as the main limits to these theories?

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1 The video footage from the seminar “Why the Euro Divides Europe?” can be found here: <https://www.youtube.com/watch?v=haxZRMlrILk>.

WS: Much of the varieties of capitalism work is of an efficiency-theoretical sort: different social and political structures are explained by different but essentially functionally equivalent business strategies developed by profit-seeking firms and instituted by governments and states on their behalf, prospering firms making for prospering economies. To me this is too reductionist and indeed economistic – too close to what used to be the New Institutional Economics coming out of mainstream economic theory (which has now long ceased to be new). My preferred macrosociological-cum-macroeconomic approach is conflict-theoretical or power-theoretical. This directs attention to the class structure of capitalist societies, the underlying logic of which is the same in all of them, although its concrete expression may vary between places. To understand how and why capitalisms differ, this implies, one has to take into account where they are subject to identical forces, or laws, or “logics”.

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AM: In your article on the end of capitalism, you speak of capitalism as ‘dying of an overdose of itself’, due to three mutually reinforcing trends – falling growth, overindebtedness and rising inequality (Streeck 2014a: 35). However, concerning the issue of these identical ‘logics’, my impression is that you speak of capitalism in two senses – one akin to the school of regulation and the institutional approach and one akin to a more Marxist analysis of capitalism as an abstract entity or in its ideal average, so to speak. In the first sense, the contemporary crisis of capitalism appears as an inability to restore or, rather, regulate accumulation to reach levels experienced in Fordism, while in the other it would signify a permanent internal contradiction within capitalism itself, regardless of its current institutional structure. Do you think that institutional regulation still remains a possibility for restoring growth or would you say that the ‘overdose’ of capitalism implies that it is simply ‘beyond repair’?

WS: As implicitly indicated above, unlike perhaps the regulationists I do not believe in equilibrium in a capitalist political economy. The regulationist equilibrium is a little too Cartesian for my taste. To me any possible institutional incorporation of capitalism is beset with internal contradictions, as you rightly suggest, systemic as well as contingent ones. In fact, my main point recently has been that whenever capitalism was in something that looked like an equilibrium, this was not only temporary but was above all produced and sustained by anti-capitalist countervailing forces – a fragile stand-off between the (ultimately self-destructive) logic of capitalist development and the needs of society for some sort of stability, imposed on the capitalist basic structure by politics and political power. Without a counter-movement against capitalism there would be no competition, only



monopolies, no good faith and trust, only reckless advantage-seeking, no families, no social security etc., etc.

AM: I would like to delve more on this important point you raise: on the one hand, you often insist on the importance of a counter-movement or forces and entities outside of capitalism that are necessary for its continuous functioning. Yet, there is a Schumpeterian tone to this, or rather “contra-Schumpeterian”, one might say: for you, capitalism undermines itself not by producing its own entrepreneurial gravediggers or the like, but by doing the exact opposite, by commodifying those institutions and actors which hold it together. How do you theorize the lack of the resisting subject here – the absence of organized working class, welfare systems, etc. – was their dismantling a precondition or a consequence of neoliberalization? Or perhaps both?

WS: Capitalism is always under pressure to expand, a pressure that is inherent to it. Capitalist expansion means replacement of non-monetized with monetized social relations and transactions – “commodification” – or put otherwise, replacement of traditionalist, subsistence-oriented economic action with “modern” orientations toward maximizing returns on available resources. “Primitive accumulation”, that is to say, is not a one-time founding moment but a permanent process, both on the margins of capitalism and in its center, where fighting the human tendency to lapse back into a subsistence orientation is central, a fight that for example takes the form of neoliberal “reforms”. Capitalist progress is always through conflict – movement versus countermovement, to use Polanyi’s terms. Who wins at a given historical time depends on the structural conditions and the political capacities of relevant actors; the battle never ends as long as there is a capitalist economy and there are human beings. Today capital has the enormous historical advantage that it has learned to organize globally whereas the forces of resistance are disorganized at the global level and exist only locally – which constitutes a devastating strategic weakness. So to me neoliberalism is capitalism taking advantage of “globalization” to dismantle anti-capitalist protections against commodification, including cultural and psychological protections through consumerism and cultural libertarianism – what in *How Will Capitalism End?* I have called coping, hoping, doping, and shopping.

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AM: Returning to the question of capitalisms’ institutional repair, how do you see your monetary reform proposals in that light?

WS: I have suggested reinserting politics into monetary policy, by enabling countries in Euroland that suffer from a hard currency regime to devalue externally, not just internally. For this we need to restore some monetary sovereignty at the national level. This won’t solve all problems of a capitalism

that is in secular stagnation everywhere; far from it. But it would give countries a break that are now being sucked dry by German export interests and their own neoliberal elites working together – the latter hoping for the hard currency helping them finally impose “discipline” on their societies, so as to make them conducive to effective capital accumulation.

AM: In the case of the EU, which you describe as an exemplary Consolidation state dedicated to fiscal retrenchment (Streeck 2014b), where do you see the possibility of these monetary reforms you suggest and on basis of what institutional configurations? Do you see any possibility of revitalizing its financial system in its present-day institutional fabric?

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WS: It needs a near-revolution, nothing less. Italy is crucial; it must come to the brink of a popular revolt against the euro. France is important in the sense that it must no longer defend the euro to the hilt – a condition that may be fulfilled after the next election. Germany is more important than France; here Merkel’s grip on the government is weakening and more and more voters are beginning to realize that the euro forces Germany to choose between being hated by everybody in Euroland and agreeing to permanent transfer payments, far beyond the “mutualization” of extant debt, that even Germany (and in particular its lower-income citizens) cannot afford.

AM: Turning to Germany, how do you see the future of the SPD?

WS: I have no idea. Politics is out of control these days, anything can happen. Before the present (February 2017) Schultz euphoria, nobody expected the SPD to come out above the 25 percent it got in 2013. I still think that ultimately, they will end up with roughly a quarter of the vote, but who knows. In any case, the next parliament will be much more fragmented than the present one. Up to a few months ago, Merkel seemed to aim for a coalition with the Greens; now such a coalition may not have a majority, and also her party may resist it. In this case the good-old SPD will again be invited to help out. Policy-wise it would make not much of a difference anyway.

AM: Since the next elections are scheduled for 2017, do you think there is any chance of a “change of pace” for Germany? And if so, how would it affect the periphery?

WS: As I said politics has become truly unpredictable. Too many things are in the air, and there are few structures left on which to draw for predictions. Nobody knows how the elections in Italy and France will go; what the Brexit negotiations will bring; what changes Trump will impose on NATO; what will happen in Turkey and Syria, in Russia and Ukraine, in Iran and Palestine, in Afghanistan, Iraq and Libya...

AM: Given your ‘repolitization’ of money theory in the quoted article on the Euro (Streeck 2015), one might wonder whether debates over the role of money can be said to exist or have effect to the same extent on the European periphery. Looking at the ex-Yugoslav states, most of their credit structures are ‘euronized’, being denominated or indexed in euros and hence made dependent on its fluctuation. Politically, this is leaving little to no room for debate. Given this, do you see any political possibilities of instituting these debates outside of the core countries? Or would you say that they are ‘condemned’, so to speak, on monetary path-dependency?

WS: Probably they are. The game that is being played here is called capitalism, not universal brotherhood. If there was enough unrest on the periphery, however, of whatever sort, that could be a game-changer. Perhaps you need the Russians to help you get a debt restructuring from Herr Schäuble? But honestly I don’t know. Today’s governments take the crises as they come. I don’t believe anyone in Berlin, Paris or Brussels has any deep thoughts on a future monetary regime for the West Balkans; the problem is simply too terrifyingly complex. They will deal with it as it arises, hoping it won’t arise in the next twelve months and can be put off, from year to year. What I don’t see is an enlargement of EMU; there are too many member countries that would veto it, regardless of the country or countries applying for membership.

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AM: Let me ask the reverse: during our seminar, you mentioned a crisis of *scale* in terms of governing. Brexit was taken as a case in point and Yugoslavia’s disintegration as its historical predecessor. It is interesting how often this comparison is made despite its occurrence in different institutional backgrounds and economic systems. Could you expand on this? Is there something the EU can “learn” from previous resolutions (or lack, thereof) to these crises of scale?

