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BOOK SYMPOSIUM ON KENNETH R. WESTPHAL'S
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SEMINAR O KNJIZI KENETA R. VESTFALA
HOW HUME AND KANT RECONSTRUCT NATURAL LAW

BOOK SYMPOSIUM ON KENNETH R. WESTPHAL'S *HOW HUME AND KANT RECONSTRUCT NATURAL LAW*

Institute for Philosophy and Social Theory, Belgrade, April, 2017.

Kenneth R. Westphal

Introduction

Thank you each and all for coming and for your interest! I hope what we do today isn't disappointing; I'm grateful for your patience with my speaking yet another language, this one English. Please do interrupt me if I don't speak clearly enough or if I speak too quickly. I'm sorry I have not yet had an opportunity to learn Serbian, so my warm thanks to you for attending!¹

Let me try to say a few things briefly about what I've tried to do in this book; it results from, well, let me put it this way: I tried to pursue the kinds of studies and research required to write this book on issues that have been with me really from childhood. I was first exposed to Hume's theory of justice in an undergraduate course in political philosophy at University of Illinois taught by B.J. Diggs. Diggs was one of the few people who paid attention to Hume's theory of justice at that time, which turned out to be an extremely fruitful beginning for me in part because already I was concerned about whether it may be possible to recover at least the core content of a defensible, tenable natural law theory without getting involved in issues about moral realism – that is, the notion that there are somehow human-mind-independent moral facts of the matter that we need properly to take into account – because debates about those kinds of facts have for millennia been enormously controversial, especially among philosophers, though not only among philosophers, and at times not merely controversial, but controversies as you are painfully aware which too easily break out into open armed conflict and worse. So I've been trying to figure out whether or how it might be possible to identify some very

¹ I am most grateful to the Institute for Philosophy and Social Theory, University of Belgrade (Serbia), for their very kind invitation to hold a workshop on my research (4 April 2017), to Rastko Jovanov for organizing this event, and to the members of the Institute for their interest and hospitality. This transcript has been lightly revised by the author for publication. Completing this transcript was supported by the Boğaziçi Üniversitesi Research Fund (BAP), grant code: 9761.

basic moral norms without having to invoke issues about moral realism *or* anti-realism and also without getting sidetracked by issues about moral motivation and its purported relations to moral justification. Hence I have found myself quite at odds with most everything that's happened in ethical theory in the Anglophone 20th century. It turns out that right up to the end of the 19th century and into the very early 20th, everyone regarded moral philosophy as the genus with two proper species – ethics and justice, and those interested in moral philosophy were equally interested in issues about philosophy of law and philosophy of education. This is also true of none other than Henry Sidgwick, who mostly now by Anglophones is remembered only for his *Methods of Ethics*, to the utter neglect of his own *Principles of Political Economy*, of the fact that he was the head of the Statistical Section of the Royal Society when that section was responsible for economics, prior to economics becoming its own discipline. Sidgwick had written a really quite wonderful book on the *History of European Polity* and he understood political economy and wrote on it as a moral science, not only in the sense that it investigates human phenomena, but that political economy is also a *normative* art, as Sidgwick says. All of that is set aside in short order at the beginning of the 20th century among Anglophones with the sudden advent of moral intuitionism among Moore and Ross, and also C. D. Broad's *Five Types of Ethical Theory*. Now, much better attention to Sidgwick's work was given by Jerry Schneewind (1997) in his really quite astonishing study of Sedgwick's thought and philosophy, but Anglophone philosophy remains mostly very compartmentalized because this makes life (appear) simpler. So I have been trying to reestablish what I still regard as the proper genre of moral philosophy as containing the two equal species – ethics *and* justice – and trying to point out that issues about justice are not just corollaries to ethics, which is how they have been largely regarded, which is why in the Anglophone tradition Rawls's *Theory of Justice* (1971) was taken to be such a breakthrough, declaring, in effect: "I'm just going to do political philosophy; I'm not going to try to deduce it out of ethics or as corollaries to ethics." I'm not persuaded that Rawls's methods were sufficiently fundamental. We can discuss why so later, if you wish.

So, my aim has been to devise a certain kind of moral constructivism which can, I think, identify and justify fundamental moral norms, including juridical norms of justice, without appeal to the kinds of subjective factors or states of awareness that have been prominent in Hume's own ethical theory and also in most varieties of contemporary moral constructivism, because they all face exactly the kind of problem that can be found within Hume's sentiment-based ethics. If we base the identification and justification moral principles upon subjective states of awareness, we wind up with an account of those principles that cannot address anyone who simply lacks those states of awareness, or less honorably: those who deny having them. So I think all these contemporary varieties of moral constructivism that do take alleged states of awareness as basic have given in to moral relativism and pretty nearly to conventionalism before they get started. So, I've looked to how Hume identified a different way

of constructively identifying and justifying fundamental principles, by taking into account quite basic and pervasive facts about our very finite form of human agency and our manifold dependencies, interdependencies and vulnerabilities, by which we are subject to extortion, injury, deception and other such unwelcome actions. Without any regard to motives or to sentiments, in his theory of justice in the *Treatise* (Book III), Hume argues strictly on grounds of utility that for human life to be possible at all, we require very basic principles providing for acquisition and justifiable use and also transfer of goods, including principles governing fidelity to promise and contract – and in conditions of even modest population growth, we further require some version of more or less formal institutions of government to identify and adjudicate disputes about rightful use or unrightful misuse of goods or about sufficient fidelity or infidelity regarding promise or contract, and to determine proper redress for violations or failures of performance. Thus we get quite straightforwardly on Hume’s account at least the rudiments of civil and perhaps even criminal justice. He also argues that we then confront coordination problems, namely: We all benefit enormously from various kinds of public works, and it is an entirely suitable function of government to organize and commission such works, such as highways or harbors, or also the common defense.