WS: I mentioned the former Yugoslavia only to remind people that a break-up of larger into smaller states is not as unusual as is sometimes thought. I could have referred to the Czech Republic and Slovakia for example. To what extent there were also economic motives involved in the falling apart of Yugoslavia, not just historical hatred, I have no way of judging; I assume there were. The general problem is always how a political community can live better, on its own or as part of a larger, perhaps federal whole. As a general proposition, I would venture to say that if you want to impose identical institutions and a common way of life on different resident communities with different traditions and collective experiences, you need a lot of power to suppress resistance – especially if the commonalities you want to enforce or create are those of an expanding market economy with its inherent need to commodify, or “modernize”, ever more spheres of social life. This

is something that the rhetoric of the “European project” fails to understand – because it denies to itself that it is also a capitalist modernization project. Nationalism and resistance to capitalist modernization are often allies today, especially where the Left has sided with “globalization”, “competitiveness” and “structural reforms”.

AM: You sometimes mention the declining hegemony of the US and its role as a world reserve currency. How do you see Trump’s victory in this sense?

WS: This is an interesting question and one can at this point only speculate on it. It seems that Trump has no interest in a Cold War 2.0 with Russia, previously known as the Soviet Union, this time over Ukraine and LGBTIX rather than over Communism. In fact, he may want to come to a sort of peaceful coexistence with Putin. Why? Because he may need all he has got for an upcoming fight with China. If Trump wants to do something for this blue-collar constituency in the United States, he must probably somehow reduce Chinese access to the U.S. market. This would hurt the Chinese economy. In response, the Chinese may no longer buy, or may even sell, the United States Treasury Bonds they have so dutifully absorbed in recent decades – which for the United States would be a severely unfriendly act. Whatever else it would imply, it would certainly stand in the way of a U.S.-Chinese co-directorate of the global economy, including its money regime. The realistic prospect, here as elsewhere, is anarchy. As the chairman put it: “There is great disorder under the heavens,” adding from his perspective that “the situation is excellent.” While we can certainly agree with the first part of his observation, whether we want to share the second part as well is a difficult question to answer.

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REVIEWS  
PRIKAZI

v



Jelena Vasiljević, *Antropologija građanstva*, Mediterran Publishing i Institut za filozofiju i društvenu teoriju, Novi Sad i Beograd, 2016

Adriana Zaharijević

Monografija Jelene Vasiljević predstavlja izuzetno značajno istraživanje u oblasti antropologije građanstva, prvo takve vrste ne samo u Srbiji nego i u regionu. Način na koji je studija zamišljena i realizovana, kao i njen metodološki pristup, jezik kojim je pisana, koji u sebi spaja vrhunski naučni diskurs i pristupačnost svojstvenu istančanoj teoriji, smešta ovu studiju visoko među relevantna teorijska dostignuća objavljena na srpskom jeziku.

Jelena Vasiljević se problemima građanstva predano bavila od 2010. godine, kada je kao saradnica na projektu *The Europeanisation of Citizenship in the Successor States of the Former Yugoslavia* (CITSEE) Pravnog fakulteta Univerziteta u Edinburgu počela da istražuje ovo polje. Od tada je na ovu temu objavila niz radova na engleskom i srpskom jeziku u renomiranim časopisima i zbornicima. Ova knjiga utoliko predstavlja krunu temeljnog istraživačkog rada koji je podrazumevao unakrsno kulturno prevođenje: pisanje o lokalnim aspektima građanstva na engleskom jeziku i uvođenje vokabulara studija građanstva u srpski kontekst. *Antropologija građanstva* ima bar tri izvanredno značajne dimenzije. Prvo, ona ovdašnju naučnu kulturu obogaćuje ne samo preciznom pojmovnom aparaturom koja na ovim prostorima do sada nije bila razrađena – premda je građanstvo (u svojim raznim, i često nepreciznim, varijacijama, od građanina, građanskih prava, građanskih vrednosti, do građanskog društva) jedan od pojmova koji je prilično dugo u javnoj, intelektualnoj i političkoj upotrebi – već uvodi i probleme i analize koje, iako imaju zapaženu ulogu u društvenoj i političkoj teoriji bar trideset godina unazad, do sada nisu bile u središtu pažnje ovdašnjih teoretičara i teoretičarki. Drugo, ova knjiga pruža značajan doprinos domaćoj društvenoj teoriji, a potom i antropologiji, budući da teme koje se prvenstveno vezuju za oblast pravne, društvene i političke teorije, prevodi i prenosi u polje antropološki relevantnih istraživanja. Treće, ona ima dalekosežniji značaj od lokalnog, pošto doprinosi ustanovljenju poddiscipline antropologije građanstva, koja je i u svetskim okvirima mlada i nedovoljno definisana – prvi sigurniji koraci u tom pravcu načinjeni su tek 2013. godine.

Knjiga se sastoji od četiri poglavlja, od kojih je prvo uvodnog karaktera, drugo tematizuje građanstvo kao istorijski fenomen i razmatra njegovu teorijsku potentnost, treće uvodi antropološki specifičan argument kulture i identiteta u sferu građanstva, dok se poslednje usredsređuje

na domaći kontekst, situirajući građanstvo i politike državljanstva u noviju istoriju Srbije. Priložena literatura broji više od tri stotine bibliografskih jedinica, među kojima se nalaze gotovo svi ključni tekstovi u oblasti studija građanstva, kako oni utemeljujući za oblast, tako i oni koji razmatraju njegova raznovrsna skorašnja uobličjenja i oni koji problematizuju granice i mogućnosti građanstva u savremenom svetu. Postojeći korpus tekstova pažljivo je biran i izrazito skrupulozno razrađivan, kako bi se obradio širok dijapazon istraživačkih interesa koje je bilo neophodno pokriti da bi se na strukturiran način predočila istorija, široka teorijska lepeza studija građanstva, antropološki pristup problemima koje polje otvara i njihov uspeo lokalno smeštanje.

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Noseći pojam građanstva se ne uzima kao samorazumljiv. Naprotiv, čitava knjiga bi se mogla čitati kao pokušaj da se ovaj, kako ga Vasiljević određuje, „pojam-problem“ definiše u svojim grananjima, putanjama i stranputicama. Moglo bi se tvrditi da je pojam građanstva čovrno mesto kroz koje se takoreći istovremeno prosecaju pravni status pojedinca, kompleks prava i obaveza, participacija u političkoj zajednici, klasni ili društveni sloj, identiteti, borbe i pripadanje (koje upućuje na izvestan osećaj, doživljaj ili samopercepciju, ali i na percepciju drugih, na „pripadanje zajedno“). Ta složena mreža međusobno uslovljenih pojmova otvara nepregledan niz pitanja: da li je građanstvo nešto izvan i iznad pojedinaca koji su građani; ko je građanin – kakav je status neophodan da bi se bilo građaninom ili građankom neke zajednice (i kakve tačno); na koji način obaveze i prava uzajamno saodređuju ovo zvanje; kakav obim učešća se očekuje ili podrazumeva u političkoj zajednici kojoj građanin pripada i kako se formalizuje ili proživljava ova pripadnost; u kolikoj je meri razvoj institucije građanstva saodređen procesima nacionalizacije i klasnog raslojavanja; na koji su način borbe da se prostor građanstva proširi i egalitarizuje na sastavni način deo njegovog opsega i sadržaja; i, konačno, koliko su različiti identiteti doprineli proširenju ili pak ograničenju građanstva kao strukture? Minuciozno kao i u ranije objavljenim tekstovima iz ove oblasti, Jelena Vasiljević posvećuje pažnju prevodu termina *citizenship*. Igra pojmova građanstvo i državljanstvo, koji vrlo često upravo u paru jedino i mogu odgovarati ovoj višeznačnoj engleskoj reči, dodatno usmerava istraživanje u polju studija građanstva ka državi i naciji (odnosno, ka nacionalnoj državi). Ovo udvajanje se kroz knjigu

neprestano testira, nekad u specifično antropološkom registru posredstvom pojma kulture, nekad u registru konkretnih ustavnih i zakonskih realizacija. U svakom od slučajeva, ono se pojavljuje i kroz pitanje da li se *odnos* građanstva ikada može deatativizovati i/ili denacionalizovati, uz metapitanje da li bi se time mogla dobiti zbilja inkluzivna, egalitarna i pravno-emancipatorska struktura.

Moglo bi se tvrditi da se polje ove knjige iscrpljuje u propitivanju složenih odnosa između pojedinaca, političke zajednice, drugih (pojedinaca), i njihovih međusobnih statusa i odnosa, koji su uvek istovremeno uključujući i isključujući. Ovi odnosi se na specifičan način dalje razrađuju u svakom od poglavlja knjige. U drugom poglavlju se ukratko, ali verno prikazuje istorijski razvoj institucije građanstva, kao i određeni problemi s kojima se u vezi s građanstvom susreću savremena društvena i politička teorija. U trećem, najdužem i, prema autorki, najznačajnijem delu knjige, možda i zbog toga što se u strogom smislu bavi onim što joj je u naslovu, razmatra se odnos antropologije i građanstva. Pod time se, pre svega, misli na ukrštanje građanstva i identiteta, građanstva i kulture, odnosno na „kulturalizaciju građanstva“, multikulturalizam i grupnodiferencirajuća prava, te na antropološki odgovor na politike identiteta. Četvrto i za nas posebno dragoceno poglavlje predstavlja svojevrsnu aplikaciju dosadašnjih rasprava na politike građanstva u savremenoj Srbiji, gde se ovaj okvir primenjuje na transformacije postjugoslovenskih prilika. Ono što Jelenu Vasiljević ovde posebno interesuje jeste građanstvo kao proživljeno iskustvo, iskustvo koje obuhvata i definisano je kontingentnim aspektima političke pripadnosti, svakodnevnih prakse političkog života i uslova funkcionisanja političkih zajednica. Interes za konkretne prakse konkretnih ljudi u određenom vremenu i na određenom prostoru, u ovoj se knjizi posebno ostvaruje u poslednjoj celini, gde se na etnografskim primerima prikazuje zamršeni, često mučan i neizvestan život građanstva, u kojem naši lični dokumenti postaju socijalni objekti koji rade za, ali i protiv nas.

Knjiga Jelene Vasiljević *Antropologija građanstva* spada u ključne tekstove društvene teorije na srpskom jeziku. Ona osvetljava brojne probleme, predstavljajući ih upravo kao probleme i to kroz bar tri vizure; unosi dugo očekivana razjašnjenja u sferu pojmova i načina na koji se koriste, i za naše je govorno područje nezaobilazna literatura u oblasti studija građanstva. Temeljna



interdisciplinarnost ovog teksta, uvezivanje pravne, politikološke, filozofsko-istorijske i svakako antropološke perspektive, govori u prilog tome da je jedini ispravan pristup jednom tako složenom pojmu kakav je građanstvo multidimenzionalan.

Ona, povrh toga, upućuje i na neophodnost prevazilaženja uskog pogleda kroz disciplinu, budući da se savremeni fenomeni, ako je ikada zbilja i bilo moguće drugačije, ne daju jednostavno užljebiti u čvrste okvire pojedinačnih nauka.

188 Andrea Faggion, Nuria Sánchez Madrid, Alessandro Pinzani (Eds.) *Kant and Social Policies*, Palgrave Macmillan, London, New York, 2016.

Igor Cvejić<sup>1</sup>

The volume *Kant and social policies*, edited by A. Faggion, N. S. Madrid and A. Pinzani provides us with valuable analysis of Kant's political and juristic thought, as well as its relevance today.

The book contains seven closely connected articles. The first five texts deal from different perspectives with Kant's claims about redistributive justice and human rights, and they are accompanied by two other texts that follow-up: Faviola Rivera Castro's text about international law (*Rawls and Kant on Compliance with International Laws of Justice*, 125–148) and Joel Thiago Klein's text about the importance of public education (*Kant and Public Education for Enhancing Moral Virtue: The Necessary Conditions for Ensuring Enlightened Patriotism*, 149–174). The opening article *Kant on Citizenship, Society and Redistributive Justice* by Susan Meld Shell critically examines the most significant contemporary readings of Kant's theory of distributive justice and provides an original interpretation, well supported by intelligent arguments and corresponding references (1–24). In their text *The State Looks down: Some Reassessments of Kant's Appraisal of Citizenship* Alessandro Pinzani and Nuria Sánchez Madrid tried to point out some limitations of Kant's distinction between active and passive citizenship (25–48). At the same time, they labeled Kant's political thought as a mixture of liberalism and republicanism – but not reducible to either of them whose insights could be reappraised “in order to criticize certain dogmas that dominate our society” (p. 45). The Article *Kant For and Against Human Rights* by Aguiñaldo Pavão and Andrea Faggion compares Kant's understanding of the only human right with The Universal Declaration of Human Rights and emphasizes their differences (49–64). Alberto Pirni tried to explain the foundations of rights and intersubjectivity in Kant's ethics (*The Place of Sociality: Models of Intersubjectivity According to Kant*, 65 – 92). The text by Helga Verden critically examines Kant's arguments about redistributive justice and the shortcomings of Rawls's and Nozick's interpretations (*Rawls vs Nozick vs Kant on Domestic Economic Justice*, 93 – 124).

It may seem as if one of the main aims of this book is to give us some kind of final answer to the question: in which category should Kant's philosophy of politics be put? Namely, there is a long tradition of understanding Kant as a “minimalist” libertarian, in the works of thinkers such as Nozick and many others. On the other hand, more and more interpreters stress the “socio-democratic”

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elements of Kant's claims on redistributive justice. If this volume (intentionally) fails to point out a simple answer to the former question, it is only because it actually uncovers in detail the complexity of Kant's view.

Kant's claims about redistributive justice are examined in detail in four texts of this volume. The crucial passage which is placed by the authors in the center of attention, and which was also the main motivation to attribute to Kant's political views some version of "state-welfarism", is the introduction of taxation in *Metaphysics of Morals*:

To the supreme commander (*Oberbefehlshaber*) there belongs indirectly, that is, insofar as he has taken over the duty of the people, the right to impose taxes on the people for its own preservation, such as taxes to support organizations providing for the *poor, founding homes, and church organizations*, usually called charitable or pious institutions. (AA 06:326)

What might seem as Kant's obvious recognition of the state's duty to care about the needs of individuals is rather a much more complicated problem, worthy of the greatest attention. 1) It seems that Kant actually rejects the idea that justice can require the redistribution of resources in response to needs (Varden, 99; AA 27: 517, 526). Moreover, Kant explicitly rejects juridical relevance of material inequality (AA 08: 289–290) and "mere" needs and wishes (AA 06: 213,230, see Shell, 3–4). 2) Libertarian readers, such as Nozick, go a step further and claim that such redistribution would always contradict a person's right to private property, and consequently a person's freedom, which was the basis of Kant's law theory. To avoid these problems some interpreters, such as Onora O'Neil, suggested that we should understand the former quote as the right of the state to enforce the duty of benevolence. However, as Shell and Varden argue here, O'Neil's thesis fails to address chiefly the juridical duty, for it is more concerned with (mere) ethics (6), and also fails to give a coherent solution to Nozick's problem of justice (100). 3) The quote itself, as it is shown in this volume, contains several very complex problems: Kant actually isn't addressing the rights of individuals (the satisfaction of their basic needs), but the right of the "supreme commander" related to the "duty of people" (*Phlicht des Volks*); it remains unclear what is the end of it, for Kant gave a complex explanation about what he means under the expression "for its own preservation".

In order to clarify possible answers most of the articles refer to Kant's distinction between active and passive citizenship. Although every citizen of the state should have a guaranteed lawful freedom and civil equality, not all of them have self-subsistence (*Selbständigkeit*) or (economical) independence for the will of someone other. Kant calls those who lack self-subsistence passive citizens, and with regard to this dependency, renounces their right to vote (AA 06: 314).

Of course, many authors find this distinction problematic. It could be said that this account seems inconsistent with equal liberty, or with the initial independence of citizens (Shall, 2). Kant himself finds that the concept of passive citizenship actually contradicts the concept of the citizen of the state (AA 06: 314). However, he holds that there is nothing intrinsically wrong with dependence if it arises from one's own choice or natural incapacity, such as youth, etc. (Shall, 18) Kant's only hope is "that anyone can work his way up from passive condition to an active" (AA 06: 315).

Alessandro Pinzani and Nuria Sánchez Madrid listed three key limitations of Kant's account of passive citizenship. 1) They found Kant's argument that the poor should not vote, because they would sell their votes, double-edged – for the same argument could be used against the rich (buyers), and it was used for ostracism in Ancient Athens. 2) Kant addresses formal obstacles to attaining full active citizenship, while (intentionally or not) economic privileges and inequalities are left out of the consideration. 3) Kant is very insensitive to the gender issue, for he finds that a woman renounces her civil independence by entering into marriage.

However, Susan Meld Shell used this account to further her own argument. If we keep in mind that Kant is not focused on the status of independence of every private person *per se*, but on a general condition, that nothing prevents passive citizens to "work their way up" to an active status, we could shed a new light on his views on redistributive justice. Therefore, as Shall argued, what interest Kant it is not the satisfaction of basic needs, nor material inequality, but rightful conditions. Furthermore, this view is neither libertarian, nor socio-democratic, but it could justify some important welfare policies, such as the right to education, health care, etc.