In these ways, on grounds of utility alone, Hume identifies and justifies these basic, central principles of justice. They may be elementary, but they are not at all trivial. We don’t get from Hume’s account of justice much attention to issues about political legitimacy, because Hume’s own project in the *Treatise* is largely explanatory. That’s no surprise, yet there are some traces of his concerns with issues of legitimacy and with legitimate distributions of power and wealth; in some of his later essays he certainly is aware of how often and how easily powerful men have dominated women, slaves and other groups over whom they can wield power. So, he is not insensitive to those issues, but he doesn’t have a philosophical response to them. Annette Baier (2010) has drawn attention to the great expansion of Hume’s concept of justice in his *History of England*. I think that she’s right about that, but she says nothing about whether or how he justified his expanded concept of justice. I don’t think that he did justify it; certainly she doesn’t show that he did.

However, these are precisely the issues directly posed by Rousseau, famously so, and I think quite rightly so. Central to Rousseau’s requirement for legitimate law, legislation and government is what can be called the Independence Requirement: Within a legitimate society no one is to be allowed to acquire or to wield any kind or extent of influence, prestige, wealth or any other form of social power, by which he or she can unilaterally dictate what someone else does. This insures that cooperation is always on the basis of voluntary agreement for good reasons; this insures moral freedom of each and everyone, according to Rousseau. It’s no surprise that this is exactly what Kant takes up.

Also no wonder is that Kant’s sole innate right to freedom further spells out Rousseau’s Independence Requirement. Yet running through this entire approach to legitimacy is the old Roman law adage, from the 2nd century C.E.

Phonetician jurist Ulpian: to live honorably, injure no one, and render unto each what is his (or her!) due. Now there are pressing issues what counts juridically as in-jurious, and I think Kant's principles can help quite a lot with these. The fundamental point of Kant's universalization tests is that rational justification in all non-formal domains, including ethics and justice, of claims, principles, judgments or also those maxims that guide actions, requires that sufficient justifying reasons for the claim or action or maxim are such that they *can* be addressed to all others, such that any and all others *can* identify and assess those grounds and likewise find them sufficiently justificatory, and *can* adopt and follow them in thought or in action, consistent with one's own judgment or prospective action. That's the universalizability built into Kant's universalization tests; Kant is already working with exactly that kind of communicability requirement in the "Doctrine of Method" in the first *Critique*. It's not new to the *Groundwork*, it's not new to the *Metaphysics of Morals*, it's fundamental to the entire Critical philosophy.² This is exactly what Hegel learns from Kant; these are the core conclusions to Hegel's analysis of mutual recognition in the *Phenomenology of Spirit*, but I'll leave Hegel aside,³ except to mention this point, that Hegel seizes upon what Kant had identified about this communicability requirement for justification, namely: a direct counterpart to Hobbes's problems in the state of nature where, again, too much of the Anglophone tradition has been obsessed with Hobbes's alleged egoism, though in fact he is not an egoist about human motivation; instead, the more fundamental issues Hobbes raises concern coordination – intersubjective coordination in our use of goods: simple innocent *ignorance* of what belongs to whom and what she or he rightfully may do with his or her belongings; simple ignorance of those relations suffices to generate the kind of total mutual interference that characterizes Hobbes's state of nature. *That's* the fundamental point in Hobbes's reconstruction of what turns out to be Epicurean natural law theory. I don't make that case; that's been done by Bernd Ludwig (1989).

Now, concerning issues about justification, Kant points out two *distinct* issues of coordination concerning our judgments about what are (or are not)

2 In his review of my book, (McCarty 2016) simply re-asserts his belief that any maxim of this form, 'You exploit me in this way this time; I exploit you in this way the next time', passes Kant's universalization test, entirely ignoring three fundamental points: The care with which I have explicated the relevant kind of universalization; O'Neill's (1989, 138–9) observation that 'The false promisor, the deceiver, the coercer, the rapist – all of them *guarantee* that their victims cannot act on the maxims they act on. (If erst-while victims adopt the maxims of those who victimized them, they have regained some agency and become collaborators and colluders, not victims, and the initiator's maxim must be reconstructed)'; and that when the subservient partner is in the control of the dominant one, the latter can do whatever s/he will with or to the submissive partner, regardless of their prior agreement; this is a fact about power and its possible abuses, it is not a moral permission so to do. (All *Notre Dame Reviews OnLine* are commissioned; McCarty's blunder indicates what has become of today's 'scholarship'). For a much more accurate review, see Šljukić (2017).

3 I examine, reconstruct and defend Hegel's Critical philosophy in Westphal (2018a).

sufficient justificatory grounds regarding which claims, judgments, maxims or actions *are* sufficiently, rationally justified; namely, that either we identify grounds, and hence also on their basis actions, which *can* be omnilaterally justified for sufficient reasons, *or* within the domain of rational justification we're stuck with a direct counterpart to Hobbes's state of nature. Kant *names* Hobbes in this connection in the "Doctrine of Method" of the first *Critique*, and Hegel noticed that: Consider that marvelous section, "The Animal Kingdom of the Spirit" (*Der geistige Tierreich*); it is the direct literary counterpart to a Hobbesian state of nature, and not at all incidentally. Hegel, it turns out, was an extraordinarily subtle reader of Kant's Critical methodology. So Hobbes's point about coordinating intersubjectively publicly identifiable principles and practices, and by these also specific titles regarding who is entitled to do what with which things, when and how, so that these fundamentals of justice must be *public* principles, procedures and titles in order to relieve us of our natural ignorance of who is entitled do what with what, when and how. Hence justice must be public. When Hobbes says that justice pertains to men in society, not in isolation (*Leviathan*, 1.13.13), is not espousing conventionalism. His point rather is that fundamental moral problems start with problems of coordination, and those problems are exactly the problems Hume addresses in his theory of justice in the way that I mentioned about basic rights of acquisition possession, use, transfer, promise, contract and the rudiments of civil and criminal justice.

The interesting point about Hume's theory of justice in these regards is that in identifying and justifying these fundamental principles, even in terms solely of utility, at no point does Hume appeal to anyone's sentiments or motives. Indeed, Hume *rejects* act utilitarianism and adopts rule utilitarianism with a quite direct and I think also decisive example, his own example of restoring a fortune, a vast sum of money, to a seditious bigot – that's his own phrase – or to a miser. If you do so, plainly the public is not the benefactor because that money is either taken out of public use altogether, or it will be used for seditious or bigoted purposes, so plainly the public will not benefit by that restoration. However, the rules of justice require the restoration of a fortune to its rightful owner and that's a much more fundamental point of public justice and utility than the further consequences. When Hume makes this case, nothing about anyone's character, or motives, or sentiments – not of the agent, not of the miser, nor the bigot, and not of any ideal spectator – plays any role at all, zero, none – they just disappear, because they're not necessary and indeed irrelevant to this fundamental principle and practice of justice.

Hume himself shows us how to identify and to justify a fundamental moral principle without any appeal to his own sentiment-based ethical theory; *brilliant!* This was really quite common procedure in modern natural law theory, which then got lost because too much of it was done within a more or less theological worldview and the authors tended to get carried away with that aspect of the view rather than looking at juridical fundamentals. Yet Hume is not doing anything radically different; he's paying much more careful attention to these basic principles than most of his predecessors, that's not nothing. Yet

it's exactly that same kind of analysis Kant gives us about fundamental rights of acquisition, possession and use at the beginning of his "Doctrine of Justice" (essentially §§1–9), but amplified by Kant's use of Rousseau's Independence Requirement and a much more sophisticated account of rational justification, including the condition on the communicability of sufficient justifying reasons I mentioned before. This distinctive and incisive method for identifying and justifying basic moral norms has been altogether neglected, to our detriment (*cf.* Westphal 2018b). Thank you.

Miloš Marković

Faculty of Law

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As for the problem of how Hume and Kant reconstruct natural law, I've found some interesting points that I would like to address and call our attention to them. As a student of law I may not have been able to understand entirely some other points in the book and I would like to get a clarification.

1) One of the things I find interesting is the definition of moral realism. It is very important to make a difference between the thesis that there is a definite answer to question whether one is morally obligated and the thesis that there are some human mind independent truths. Because obviously a moral constructivism can endorse the first thesis, but moral realism is limited to the second thesis.

2) The second interesting point are five social coordination problems of Hume. They are reminiscent of Herbert Hart's legal anthropology in his famous book *The Concept of Law*. Hart speaks about five truisms which are contingent facts, but nonetheless universal about human nature: human beings are vulnerable, more or less equal, they have limited resources at disposal, their sympathy towards each other is limited (neither angels nor devils) and they have limited understanding and strength of will (limited contemplation and determination). All of those truisms justify certain rules (Hart makes a difference between primary and secondary rules). For example, the vulnerability of human beings justifies the rules that demand protection of persons. The equality enables coercion, because if there were greater inequalities among humans so that some were greater and stronger and smarter it wouldn't be possible for the less strong and less smart to exercise coercion and impose sanctions on the superior ones. The limited sympathy makes the coercion necessary. The limited resources are enough to justify both static and dynamic rules, in the sense that static rules regulate property (Hart doesn't use the term possession) and the dynamic rules that regulate promise and contract. In contrast to Hart's account Hume requires some further premises, further social coordination problems in order to make a complete system of those static and dynamic rules regulating possession or property and promise and contract. The limited contemplation and determination justify the secondary rules which give legitimate power to government to organize the society to issue further authoritative rules. That is actually the fifth

social coordination problem that Hume also discusses and uses as a justificatory point for government rules as rules protected with sanction, i.e. legal rules.

3) The third point I find very interesting is your remark that issues we confront today, primarily legal philosophers and moral philosophers, are far too complex to afford a dismissive attitude towards our philosophical predecessors. In regard to that I had an impression that maybe too much is written about what other authors have already written. We are discussing what someone said, we are having a meta-debate forgetting about the core issues, just discussing only about sentences or even words which are in some works of renowned authors. My concern is that if we disregard the core issues, then the meta-debate would be in vain.

The points that I found problematic are the following:

1) The contention that moral philosophy entails ethics and justice is contestable. I regard justice as a moral value or a moral virtue, not a philosophical discipline in practical matters. Therefore it is hard for me to conceive ethics and justice on the same level as two coordinate types of moral philosophy as a generic discipline. Ethics is like a synonym to moral philosophy, while justice represents an object of legal philosophy, even maybe of political philosophy. From that viewpoint it would be plausible to talk about ethics and legal philosophy as types of the moral philosophy, on the one side, and about good and justice as their objects, on the other. That was on p. 2 of the book. Now I would like to refer to p. 25, where we come to read about basic moral principles of ethics and jurisprudence. Somewhat different terminology is used which calls our attention to the possibility to reformulate those elements of moral philosophy. On p. 181 we may read that for the Anglophone analytical ethics in contrast to moral philosophy the ethics is primary, while social-political philosophy i.e. justice is secondary. Therefore, in three different places of the book, three different terminologies are employed to address the problem of justice. That is how I reach the conclusion, and please correct me if I am wrong, that the moral philosophy can be divided in an individually oriented and a collectively oriented part. The division may well not be precisely stated. But the formulation suffices to point out that the individual problems constitute the object of ethics as moral philosophy in the narrow sense, while legal and political philosophy deal with the collective issues.

2) Proceeding from the previous question, I would like to ask whether to comply with the dictates of justice represents an ethical or a moral duty?

3) According to the Optionality premise the fact that the principles of justice are artificial does not necessarily mean that they are either relative, conventional or arbitrary. But, does it mean that relative and conventional moral standards and principles are not arbitrary and to what extent? I see a relative moral principle as based on an individual decision or individual will, while conventional as based on a collective will or agreement. But, is the difference made with regard to arbitrariness? Aren't they both already arbitrary? We may even take into consideration different types of moral relativism: descriptive, normative, meta-ethical. I would appreciate if you could clarify the matter.