It is important to underline that Kant's redistributive policies are not concerned for the individual

rights of persons. As A. Pavão and A. Faggion argued, Kant's understanding of human rights is somewhat narrower, for it actually contains only one innate right- freedom, insofar as it can coexist with the freedom of every other in accordance with a universal law (50). What libertarian critiques of redistributive policies oversee is that the mutual interdependence under the public rights of state (from which neither the rich are immune), more than the question of private rights, is that which could enforce redistribution (Shall, 21; Pinzani & Madrid, 36; Pavão & Faggion, 60; Varden, 106f).

Articles in this book rightfully emphasize that Kant's main concern is not the state's own material preservation, nor the preservation of its individual members, but the end of the redistribution, which has to be related to the "Rousseauan" conception of (*a priori* united) the general will of the people (Shall; Pinzani & Madrid; Pirni; Varden). Kant wrote:

The general will of the people has united itself into a society which is to maintain itself perpetually; and for this end it has submitted itself to the internal authority of the state in order to maintain those members of the society who are unable to maintain themselves (AA 06: 326)

Shall made a complex argument concerning Kant's distinction between civil union (juridical state) and society. Accordingly, the public society should be understood as "a creature of the state [...] owning its existence to the self-constitutive juridical act by which the state itself is formed" (Shall, 8). The end and justification of redistribution have to be, thus, understood in terms of the ongoing existence of people as members of society:

As member of the general will, in other words, each wills his *own* existence as citizen only insofar as he also, and equally, wills the civic existence of every other member of the people (Shall, 8)

Alberto Pirni made further arguments and tried to justify the *a priori* foundation of this intersubjectivity through the ethical idea of the realm of ends.

Taking the former arguments in consideration, it becomes obvious that Kant's requirements could not be reduced to merely negative conditions of individual independence, but rather that they advocate a positive task of a self-subsistence under the general will of the people, which was highly compatible with the ideals of the enlightenment. Therefore, the public education, which presupposes not mere learning but constant practicing of the public use of reason, becomes one of the crucial tasks of the state. Joel Thiago Klein dealt with this problem in his article.

Many more problems could arise if we raise this discussion to a higher level, concerning the issue of lawful interrelations between the states. In his article Faviola Rivera Castro analyses Kant view on international justice, by emphasizing, in contrast to Rawls, the contractarian solution and the importance of the relation between states, rather than the mere level of their development.

The volume *Kant and Social Policies* represents indispensable literature for Kant scholars. At the same time, it provides very appealing and engaging insight in Kant's thought for a broader audience. However, the most valuable benefit of this book is probably that it connects Kant's relevant arguments with contemporary concerns of our society.

Graziano Ranocchia, Christoph Helmig, and Christoph Horn (Eds.), *Space in Hellenistic Philosophy. Critical Studies in Ancient Physics*, De Gruyter, Berlin 2014.

Tamara Plećaš

The collection of essays under the name *Space in Hellenistic Philosophy* is the result of the international workshop taken place in Naples in April 2012. The participants, as can be seen from the title, mainly discussed the concept of space, but also the concepts related to it, and Hellenistic philosophers and their contribution to the subject acted as the focus of their discussions. The reason for such a decision is given in the observation that philosophical attention is mostly put on the Presocratic authors, then Plato and/or Aristotle when we nowadays discuss Ancient physics. Besides that, authors agree that the reflection given by Hellenistic philosophers on this particular subject was valuable and innovative, and because of that their contribution shouldn't be marginalized. Although these essays are written in different style, which is inevitable, they share the mutual characteristic of analytical and problem-focused approach, which is taken to be the advantage of this volume.

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The first chapter deals with Aristotle's conception of place, and is written by Keimpe Algra. The author examines wide chronological framework from Aristotle to Sextus Empiricus. In first paragraphs he deals with Aristotle's conception of place, and in the latter ones with its reception among different scholars in the Hellenistic period. Algra systematically examines Aristotle's account, and raises important objections against Aristotle's often puzzling conception of place. Also, Algra gives valuable comments on Hellenistic authors (Eudemus of Rhodes, Theophrastus of Eresos, Strato of Lampsacus, Xenarchus of Seleucia, Cleomedes, Alexander of Aphrodisias, and Sextus Empiricus) while examining their contribution to this particular problem and their relation to Aristotle, and also the insight into some solutions provided by contemporary authors. For the most part, the author criticizes well-known Morrison's solutions, finding them mostly unsatisfactory.

Stoic contribution to the problem of space is discussed in the following two essays. The first one deals with the theory of the one of the most prominent Stoic philosophers – Chrysippus, and the other one with Posidonius' account. Chrysippus' conception of space is considered in the paper written by Michele Alessandrelli, where we encounter the semantic analysis of the main concepts of space in Stoic physics, and the argumentative elaboration of Chrysippus' theory. A particular attention is given to the analysis of a quite enigmatic concept of spatial reality *viz.* χώρα, also explaining

reasons why Chrysippus introduced this concept on the basis of two controversial definitions. On the other side, Teun Tielman explores Posidonius' theory of void, and he tries to master the contradiction between the statement claiming that the void which surrounds cosmos is infinite, and the statement found in Aëtius, according to which Posidonius claimed that the void is finite.

In the next three essays we are given an insight into the theory of space which was held by Epicurean philosophers. Epicurean and Aristotelian position was thoroughly examined and problematized in the essays written by David Konstan and Holger Essler. In the first one, Konstan (re)considers Epicurus' interpretation of the conception of space and space properties, and he sees himself to be closer to Brad Inwood's than to influential David Sedley's, or Keimpe Algra's argumentation. In his analysis, Aristotle's position is opposed to the Epicurean one, which is a usual way of introducing this particular problem because Aristotle (following Plato's and Parmenides' legacy) thought that void can't exist, since the universe is *plenum*, while Epicurus considers space as empty, at least according to Konstan's interpretation. On the other side, Essler deals in his paper with philosopher Philodemus (who is claimed to be an interpreter of Epicurus' work), and with Philodemus' interpretation of the concept of space that can be found in his treatise *On Gods*, though not as explicit theory. Although it cannot be proven that Philodemus had knowledge of the Aristotles' *Metaphysics* and meteorological works, it is shown that he was familiar with problematics of these works and with Peripatetic teachings referring physics and biology. According to Essler, Philodemus' awareness of his opponents' views (Aristotle and Peripatetics), and also his capacity to use their arguments and combine them to fit in his own account, makes him an original and innovative author. Finally, Carlos Lévy in his interesting essay writes about the concept of *spatium* from Lucretius to Cicero. Titus Lucretius Carus was a Roman poet, and he was considered to be under the Epicurean influence. The author's task was to examine Lucretius' degree of innovation when using the concept of *spatium*, comparing it with former Latin poetic tradition, so as to analyze the transformation of *spatium* into a philosophical concept, and finally, to compare Lucretius' and Cicero's usage of the concept of space. Analyzing Latin texts written before Lucretius, Lévy concludes that *spatium* was mainly used to signify time period, and that

Lucretius created a different, theoretical and philosophical notion.

The last essays consider views of the Greek skeptical philosophers, namely Aenesidemus and Sextus Empiricus. Richard Bett deals with philosopher Aenesidemus, and as the main sources for his analysis he takes Sextus' and Diogenes' versions of the fifth trope which despite some differences share common elements. Bett provides a negative answer to the question whether we can encounter any particular Aenesidemus' conception of place or space, which is not such an unusual attitude, regarding the fact that skeptical philosophers were supposed to have none doctrinal teachings. The main goal of Aenesidemus' was to attack his philosophical opponents, and to destroy their confidence in their own concepts and arguments. On the other side, Emidio Spinnelli writes about Sextus Empiricus (with a focus on his *Outlines of Pyrrhonism*), and this paper together with the older Keimpe Algras' essay (from 2007) represents an interesting, thorough and detailed analysis of Sextus' position and his contribution to the philosophical notion of place.

In the end, the essay which concludes this volume is doxographical reverberation of the Hellenistic discourse on space, written by Jaap Mansfeld, and is mainly focused on Aristotle's and Aëtius' heritage. In other words, the author wanted to show that the methodology of discussions taken by Hellenistic authors on the philosophical notions of void, place and space is for its most part Aristotelian.