4) I now turn to the difference between identification, explanation and justification of moral principles as primarily explained on p. 40 and 41. A difference is asserted between an identification of moral principles, explanation of our knowledge of them and justification of both moral principles and our knowledge of them. Hume's project was purportedly explanatory. Supposedly in his moral theory he remained focused only on the explanation, not on the justification. I'm afraid I was not able to catch the fine difference between these two. Each definition of three tasks entails a normative element, because we are not simply to identify principles, but to *correctly* identify principles, to *properly* explain and to *tenably* justify them. While reading the book I regarded identification of principles as a completely cognitive task meaning that principles are somehow given in advance, and we have to identify them, to state them, to describe them, not prescribe them, and only afterwards justify them as they are. It seems as opposed to the whole project of moral constructivism the talk about a correct, proper identification. It seems to me as if the correct identification overlaps with the justification of the principles. How otherwise are we supposed to correctly identify them? That is also something I had a problem with, having doubts whether I understood it properly.

5) Referring to p. 55 and contention that some acts of injustice arouse the sense of injustice because they are unjust. My question is whether some or all acts do arouse the sense of injustice in Hume's opinion?

6) Referring to p. 58 and the figure of impartial spectator, I would like to ask whether there is a difference between being just and being non-arbitrary? As complex social relations the principles of justice (as principles solving social coordination problems) are artificial. Nonetheless they are indispensable to human life both individual and collective. That's why they represent laws of nature, i.e. they are non-arbitrary. But, moreover those principles are said to be just. Why? For reasons Hume provides in his resolution to five social coordination problems. I am referring to p. 36, where the discussion about the social coordination problems concludes. On p. 58 the principles "of justice" (as principles solving soc. co. problems) are laws of nature, i.e. non-arbitrary, because they are solution to those problems. But on p. 36 the principles "of justice" (as principles solving soc. co. problems) are just because of the same reason, that is, because they are solution to those problems. In that light my question is whether justice consists in non-arbitrariness, and if not, why are laws of nature just beside the fact that they are non-arbitrary?

Kenneth R. Westphal

Thank you very much; I think these are very interesting questions! Obviously I regret having left some of them apparently open, but let me try to clarify some of them. Let me start with a remark regarding moral anthropology or practical anthropology (as Kant calls it) and Hume's observation about our limited generosity and benevolence. This feature of what Hume takes to be human psychology – our limited generosity and benevolence – at most explains why we

need to pay particular attention to duties of virtue or duties of justice regarding others, and when we ought to be and how we ought to be more benevolent or more generous. So, the fact of limited generosity only *explains* why we face particular issues about when assisting others is morally a duty; it doesn't *justify* these acts morally *as dutiful*. *These* are the moral issues, while limited generosity does nothing to identify which acts *are* appropriate or morally obligatory acts of assistance. This is part of where Hume is engaged in a psychological, anthropological form of inquiry about moral beliefs, which by design cannot address issues about which actions are in fact just or virtuous or for that matter supererogatory (*i.e.*, above and beyond the call of duty). In the Hume chapter (of my 2016 book) where you wonder what counts as explanation, and what counts as justification, there's very little normative justification of Hume's basic rules of justice, because Hume's account is so much an explanatory account, mainly seeking to explain why certain actions are *called* just or unjust, and at times he wants the mere designation of acts as either just or unjust or the mere designation of acts as virtuous or unvirtuous, vicious, to constitute those acts *as* (morally) just or unjust, virtuous or vicious. That's the strongest nominalist part of Hume's anti-rationalist explanation of moral language and moral beliefs. That project of Hume's has nothing to do with justifying those beliefs (morally or otherwise); it only seeks to explain how we ever come to associate any moral sentiment of approval or disapproval of various acts which we happen to designate 'just' or 'unjust', 'virtuous' or 'vicious'. So, you're right, in that chapter there's very very little about normative justification, yet the issue about non-arbitrariness comes up this way: These basic rules of justice Hume *does* identify, and he identifies in many regards why these are absolutely *necessary* for human life. This *is* an important contribution to their identification and their justification, except that Hume doesn't make it out to be a normative justification. He does say they promote general utility, but does not offer this observation there as a normative justification of those principles. All the normative justification awaits my discussion of Kant's views (in the subsequent chapters).

So, the issues you query regarding non-arbitrariness are emphasized by the way I try to get philosophers to stop automatically equating conventional norms with arbitrary or optional norms, which has been rampant in the Anglophone discussion for the past 80 years. I think it really is an insight on Hume's part that there *are* some norms which may well be conventions, they may well be our artifacts, but nevertheless they are *entirely* non-optional: either we identify these and abide by them, or resolve all our problems by quickly going extinct. So, there's at least a strong prudential reason to behave ourselves rather better than we often do, but this is not a normative, moral justification of so acting (on Hume's part) because it is the right way to behave in our dealings with one another. So, yes, and I tried at several points (perhaps not clearly enough) to indicate, that of course there are many principles we must establish conventionally; this is called legislation and custom, but these will all specify and augment the very basic principles of justice that Hume has identified in his rules of justice and some further such rules that I think Kant identified. As

particular societies become larger, they require more clearly stated laws governing property and its acquisition, its rightful use, transfer, and what counts as harmful or negligent misuse of our belongings. Many such principles and practices must be made more specific as our societies increase in size and also as our economies become more complicated and as we start putting so much more technology into economies and into common usage. I wanted to emphasize that there is a core group of principles by which we must abide, in one form or another, within any feasible, and within any tolerably just, human community. As for what is tolerably just, I only address in the part of book on Kant, but I think that Hume's insights about the rules of justice are a really good start, and in particular that he sees that artifice, literally making something, such as these most basic principles, may be conventions, and yet, nevertheless, there are simply no alternatives for us given our finitude and our mutual interdependence and our vulnerabilities.