Finally, the personal closing remarks regarding this volume are as follows. It is known that Hellenistic schools, especially Epicurean and Stoic, valued ethical issues more than any others, but that doesn't mean that they didn't emphasize the significance of physics for their philosophical systems, and that is shown in present papers. Among Hellenistic authors, the concept of space was discussed and thematized in heterogeneous ways, and this particular attempt of collecting various theories and opinions in one place, specifying similarities and differences between these conceptions, authors and philosophical schools, is of great importance. These essays are doubtlessly a valuable contribution to better understanding of the main physical and philosophical concepts regarding Hellenistic period. Important philosophical and semantic issues were raised, some of them yet to be answered, and discussed, hopefully in the near future.

## Philosophy as a Social Critique

Naomi Zack, *White Privilege and Black Rights. The Injustice of U.S. Police Racial Profiling and Homicide*, Rowman & Littlefield, New York, 2015.

Veselin Mitrović

The book *White Privilege and Black Rights. The Injustice of U.S. Police Racial Profiling and Homicide*, (New York, Rowman & Littlefield, 2015) by Naomi Zack is dedicated to exploring some basic philosophical, moral and (in)justice issues. The title already gives the terms the author consistently follows through the book: privileges, basic and unquestionable rights, and injustice.

The book is divided into three chapters: the first chapter covers a critique of white privileged discourse, where Zack analyzes the meaning of privilege, entitlement and rights in American society within the methodological frame of the book, as well as potential correction of U.S. police racial profiling and homicide of young unarmed black men. Zack looks at privilege in the sociological sense, as a kind of social award and at the same time gratification whether that honor is deserved or not. Concurrently, those who are not privileged should not be subject to injustice. Zack explains that white privilege discourse represents a sociological critique of the ethno-class division: whites have easier access to upward socioeconomic mobility with the goods of life available only to the more advantaged in society. Simultaneously, however, not all police officers are white, nor are, of course, all white people police officers. Zack points out the inadequacy of white privilege discourse to address the violation of black rights. In other words, Zack views privilege as conditional, whereas rights are or should be unconditional (p.2, 8, 9). She concludes the first section with an explanation of what it really means that black lives (do not) matter. That actually means that in moments of confrontation, everything happens as though the risk of death to a black male was not the most important consideration to police officers who opened fire. And it means that grand juries who do not indict such killers or juries who find them not guilty at trials, also find that other things matter more, such as, the letter of the law, police discretion and relative police autonomy, and reasonable doubt (p. 29).

The second chapter is about black rights and Police Racial Profiling where Zack takes a close legal and moral look at several specific cases of homicide and the police racial profiling that sets the stage both for such arbitrary violence and its impunity. The author insists on a difference between ideal and material rights, where the first type of right is more abstract. The second type of right pertains to a physical condition or how actual human beings are treated, primarily with respect to their most



basic bodily rights to life and safety. Drawing the reader into a deeper discussion of rights, Zack emphasizes that the white majority in the U.S. has both types of rights. The first level of the rights protection (material right to life and personal security) is carried out by local police departments as part of their official duties. However such official duties occur in the context of police culture (p.32-3). A further analysis of the relation between official duties and stereotypes about criminals, racial bias etc. is largely enriched with empirical data and extraordinary examples of intersection of the modern and traditional organizing of a specific group (i.e. police officers), their roles and duties on the one hand, and group cohesion on the other. In the complex game of statistical figures of crime, blacks as a victims of police homicide become a gray figure in crime, falling somewhere between juristically concluded, but morally and socially unacceptable cases of injustice. Aside from the bitter experience of the victims' families and wider (especially black) community, the image of blacks as the dominant criminal figure reinforces the racial bias present in police work, pushing this type of injustice in the direction of hopelessness, rather than improvement. The book presents specific examples, such as the legal case *Floyd v. The City of New York*, where the court decision offers a way in which racial profiling and other specific practices (stop and frisk), as well as jargon ("High Crime Area," "Furtive Movements" or "Suspicious Bulge") in police culture should be understood as subjective and vague. There were attempts to stem the increase in the described police stops (from 314,000 in 2004, to a high of 686,000 in 2011) through court orders. Decisions like this may be a corrective way to prevent the killing of young unarmed black males. However, before these remedies could be enacted, all of Judge Scheindlin reforms were vacated from the Second Circuit U.S. Court of Appeals, on the grounds of a kind of professional voluntarism. The Appellate panel rejected this request and the City of New York further appealed. When New York City's Republican Mayor Michael Bloomberg (2002-2014) was replaced with Democrat Mayor Bill de Blasio in 2014, the hold on Judge Scheindlin's reforms was lifted (p.52-3). The reaction of the NYPD, who were not happy with this decision, was something that awoke wider concern, both administrative and communal. Namely, the largest City police union spread an online notice (entitled "Don't Let Them Insult Your Sacrifice!") about banning the appearance of Mayor de Blasio at the funeral of police officers

who die in the line of duty. It could be added to Zack's analysis that such sociolinguistic transfer in vocabulary of police culture, from a protecting force to victimhood and sacrifice is a classical sociological example in common traditional practice of homogenization of one group's members, regardless whether they act right or wrong and regardless of their official and institutional roles. Aside from positioning its own members as martyrs, such practice reproduces the power of the group (as well as power of the majority) and revitalizes previously legally restricted action. Analogies are easy to find in U.S. history at the end of slavery and concurrent establishment of segregation and Jim Crow laws. At about the same time, the Dreyfus affair signaled similar divisions in Europe, this time based on antisemitism and ethnic-political homogenization (in the last decade of the 19th century). Conspicuous in all these cases are the overlap of attributes characteristic of both types of solidarity: mechanical and organic. Collective consciousness appears in "modern," that is, organically structured societies, with a clear differentiation of professional and social roles. Unfortunately, such homogenization of one group took place at the expense of another, who became the enemy and culprit for larger social ills – legitimately and horribly punishable prey. This is the pattern described by Zack in the third, final chapter – *the hunting schema*.

The third chapter is devoted to the possible solution to the problem of black injustice and police homicide. Seen through this socio-historical framework, the disadvantage of blacks is ultimately reflected in horrifying and shocking police killings of Oscar Julius Grant III, Trayvon Martin, Eric Garner, Michael Brown, Tamir Rice, and many other young unarmed black males, all of which took place at the beginning of the 21st century and under the aegis of U.S. law. Asking how many more need to be killed, Zack starts by comparing justice as an ideal and justice as correction of injustice. She proposes a more applicable concept of justice, rather than justice as an ideal or theory of justice. Keeping in mind the abstract image of justice in most theories of justice and the Preamble to the UN Universal Declaration of Human Rights, *applicative justice* is based on a comparison of the social and legal fact within a disposition of whites and blacks in the U.S. Where whites are treated justly by their government, blacks are treated unjustly by the government often enough for it to constitute injustice.



The author concludes that blacks should be treated by the government the same as whites are treated (p.72). The achievement of the applicative justice goal, Zack sees in the changing of the police as well as the common culture in U.S. One of the many examples is best given through numbers. There are 1.1 million police officers to about 100 million white voters (civically engaged), as of 2008. This means that only one police officer needs to influence about 100 other whites. So, this ratio could be used as an effective tool in creating a sentiment of trust between, on the one hand, one of the pillars of governance and white civically engaged majority, and on the other, the black endangered minority. At this point the author transfers the discussion to the most concrete levels, comparing events in which concrete persons are killed by concrete police officers/killers, and looks at the ensuing court decisions. One of the generators of black injustice is *the hunting schema* which is described as a psychological combination of pre-existing beliefs, contextual events or conditions, and actions, such that the existence of the beliefs in a relevant context predisposes an individual to act in certain ways. Young Afro-American males are uniquely singled out as dangerous prey that young white males are permitted to hunt in some circumstances (p.79). This hunter schema is explained in a few steps (p.81) and is regarded as the foundation for the gradual reproduction of injustice on various levels. The law is a tool for shaping politics, but morally questionable judgments mostly protect the majority. The police are not answerable to the federal government and their brutality does reinforce a racial bias. Perhaps the most important, yet also mostly invisible, cultural level is the

homogenization of police subculture and social apathy regarding black injustice. Zack underlines the importance of solidarity and moral concern on every mentioned level, something that may lead to the correction of injustice.

Zack's analysis in *White Privilege and Black Rights* can be compared to the relation between the police and racial or ethnic minorities in Europe, especially taking into consideration the conflicts in Yugoslavia and current ethnic make ups of the resulting states. Further, in this light we could also look at the present conflicts and divisions in Ukraine that resemble a police or paramilitary allegiance to one of the two groups of erstwhile harmonious neighbors. We should pay special attention to all the marginal groups in the EU (in particular the Roma, immigrants, etc.), as well as the relations of power within it and around it. The sentiment that appears in the relationship between the EU founding states and its margins almost recalls the relationship of privilege and guaranteed rights Zack describes in the US. Therefore this book can offer a significant methodological framework for an analysis of power, rights, and privileges within the EU, but also regarding its neighbors.