Yes, nominally the terms 'ethics' and 'moral philosophy' could be swapped around, but I'm happy to go back to Plato's *Laws* and also to Aristotle – his *Ethics* and *Politics*, which are two parts of one project – and how consistently this topic was regarded as moral philosophy, also in England of the 19th century, e.g., Bentham and Mill. Bentham means his title: *Introduction to the Principles of Morals and Legislation* – and likewise Mill, in *Utilitarianism*, in the last chapter on justice, is quite clear that these rules are rules of justice for philosophers too, until they show us that we can do better in these regards. Sidgwick is quite plain about moral philosophy embracing both ethics and justice. So, yes, we could swap the English terms, 'morals' and 'ethics', but I think the tradition of usage, coming from literally the ancient Greeks to now, leaves us with more established usage according to which moral philosophy designates the genus, and within it we have ethics, justice, political philosophy, philosophy of law, philosophy of education, and of course everyone from Plato, indeed from Socrates, down to Sidgwick recognize that these are inseparable aspects of human life. Ethics just isn't individualist in the way that 'moral point of view' theories tried to make it in the 1950s. The individual questions about how each of us ought to behave are shot through with all kinds of social dimensions regarding our associates, our family, our friends, and of course all of our professional, or vocational, or academic involvements and how we make use of public, civic and private materials and resources.

So I agree with you that there isn't any clean, plausible distinction between individualist ethics and anything more social, but that's how too many Anglophones have thought about ethics in the 20th century, beginning with Moore, Ross and C. D. Broad. Broad first restricts attention to the ethical aspects of those writings of the figures he considers in his *Five Types of Ethical Theory*, where he praises Sidgwick to the heavens for all sorts of things, but never mentions that Sidgwick wrote on *Principles of Political Economy*, the *History of European Polity*, and that many of his ethical essays addressed quite pressing social and political issues. All of these are completely disregarded by Broad, and that neglect goes forward in the Anglophone tradition, particularly so in

the United States, but very much so also in England; *this* alleged primacy of individual(ist) ethics to justice I dispute; and yes, I expect this dispute to make much less sense in Europe, or anywhere else in the world, because in Europe there's been quite broadly, with one exception, a much more generous and responsible retention of the importance of issues about politics and justice and philosophy of law. The exception is France where the influence of the Communist Party squelched issues about philosophy of law, political philosophy and many issues about justice until really quite recently; I know French colleagues who now are doing all they can to regenerate political philosophy and theory of justice within practical philosophy. I hope that's some help; thanks for your questions and comments.

Igor Cvejić

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I have three questions or comments. The first two questions are concerned with some of my doubts about taking Kant's arguments, but trying to take them without general background of transcendental idealism and *a priori* foundations.

1) When we take a look at the first six paragraphs of *Private Rights* in *Metaphysics of Morals*, where Kant reveals his arguments about a possession, we could see that Kant's core intention is to abstract from intuition (*Anschauungen*, MS, AA 06: 255), explicitly, from world of phenomena, from the nature as the field of concepts of understanding (*Verstand*). Thus, the object of intelligible possession is, primarily, the purpose, as the object of the will, e.g. the object of purposive causality. It is important because it shows to us, that Kant explicitly leaves the questions about sensuous objects, and the nature, and speak about noumenal objects, and the realm of ends. The whole argument is, thus (at least before §7.), developed in the different field, in the world of noumena. It actually helps Kant to skip some problematic questions related to the physical conditions, because he strictly speak about noumenal objects, objects of the will. Therefore, I am skeptical about a claim that Kant had missed to mention some anthropological arguments, but I find that he rather wanted to make *a priori* foundations for his argument in the world of noumena – and, accordingly there are no place for arguments which concern the physical world. Important implication from this is the that Kant actually take an opposite direction and in his next step he applicate the concepts of the freedom to the world of nature, which is an important step in his critical project as a whole.

2) This question could be sharpened if we look at the chapter in *Critique of Practical Reason* which concerns the object of practical reason (KpV, AA 05: 57f). Here Kant introduce phenomenological distinctions in a constitution of the object of cognition, on the one side, and the object of will, on the other. Probably the most radical interpretation of this argumentative step could be found in Herman Cohen. He argues that we should distinguish different directions of consciousness (*Bewusstseinsrichtung*) for every basic faculty of the

soul, and, accordingly, different directions of consciousness constitute a different content of consciousness (Cohen 1889: 97).

Both previous questions remind us how important for Kant is a division of basic faculties of the soul. It is evident also in the fact that Kant starts *Metaphysics of Morals* with emphasis on the division of the faculties. Thus, my concerns are that Kant's argument work inside the field of the concepts of freedom, which are applicated to the physical world only in the further steps of the argument, while on Professor Westphal's account it seems that physical conditions play important role already in the first steps of the argument. Particularly, I have doubts if Kant's argument is correct if we do not distinguish the objects of the will from objects of cognition in the first steps of the argument.

3) Finally, my last comment concerns the question of the foundation of intersubjectivity in Kant, relevant, of course, for the argument about possession. In *Metaphysics of Morals*, after he introduced argument for taxation, Kant writes:

“The general will of the people has united itself into a society which is to maintain itself perpetually [...]” (MS, AA 06: 326).

It is important to notice, that, it is not a group of individuals who have united themselves, but it is a general will that has united itself into society. Further, Kant argues that the will is united *a priori*:

“a will that is omnilateral, that is united not contingently but a priori and therefore necessarily, and because of this is the only will that is lawgiving” (MS, AA 06: 263).

The question could be asked: if the will united necessarily and *a priori*, because no private law would be possible without it, or, as Alberto Pirni has argued, because it is direct implication of one of the formulations of categorical imperative, namely the formulation which concerns the realm of ends (Pirni 2016)? Kant explicitly argues for this implication, when he defines the term ‘realm’: “by a *realm* I understand a systematic union of various rational being through a common law.” If we accept this interpretation, then the intersubjectivity should not be founded in (or with the help of) anthropological presuppositions about human conditions, on the contrary, it is *a priori* (that it is independently from empirical conditions) demand, which follows from Kant's foundation of ethics.