*White Privilege and Black Rights* is the basis for further thought and research on applicative justice and its practical implications, not only in the US, but the world over (and in particular regarding immigration policy of the EU). Special concern should be paid to potential cases of eugenic choice, which become more than real in the context of transformation of former states of well-being into so-called altruistic states, that is governments that provide basic rights to marginal groups as a kind of charity.



FROM THE ACTIVITIES OF THE INSTITUTE  
IZ RADA INSTITUTA

VI



Pregled tribina i konferencija u  
Institutu za filozofiju i društvenu  
teoriju u 2016.

Olga Nikolić i Igor Cvejić

## TRIBINE

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### mart

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nacional-socijalizam u obzoru povijesnosti  
bitka“, petak 4. mart

Jean-Baptiste Cuzin, „*Ré-enchanter la démocratie?*  
Između etike i delanja: razmatranja o potre-  
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Rory Archer, „Between class and nation: Working  
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Milan Podunavac, „Politika straha i principi  
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Marko Grdešić, „Naslijeđe populizma: Kako fokus  
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Dragan Stanojević, „Pomaljanje novog očinstva  
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Vojislav Koštunica i Kosta Čavoški, „Reagovanja  
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Jugoslaviji 1944-1949*“, sreda 27. april

Zona Zarić, „Snaga i dinamika emocija u politici -  
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Armina Galijaš, „Transformacija Islama na Balkanu 1995-2015. Strukturalne promjene islamskih zajednica“, četvrtak 12. maj

Tribina „Levica, desnica i pravoslavno hrišćanstvo“, petak 13. maj. Učesnici: Davor Džalto, Časlav Koprivica i Vladimir Marjanović

Dunja Poleti, „Rodni aspekti prostorne mobilnosti u Srbiji“, sreda 18. maj

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Ivan Mladenović, „Opravdanje demokratije i njenog autoriteta“, sreda 25. maj

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Milenko Popović, „Tehnološki progres, globalizacija i sekularna stagnacija“, sreda 1. jun

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Tibor Várady, „How and Why to Keep a Dissident Spirit in Spite of Tradition?“, četvrtak 22. septembar (u roktoratu univerziteta u Beogradu)

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Eva Von Redecker, „Exodus by Dispossession? Butler and Landauer on Fundamental Collectivity“, četvrtak 29. septembar

**oktobar**

Okrugli sto: Multikulturalizam u Vojvodini danas, petak 7. oktobar (u KC Novi Sad)

Učesnici: Darko Baštovanović, Miroslav Keveždi, Alpar Lošonc, Michal Sladecsek, Zoran Tairović, Boris Varga

Trivo Indić, *Ciklus Sećanja na rad Instituta*, sreda 12. oktobar

Tomasz Kamusella, „The Forgotten 1989 Ethnic Cleansing of Bulgaria's Turks“, sreda 19. oktobar

Völgang Štrek, „European Union as a transformative power? Capitalism, democracy and modernisation at Europe's periphery“, petak 21. oktobar (u Kulturnom centru beograd)

Marko Novaković, „Nastanak estetike i uloga aisthesisa u mišljenju filozofa“, sreda 26. oktobar

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Marjan Ivković, „Savremena kritička teorija: utemeljenje kritike naspram razotkrivanja dominacije“, sreda 2. novembar

Ruth Wodak, „The Language of Walls' - Analyzing Right-Wing Populist Discourse“, utorak 15. novembar (u Kulturnom centru Beograd)

Aleksandar Pavlović, „Ko je srpska Antigona?“, sreda 23. novembar

Todor Kuljić, „Okupirani antifašizam u Srbiji“, petak 25. novembar (u Studentskom kulturnom centru Novi Sad)

Irena Fiket, „Aktivno građanstvo u deliberativnoj demokratiji: obećanja teorijskog modela i njegova praktična ograničenja“, sreda 30. novembar

**decembar**

Milan Subotić, *Ciklus Sećanja na rad Instituta*, sreda 7. decembar

Jelena Čeriman, „Partnerski odnosi i roditeljstvo u porodicama u savremenoj Srbiji“, sreda 14. decembar

Debata „Dijagnostika fašizma“, četvrtak 22. decembar (u Studentskom kulturnom centru, Novi Sad)

Učesnici: Alpar Lošonc, Maja Solar i Dragan Nikčević

**SEMINARI I KONFERENCIJE****subota 27. februar***Seminar with Raymond Geuss: „Utopian Thought between Words and Action“*

Participants: Igor Cvejić, Rastko Jovanov, Predrag Krstić, Mark Lošonc, Aleksandar Matković, Predrag Milidrag, Tamara Petrović Trifunović, Gazela Pudar Draško, Željko Radinković, Bojana Radovanović, Adriana Zaharijević, Đorđe Pavićević, Jelena Pešić i Božidar Filipović

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**petak 25. mart***Seminar with Geoffrey Hodgson on the book „Conceptualizing Capitalism“*

Participants: Jovan Babić, Alpar Lošonc, Mihail Arandarenko, Ivan Mladenović, Marko Vladislavljević, Mihajlo Đukić, Petar Bojanić, Aleksandar Fatić, Marjan Ivković, Mark Lošonc, Aleksandar Matković, Michal Sladeček

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**sreda 27. april***Naučni skup u čast Nebojše Popova (1939–2016) i sećanja na njega*

Učesnici: Zagorka Golubović, Dragoljub Mićunović, Božidar Jakšić, Vesna Pešić, Vojislav Koštunica, Lino Veljak, Dragomir Olujić Oluja, Milan Subotić

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**4 - 6. maj****SOCIAL JUSTICE: NEW PERSPECTIVES, NEW HORIZONS****sreda 4. maj**

Wolfgang Merkel, “Social justice and the three worlds of welfare capitalism”

Lisa Herzog, “The Game You’re in. Social Norms and How They Can be Abused”

*The Role of Civil Rights in Attaining a Just Society*

Kimberly S. Adams, “From Seneca Falls to Selma to Stonewall: President Barack Obama and Civil Rights”

Nadjhia Normil-Skakavac, “It’s Just another ‘negro’: Police Brutality and the Unrendered Justice in America”

Vincent Redhouse, “A Case for the Separation of Indigenous Peoples from Their Settler Colonial States”

Joseph Grim Feinberg, “Civil Society and Uncivil Justice”

*Freedom, Justice and the Market*

Richard Christian, “Markets, Exploitation, & Justice”

Gottfried Schweiger, “Social Equality, Social Justice, and Market Socialism”

Olga Nikolić, Social Justice and the Formal Principle of Freedom

Vladimir Mentus, “Attitudes towards Freedom and Equality - Empirical Examination of Trends in Europe”

*Welfare and Redistribution – Contemporary Theory and Practice*

Alexandru Volacu, “Heterogeneous Rationality and Reasonable Disagreement in the Original Position”

Suzana Mihajlović, “Trends of welfare redistribution in the European welfare states”

Branko Bošković, “From Neoliberalism and Social Democracy to Social Investment: Equality under Scrutiny”

Maria Roxana Triboi, “Spontaneous Large Scale Practice, Urban Pastoralism as An Environmental Tool For Sustainable Urban Planning”

Werner Gephart, “Justice as Culture. Beyond Blind Culturalism and False Universalism”

Tobias Reichardt, “Equality as an Ideal that Transcends Capitalism? The Critique of the Frankfurt School”

*CAS Panel*

Dragan Tevdovski, Trajche Panov, Dane Taleski, “Socially Impoverish and Entrap: A Strategy to Maintain a Hybrid Regime”

Ali Emre Benli, “Rawlsian vs. Social Choice Approach to Theorizing Injustice”

Vladimir Unkovski-Korica, “City Partnerships as Détente from Below? Twinning Bologna and Zagreb”

Nicolae - Emanuel Dobrei, “Citizens above the Constitution. Rawls, Schmitt and the requirements of public justification”

*(Re)conceptualization of Social Justice*

Robert Gallagher, “Reciprocity and Justice”

Nicolai Abramovich, „Recognition, Decency and Humiliation: Inequality as a Moral and Logical Contradiction“

Sean Comer, „Martha Nussbaum’s Ten Central Capabilities as a Universal Theory of Justice: A Non-relative Ethical Defence“

Conversation with Jose Gil (u UK Parobrodu)