Kenneth R. Westphal

I have even more wildly heterodox views on the ‘noumenal’ character of Kant's opening analysis of rightful possession, which I will try to characterize; I can do no more than characterize them briefly, but it's part of why it's taken me so long finally to be able to write this book because I've been sorting out those issues in Kant's theoretical philosophy in his theory of judgment. Issues about *a priori* principles or ‘foundations’ in Kant's moral philosophy are crucial, but I really do take Kant seriously in his aim to develop a Critical philosophy that

is quite radically different not only to empiricism but also to rationalism and to prior, pre-Critical metaphysics. Kant's use of the term 'noumenal' must always be carefully interpreted in context. He's often willing to use such terms, but whether he's talking about anything metaphysical needs to be carefully checked. On Kant's view anything which cannot be fully specified and justified on the grounds of empirical evidence alone will have some *a priori* aspect or other, and for that reason alone will count as 'noumenal', though this may have nothing to do with the metaphysics of transcendental idealism and its distinction between things themselves and spatio-temporal appearances to us. So when Kant speaks of 'intelligible possession', this is his way of restating Hume's and Hobbes's point that relations of possession – in contrast to mere physical holding (detention, *detentio*) – are normative. By holding this glass I don't possess it; it belongs to the Institute. Kant underscores this issue about relations of possession being intelligible in that they are not physical relations, they are instead (at least in part) *moral* relations; they are relations we establish in part by establishing publicly identifiable procedures for rightfully acquiring, possessing and using things. All of those procedures and the specific titles that those procedures can literally be used to generate and to assign, are entirely normatively structured and for that reason alone they count as 'noumenal' and 'intelligible' in Kant's view. Kant develops these principles in the opening sections on rightful possession in the "Doctrine of Justice" about the use of the concept of freedom and its relevant application to us. Yes, Kant says numbers of things about what is 'noumenal' or 'intelligible', yet I think they are not inconsistent in ways so often alleged. In the *Critique of Practical Reason*, Kant is explicit that the concepts of freedom and the moral law are reciprocal concepts; only free rational agents are subject to the moral law, and the moral law only pertains to free rational agents. Kant's question then is, Which of these principles can we use as a ground for knowledge of the other? – but at this point Kant seeks the proper *ratio cognoscendi*; when he talks about 'the fact of reason', he invokes points about rational judgment that he made already in the first *Critique* about the constitutive contrast between simply finding oneself with beliefs, thoughts or sensory appearances, on the one hand, and making judgments on the other, where making judgments involves *assessing* what beliefs or thoughts one *has* in their relevance to their purported domain of use *and* the sufficiency of one's grounds for surmising, affirming, justifying or demonstrating that the claim or the thought is correct. Those topics I discussed concisely, though in pretty fair detail, in chapter six (§27), and this is surely one of the most heterodox things I say about Kant, but I have argued this several times in other places because it is so important.

Kant simply did not need transcendental idealism at all, and especially not to defend the possibility of free rational action; sufficient grounds for ascribing freedom to us both in thought and in action come from his account of the autonomy rational judgment; that's already in the first *Critique*. About Kant's contention that he needs transcendental idealism and my contention that he didn't, one of the most basic points that I can summarize is this – Kant like

so many others took universal causal determinism within the spatio-temporal realm for granted and he thought that it was demonstrated by Newtonian physics, particularly as improved and made more precise by Laplace. Laplace did espouse universal causal determinism, but Laplace knew the difference between believing it and justifying it, yet that has been lost on his readers. What Laplace actually says and, you know, the famous example is this: of an omniscient intellect that knows current state of the entire universe, every relevant law, and the precise location and velocity of every, even the smallest particles, Laplace says such an intellect could calculate the entire state of the preceding universe and also calculate everything that comes, so that the entire history of the universe would be present to it. However, this alleged intellect is doubly subjunctive *in Laplace's formulation*. What he says is: we ought *to regard* (envision, *enviser*) the present state of the universe as produced by the immediately preceding state and as causing the immediately succeeding state of the universe. Now why should he say that in the preface to a book on probability? It's a methodological *presumption* of empirical inquiry, whether statistical or causal, and Kant, I'm sorry, should have recognized that Laplace stated a *regulative* principle of empirical inquiry. That's how Laplace states it, and he's right; deterministic explanation requires an exact, sufficient causal explanation of the events or of the kind of events in question, and we have no justified claim to determinism about those events *until* we've got their complete, sufficient causal explanation, and that's rare. Furthermore, causal *determinism* requires a causally closed system. Nothing in Newtonian physics entails or requires a causally closed system, and as far as human behavior is concerned, we as human beings are not causally closed systems, not remotely so; if we were, we wouldn't want a coffee break. So, this whole business about causal determinism is a complete red herring. Kant was misled by the scientific world-view of his own day, and by his own inattention to the profound implications of the distinction between the unrestricted semantic intension of the (transcendental) causal *principle*, and the domain-specific (referential) scope of any credible, sufficiently justified, objectively valid causal judgment(s) (Westphal 2017b). In the *Metaphysical Foundations of Natural Science* Kant realizes that he needs to justify not the universal causal principle, that every event has a prior and sufficient (set of) cause(s), but the much more specific principle, which he identifies as a 'metaphysical' (rather than transcendental) principle, that every physical event has a sufficient (set of) external physical cause(s) – a distinction he reiterates also in the third *Critique*. He doesn't formulate that distinction anywhere in the first *Critique*, but in fact his analysis and defense of causal judgments justifies the more specific principle, though only in those cases where we succeed in identifying causal interactions among spatiotemporal particulars. So he does have a justification within the first *Critique* of that more specific principle, but not a justification of its universal status regarding every event within space and time. We can justify claims to causal explanation only to the extent that we actually identify the relevant causal relations, and the extent of such identification may vary enormously – from precise technical

or scientific specifications all the way down to our commonsense making our way through the world, for which quite abstract, very general and unspecific claims suffice, also as foundations of intersubjectivity. I do not need relativity theory to drink a glass of water – thank goodness.

I recently published a piece which underscores some central, though neglected relations between Kant's and Aristotle's moral theories on just these points because Kant actually is quite clear that we can only come to use our innate cognitive capacities through education and upbringing, and these are central to our becoming morally competent adults (Westphal 2016b). This intersubjectivity is there at the beginning of any issues about moral philosophy, comprehensively speaking, because we do have the capacity to decide what (not) to do and we are thus obligated to consider how what we decide (not) to do may (not) affect ourselves, or others, in morally relevant ways. This social aspect to individual decision and action is further augmented by Kant's recognition, like Aristotle's, that we are mutually interdependent for reaching enough maturity even to wonder whether we can (not) steal something from the dime store – the answer by the way is: No! Hence 'the fact of reason' seems to be such a surprise for Kant to claim in the second *Critique*. I think it's not any kind of relapse into intuitionism, as has sometimes been claimed, and actually acknowledges what he already said about the rational autonomy of judgment in the first *Critique* about recognizing others as free rational agents. It's quite surprising what he says in two places: one is the "Doctrine of Method" in the first *Critique*, and again in the long general remark after §91 in the third *Critique*. He makes exactly the same argument, essentially by analogy or perhaps more precisely by abduction: Whenever we see an organism behaving in ways which are purposive, and which *cannot* be explained by appeal to causal laws of nature – this is exactly when we are entitled to ascribe to that organism, not only sensibility, but also understanding and reason. A surprising argument, if you don't read enough Kant's Critical corpus. I think he's quite right. Although Kant himself isn't quite yet a hermeneutical philosopher, but very nearly so, and his point really does concern how we understand one another to be sufficiently intelligent agents to deal with one and other *as* persons, *as* human beings – and then there are pathological cases where we realize, no, this is not a competent person, and we need either to protect ourselves, or put this person under professional supervision for his or her own good.

Bojan Blagojević

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I would like to start with a quotation from *Kant's Foundations of the Metaphysics of Morals*: "All moral philosophy rests entirely on its pure part and, applied to the human being, it does not borrow the least thing from our acquaintance with him (anthropology), but gives him, as a rational being, laws *a priori*; which of course still require a power of judgement sharpened by experience, partly to

distinguish in what cases they are applicable, partly to obtain for them access to the will of a human being and momentum for performance.” (Kant 2011: 7)

Now, this applicability has always been a point of interest for me, when it comes to Kant. For example, if I were to formulate a maxim saying I would dedicate my life to philosophy, what would happen if all human beings, or all rational beings were to accept that maxim as their own? What would happen if that maxim were to become universal? That would probably mean that we would all die of hunger because no one would produce food. And if we assume that the practical law is applicable to this maxim, then we would consider that maxim immoral. Or, for that matter, almost every maxim concerning professional choice. However, we can see how absurd that is. We see that division of labor is excluded from the domain of the practical law. In the Preface to the *Groundwork* when Kant says that we still require “a power of judgement sharpened by experience”, he says nothing more specific about that. He leaves the reader to her own resources. But there are certain passages in the *Groundwork* that can serve as hints as to what Kant takes this experience, relevant experience might consist of or what it might point to. The first obvious candidate is the assertoric imperative. Kant says: “there is *one* end that can be presupposed as actual in all rational beings (in so far as imperatives suit them, namely as dependent beings), and thus one purpose that they not merely *can* have, but that one can safely presuppose they one and all actually *do have* according to a natural necessity, and that is the purpose of *happiness* (...). One must present (the assertoric imperative) as necessary not merely to some uncertain, merely possible purpose, but to a purpose that one can presuppose safely and a priori in every human being, because it belongs to his essence.” (Kant 2011: 59–60) The essence of the human being that Kant is referring to is not the human being’s rational noumenal essence, but his empirical essence, as a dependent finite being, and that leads us to the second hint that Kant provides as to what is the relevant experience that sharpens our power of judgment and that is the concept of imperfect duties towards oneself and towards others, the development of my own talents and helping others in need. Kant provides quite poor arguments for the imperfect duties in the text of the *Groundwork*. It is not obvious if Kant refers there to the purposes that humans have as rational beings or empirical beings. Kant claims that one should develop her talents because they can be very useful for achieving her purposes. This can be an argument of prudence as well as an argument of morality. I believe that Kant intends to make a relevant difference here between these arguments. Also, let’s consider the imperfect duties towards others. If it is to be a universal rule that everyone should help others in need, it can be argued that it is prudent for me to act upon such a maxim and will it as a universal law because I may find myself to be in need. However, in order to make a moral argument out of it, we would require a certain notion of what it actually means to have a purpose as a rational being, not merely as a finite phenomenal being. What Kant says is that empirical knowledge is obviously of no help here because it only attains generality at best. However, Kant never says that this generality can be discarded

as useless. This general knowledge is actually part of this relevant experience needed in order to sharpen our power of judgment. Where can we see this? If Kant dismisses general knowledge, he puts himself in a very old conundrum, the same one that bothers the Stoics or Cynics. Namely, if we say that property or goods have no value, if we say that they are no *proper good*, how would we justify the claim that theft is a crime? If we say that life itself isn't a good, why would murder be a crime? Why would it be wrong to kill, rob etc. If we call them "preferred indifferents", we would only be begging the question. Thus, Kant needs this empirical generality in order to have at least a sketch of a scope of what it is to help others or what it is to develop our talents, and what it is to have a purpose at all as a finite dependant being. However, when it comes to noumenal beings and their purposes, what is to be counted as such? What can we use to describe noumenal beings?

Here I'd like to refer to a few comments made by Terrence Irwin in his *Development of Ethics*. I find Irwin's arguments in general very provocative and some of them may present a challenge for the constructivist view. Some of his comments can be well incorporated in Westphal's conception while others may take some effort to put them in line with his conception. Most of them are very provoking and very inspiring. At least, for me they were.