#### četvrtak 5. maj

Snjezana Prijic Samaržija, „Social and Epistemic (In)justice“

Christian Piller, „Broome and Aristotle on Fairness“

#### *Commodities, Freedom and Social Change*

Julian Fink, „The Morality and Justice of Price/Quality and Ethical Consumerism“

Vladimir Gvozden Alpar Lošonc, „The Impact of Selling Places on the Commodification of Social Justice“

Janelle Diller, „Social justice and international and transnational law: Contemporary patterns“

Sibel Kibar, „Three Examples on Justice, Rights and Freedoms in Neo-Liberal World“

#### *Epistemology of Social Justice*

Federica Liveriero, „What Are the Democratic Bases of Equality? Epistemic Parity and Political Disagreement“

Robin Zheng, „Bias, Structure, and Injustice: A Role-Ideal Model of Accountability for Implicit Bias“

Oana-Alexandra Derviş , „Metric, Criterion and Just Institutions: Can Resources and Capabilities Meet Expectations?“

Marica Frangakis, „Social Justice and the neo-liberal state – The “shock therapy” of Greece“

Christoph Henning, „Productivity, Justice, and Violence: Critical Perspectives from political Economy“

Joachim Becker, „Restructuring Production – Options for the Central Eastern and Southeast European Periphery“

Round table: “Out of Your Sight: poverty, rural, gender”

Participants: Sanja Milutinović Bojanić, Mihajlo Đukić, Gezim Krasniqi, Milana Lazić, Slavica Milojević, Olivera Vuković, Gazela Pudar Draško, Jelena Čeriman, Verica Pavić, Ana Marija Ivković, Tatjana Lazarević, Vjollca Krasniqi

Round table: „Social Justice in the Regional Perspective: Inequalities in the Western Balkans“

Participants: Vedran Džihić, Slobodan Cvejić, Mihail Arandarenko, Ivan Sekulović, Mirna Jusić, Gezim Krasniqi

#### petak, 6. maj

Hauke Brunkhorst, “Democracy under Siege. Decay of Global Constitutionalization and Structural Transformation of the Public Sphere”

Jelena Vasiljević, “How (Do We Need) to Think about Solidarity and Citizenship?”

#### *Justice, Critique and Justification*

Ferdinando Menga, „Conflict, Singularity, A-Legality: Paradigmatic Insights on Radical Democracy as Infinite Critique of Politico-Legal Boundaries“

Toni Prug, „Knowing non-capitalist production: Categories, Determinate Abstractions and Social Forms“

Yasemin Sari, „Democratic Responsibility or the Power of Becoming a Demos“

#### *Recognition and/or Social Justice*

Alaan McCarthy, „Deconstructing Morality, Moving towards Moral Conditions that already Exist“

Nuri Ali Tahir, „Fighting Injustice Through Health Care Reform: How to Understand Social Injustice and Recent Reforms in American Health Care System“

Alexey Trotsak, „On Negative Understanding of Justice: interdisciplinary Approach“

#### *Social Justice Between the past and Utopia*

Natalija Ćosić, „Negotiating Cultural Heritage Return“

Miloje Grbin i Dejan Petrović, „Utopianism in Karl Mannheim’s and Lewis Mumford’s Work“

Davide Pala, „Global Justice Theories and Non-Ideal World“

Petra Bakos Jarrett, „Borderlands, Distributive Agency and a Feminist Re-Thinking of ‘Environmental Justice’“

Roberto Frega, “The Normativity of Democracy”

#### *Migrations as a Global Challenge for a Just Society*

Raluca Bejan, „The ‘East/West’ divide and Europe’s relocation system for asylum seekers“



Carol Schick, „Justice and National Self-Interest: The Case for Quality Education“

Zaremba Kosovich, „The Notions About Social Justice among Ukrainian Labour Migrants“

*Spatial justice, participation in urban development and transparency in decision-making*

Miodrag Vujošević, Tamara Maričić, Slavka Zeković, „The role of participative planning in renewal of strategic thinking, research and governance in Serbia“

Tselios Vasileios, „Social welfare, political decentralization and quality of governance in Europe“

Marija Cvetinovic, Jean-Claude Bolay, „Participatory Urban Transformations in Savamala: capacities and limitations“

Graeme Sherriff, „Social and Environmental Justice through Transport policy: New Perspectives on Greater Manchester’s ‘Congestion Charge’ Referendum“

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24 - 25. jun

**INTERNATIONAL LAW AND ETHICS  
CONFERENCE SERIES (ILECS)**

petak 24. jun

Tamar Meisels, „Liberal Nationalism and Territorial Conflict“

Brenda Almond, „Border Anxiety: Culture, Identity and Belonging“

Jovan Babić, „Where? What Does it Mean, why Does it Matter?“

Boris Kashnikov, „Borders, Cossacks and Perpetual War“

Jan Narveson, „The Logic of Borders: Local vs. International“

Zoran Oklopčić, „Scopic Regimes of Territorial Rights: Normative Theory, Critical Geography and Beyond“

Zoran Kurelić, „From Hell-holes to Hell“

subota 25. jun

Rudolf Schuessler, „Rights to Migration: The Moral Consequences of Scholarly Disagreement“

Alice Pinheiro Walla, „Kant’s Legal Theory and Territorial Rights“

Paul Viminitz, „Walls“

Jovana Davidović, „Our Duties to Refugees: Jus ad Bellum and Jus Post Bellum“

Kerstin Reibold, „What Can Rawls Tell Us About Indigenous Land Rights?“

Nicholas Fotion, „The Ethical Dimension in War“

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petak 23. septembar

**TRANSITION WITHOUT JUSTICE**

Round table on the Bachmann and Fatic book „*The UN International War Crimes Tribunals: Transition without Justice?*“

Speakers: Tibor Varady, Nenad Dimitrijevic, Jovan Babić, Klaus Bachmann, Aleksandar Fatic

Thomas Hancocks, „Transitional Justice, Rights and Legitimacy“

Izabela Watts, „Justice before peace: 14 shades of transitional dilemmas from civil war to democracy“

Nenad Dimitrijevic, „Normative Change and Transitional Justice“

Zoran Cirjakovic, „Aiding transitions or facilitating neocolonial interventions: Transitional justice against democracy?“

Roozbeh Baker, „Institutional Design and the Struggle for Influence: Criminal Procedure Reform in BiH post-2003“

Catalin Constantinescu, „Romanian Transitional Criminal Justice: The story of five trials and a failure“

Nikolina Zidek, „Victor’s justice before Croatian domestic courts: a case study of trial for war crimes in Grubori“

Misa Djurkovic, „A political instrumentalization of justice: The case of ICTY“

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nedelja 25. septembar

*Seminar with Rogers Brubaker on the book “Grounds for Difference”*

Participants: Dino Abazović, Ivan Đorđević, Jovana Mihajlović Trbovc, Jovo Bakić, Ljubica Spaskovska, Marko Kovačević, Tamara Petrović Trifunović, Viktor Koska

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26 – 28. septembar

**POLITICS OF ENMITY: CAN NATION  
EVER BE EMANCIPATORY?**

ponedeljak 25. septembar

Rogers Brubaker, „Religious Dimensions of Political Conflict and Violence“

*Revisiting the Theories of The Nation*

Vladimir Gvozden and Alpar Lošonc, „How to think nation as a community?“

Robert Gallagher, „ἔθνος and nationalism“

Daniel Rosenberg, „Ernest Renan’s What is a Nation? Reconsidered“

G. M. Tamás, „Nation, race, ethnics and class: the problem revisited“

204 (Inter)National Vs. (Inter)State: Is Nation-State Going to History?

Zeynep Selen Artan-Bayhan, „Boundaries of Turkish ethno-national identity: immigrant imaginations in the United States“

Elli Ponomareva, „Armenia’s trans-border nationalism: diaspora identity construction and the Karabakh conflict“

Stefan Aleksić, „Nation of refugees: inventing a nation or reinventing belonging“

*Gendering Serbian-Albanian Relations*

Elife Krasniqi, „Gender and Nation: competing loyalties in socialism and post-war period in Kosovo“

Adriana Zaharijević, „Sisterhood in dispossession: the case of Serbia and Kosovo“

Armanda Hysa, „Theorizing ethnically mixed intimate relations in the Balkans: the case of Albanian–Serbian mixed marriages“

Florian Bieber, „After ethnicity? Persistence of and challenges to the ethnicity paradigm in the Balkans“

*Nations and International Relations*

Luca Lattanzi, „The crisis of national states and the deterritorialization of enmity in Carl Schmitt’s international thought“

H. Hande Orhon Özdağ, „Conflicting effects of globalization on nation states of the core and the periphery“

Marko Kovačević, „Bringing in Bibó: understanding identities and reality of small post-Yugoslav states“

Mariusz Węgrzyn, „Indispensable nation – respect for the rights of nations as an indispensable prerequisite for respect of human rights, the world order and international security“

*Europe, Nations and Symbolic Geography*

Tamara Pavasovic Trost, „Belonging to Europe: understanding the complex symbolic geographies of Europe in everyday Serbian discourse“

Sanja Lazarević-Radak and Andrej Mitić, „Symbolic geography and anthropomorphization of a nation: the Ottoman Empire and Turkey in English and American travelogues (1840-1921)“

Madlen Nikolova, „Europe’ and its constitutive Other: a case study of a trial against ‘foreign’ Islam in Bulgaria“

Panel discussion „Future without enmity: Serbian-Albanian relations in perspective“ with presentation of trailer for documentary film“

Participants: Tanja Mišćević, Odeta Barbullushi, Florian Bieber, Agron Bajrami, Borko Stefanović

utorak 27. septembar

Reinhard Mehring, „Carl Schmitts Freund- Feind- Unterscheidung heute?“

*Nationalism and Risks*

Aleksandar Fatić, „Is Jihadi terrorism a longing for organic identity?“

Robert Pichler, „Macedonian Muslims between national emancipation and the rise of religious fundamentalism“

Andrej Pezelj, „Violence and emancipatory role of the state“

Marjan Gjurovski and Dragan Djukanovic, Risks of social identity – the case of the Republic of Macedonia“

Stefan Milutinović and Ana Veljković, „The European crisis through the lenses of the refugee crisis: are migrations from the Middle East strengthening nationalism in Europe?“

*Nationalism and the Urban Space*

Natasha Sardzoska, „Struggle for nation-state recognition: spatial nation-building, urban mapping and porous memory in the reinvention of the Macedonian capital city“

Denis S. Ermolin, „Komšilik in Pristina: between memory and locality“

Ana Ljubojević and Mia Jerman, „Town monument, then and now: memories of the 1990s and social production of identities in Dubrovnik“

Srđan Atanasovski, „Sonic ecologies of urban segregation: Serbian-Albanian relations and producing 'the Other' on the street rallies“

Aneta Strzemžalska, „Formal and informal nationalism: jazz performances in Azerbaijan“

Nuria Sánchez Madrid, „Politics of peoplehood: the birth of a new nation“

Montserrat Guibernau, „Identity, belonging and nationalism“

*(Post-)YU states and nationalisms*

Adin Crnkić, „Constructing Bosniak nationalism: historical institutionalist perspective“

Ivan Ejub Kostić, „From a religious to a national movement: a case study of the Young Muslims“

Dario Brentin, „The sporting men have no country!': sport as a channel for inter-ethnic understanding in the post-Yugoslav space?“

Ozan Erözden, „Civic nationalism, universalism and war crimes: the case of Croatian Social Democrat Party (SDP)“

*(Real) Socialism and National Question(s)*

Ercan Gündoğan, „A Critical re-evaluation of Lenin's and Stalin's conceptions of national question and self-determination right of nations and people“

Rastislav Dinić, „New, yet unapproachable states: Cavell on America, Makavejev on Yugoslavia“

Marjan Ivković, Tamara Petrović Trifinović and Srđan Prodanović, „From social justice to identity: systemic legitimization of Yugoslav socialism in Kosovo protests“

Ana Petrov, „Whoever doesn't listen to the song will listen to the storm': politics of nationalism and Yugoslav popular music“

*Ethnographies of a Nation*

Krisztina Rác, „Constructing and destructing the national: discourses and practices of ethnicity among Hungarian youth in Vojvodina“

John William Day, „Living Turkish nationalism: theoretical and ethnographic reflections from Kurdish Turkey“

Andrej Kubiček, „Roma nation: escaping pariah people's stigma?“

Inis Shkreli, „Exploring collective identity and everyday life of Serbian-Montenegrin minority in Shkodra“

Panel discussion: „The return of the national borders and the rise of extremism in Europe“

Participants: Rigels Halili, G. M. Tamás, Jovo Bakić, Ljubica Spasovska, Nebojša Vladislavjević, Monserrat Guibernau

**Sreda 28. septembar**

Gazela Pudar Draško, „Enmity in the intellectual world: what do they stand for?“

*National Identity Formation: Us and Them*

Mark Hau, „'Catalan is whoever wants to feel Catalan': narrative cultivations of self among Catalan nationalists“

Lucas Álvarez Canga, „Enmity in nationalism: Spain as a key element of Catalan identity and Nationalism“

Roland Gjoni, „A different kind of us: national identity dynamics between Albania and Kosovo“

Vedran Džihčić, „Persistence of ethno-politics in Bosnia&Herzegovina: adaptability and performativity of ethno-nationalism“

*Nation and Politics in Education and Academia*

Çağatay Çoker, Gonca Nebioğlu, Ogeday Çoker and Yakup Azak, „Nationalist and gender discourse in textbooks of highschool education in Turkey“

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## **sreda 5. oktobar**

Radionica „*Humanističke nauke i problem političke prakse i društvene angažovanosti*“ (Filozofski fakultet, Univerzitet u Banja Luci)

Učesnici: Gazela Pudar Draško, Adriana Zaharijević, Olga Nikolić, Igor Cvejić, Srđan Prodanović, Marjan Ivković, Željko Šarić, Željko Radinković, Markus Manojlović i Miroslav Galić

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## **petak 21. oktobar**

Seminar „*Why the Euro divides Europe*“ with Wolfgang Streeck

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## **utorak 8. novembar**

Workshop *Intellectual Engagement and Political Mobilization*, The National Center for Scientific Research (CNRS)

Participants: *Éric Fassin, Igor Krtolica, Laurent Jeanpierre, Geneviève Fraisse, Bertrand Ogilvie, Alain Brossat, Hourya Bentouhami, Alexis Cukier, Gazela Pudar Draško, Adriana Zaharijević, Aleksandar Pavlović, Mark Losoncz, Edward Djordjevic, Petar Bojanić, Sanja Milutinović Bojanić and Igor Cvejić.*

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## **sreda 16. novembar**

Seminar with Ruth Wodak on the book „*The Politics of Fear: What Right-Wing Populist Discourses Mean*“

Participants: Adriana Zaharijević, Gazela Pudar Draško, Marjan Ivković, Srđan Prodanović, Danijela Majstorović, Jovo Bakić, Dušan Ristić, Kristina Rac, Isidora Stakić, Andrej Cvetić i Tamara Petrović Trifunović.

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## **subota 19. novembar**

skup *Demokratska tranzicija u Španiji i Srbiji – iskustva i paralele*, Kulturni centar Novog Sada

Učesnici: Zoran Krstić, Silvija Monros-Stojaković, Trivo Indić i Ksenija Šulović.

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## **petak 9. decembar**

Workshop *Can Social Engagement Challenge Neoliberal Democracy?*, Wissenschaftszentrum Berlin für Sozialforschung (WZB)

Participants: Wolfgang Merkel, Julia Haarbrücker, Thamy Pogrebinski, Andreas Schäfer, Eva Fon Redecker, Thorsten Wilhelmy, Aleksander Dunst, Petar Bojanić, Marjan Ivković, Gazela Pudar, Srđan Prodanović, Aleksandar Pavlović, Jelena Vasiljević i Igor Cvejić

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### **Ponedjeljak 12. decembar**

Radionica „*Korak napred: Zajedničkim angažmanom do naučne izuzetnosti i društvenih promjena u regionu*“ (na Fakultetu političkih nauka, Univerzitet u Sarajevu)

Učesnici: Sead Turčalo, Nerzuk Ćurak, Asim Mujkić, Dino Abazović, Vedran Džihić, Sanja Milutinović Bojanić, Petar Bojanić, Adriana Zaharijević, Mark Losonc, Gazela Pudar Draško, Erhard Busek, Felix Henkel, Filip Radunović i Nicollo Milanese

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### **Otvoreni razgovori:**

Kako razumeti izbegličku krizu, petak 18. mart  
Natalitet: između populacione politike i abortusa, sreda 20. april

Kakvo društvo želimo?, sreda 5. oktobar (Banja Luka)

Kakvo društvo želimo? (De)industrijalizacija vašeg grada – analiza iskustva i potencijalnih alternativa, petak 18. novembar (Bor)

Kakvo društvo želimo? O izazovima zajedničkog zamišljanja alternative, ponedjeljak 12. decembar (Sarajevo)

Kakvo društvo želimo: između privatnog i javnog, subota 17. decembar (Sombor)

Kakvo društvo želimo: između privatnog i javnog, petak 23. decembar (Loznica)



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