First, Irwin asks if we can attribute the realist view to Kant. He thinks that there certainly are passages in the *Groundwork* and in the *Critique*, or *The Metaphysics of Morals* that can bring into question that Kant is even trying to provide a realist account. He says: "Kant's claim that moral beliefs are practical and one might infer that they express a point of view we take for practical purposes, not a source of true beliefs about any independent reality (...). In the *Groundwork*, he maintains that 'every being which cannot act in any way other than under the idea of freedom is for this very reason free from a practical point of view'. Perhaps moral theory tells us the ideas under which we must act, without giving us reason to believe in any moral reality that is not constituted by our moral beliefs." (Irwin 2011: 149) Irwin doesn't believe that this is a persuasive point. Here is what he adds "This reconstruction of Kant rests on two assumptions: (1) He is right to claim that the phenomenal world described by empirical science leaves no room for moral truths. (2) His attempt to describe a noumenal reality that moral truths are about is hopelessly flawed. Each assumption is doubtful." (Irwin 2011: 150) Kant's introduction of noumenal reality, even in the First *Critique*, serves to make room for moral beliefs. If our moral beliefs do not claim to be about objective reality, then Kant would have no reason to introduce subjective noumenal properties.

The second comment, linked to this one, insists on a difference between being a legislator and being an author of the law. Kant makes a clear distinction between these concepts in *The Metaphysics of Morals*. "A (morally practical) *law* is a proposition that contains a categorical imperative (a command). One who commands (*imperans*) through a law is the *lawgiver* (*legislator*). He is the author (*autor*) of the obligation in accordance with the law, but not always the author of the law. In the latter case the law would be a positive (contingent) and

chosen (*willkürlich*) law.” (Kant 1991: 53–54) In making the distinction between the legislator and the author of the law, if we want to make the law non-arbitrary, our practical reason (if it is to be the one imposing the law upon us) mustn’t be the author of the law. What Irwin is trying to say, if I understand his and Westphal’s position correctly, is that what we actually construe is not the law, but the obligation. It is the sense that I must obey, the answer to the question “Why would I obey the categorical imperative?” He continues: “The will (or practical reason) imposes the obligation of the law and does not decide what the moral law is to be but only chooses whether or not to accept it.” (Irwin 2011: 157) The concept of autonomy that is implied by this distinction between the legislator and the author of the law is in line with the traditional naturalistic concept of autonomy, claims Irwin, and this is plausible because Kant’s only point against naturalism is empiricism. Another important point about Kant’s legislator/author distinction is that it enables him to avoid the Pyrrhonian dilemma of the criterion, at least according to Irwin’s account: “if we were to claim that practical reason makes the moral law a law because of its act of declaring the law, we would make the moral law a special kind of positive law. We would then have to postulate a further moral law that authorizes practical reason to legislate. This further moral law could not itself be made law by some act of practical reason. Practical reason, therefore, can declare a moral law only by recognizing some law that exists apart from acts of declaration.” (Irwin 2011: 160) I think that is in fact consistent with Westphal’s position that we already take the social practices in the institutions and we make them into law.

My final point will be the question whether this concept of autonomy is in line with Kant’s dedication to Enlightenment. If we take that autonomy isn’t the ability of the will to be the author of its own law but only to choose what it enforces upon itself, then it is consistent to Kant’s dedication to Enlightenment because the autonomy decides, according to its own reasons and not any externally imposed authority, what it should impose on itself. Thus, to be the author of the content of the law is not required for Kant’s dedication to Enlightenment.

Kenneth R. Westphal

Again, thank you very much for your comments and passages, and for mentioning Terry Irwin, who is one of the people I think focuses too much on ethics, and not enough on moral philosophy. I think that when Irwin uses the phrase ‘noumenal reality’ he doesn’t know what Kant’s talking about; I’ll stop there, without further examining the remarks you pull out concerning autonomy and the Enlightenment and what Irwin is citing as grounds for ascribing moral realism to Kant. We agree entirely that Kant says we each authorize our own obligation to do as morality requires. We then have the question, What *does* morality require of us? If we’re not to wind up in the Hobbesian state of nature, whether verbally or worse, there must be some quite definite principles that specify what is obligatory for us as free rational agents, regardless

what we may happen to think about it. On those points Kant entirely agrees with Irwin, but I'm not at all happy with how Irwin characterizes 'moral realism' because I think he uses the phrase much too loosely. I was quite specific in rejecting the need for notions about truth-makers for moral claims, including, *e.g.*, 'Platonism' or more theological natural law theory. Yet I have not at any point said nor argued that moral realism is incorrect. I've argued that's not necessary, one way or the other. By design this kind of natural law constructivism is consistent with, *i.e.*, compatible with, at least the core of quite traditional natural law theory – whether it's Platonist, theological or *ius gentium*, and I'm very happy with that result. Indeed, I have doctoral students, observant Muslims, who realize that this is exactly why the neutrality about moral realism matters for what I'm doing and they're writing on Kant and natural law constructivism and classical Islamic natural law theory – fabulous! And partly because Kant's account of autonomy and communicability justifies a very fundamental requirement – one that is quite global, central to moral views and approaches to the world –, namely: the fundamental requirement of humility, expressed using the humanity formula: Harm no one, injure no one; this includes: Do not impose your views on others! This is consistent with our identifying, thwarting or otherwise constraining identifiable actions that are unjust – murder, mayhem, homicide and so forth. Yet that duty of humility is a quite powerful constraint on legitimate actions, whether institutional, individual, collective, commercial, domestic or international. I think that Kant is quite serious about that, and that he's right that it is central to morality and to human rights. We need to distinguish two aspects of that period we call the Enlightenment; Kant's view of enlightenment has everything to do with the autonomy of reason and reasoning, and nothing to do with the kind of one-size-fits-all mentality that was used as a pretext for far too much imperialism. I take it that's not particularly an issue right now, for us, here today. I know it's still happening; that same damn mess.

Now, about whether Kant regards us as rational beings or as empirical beings. The answer is: both! It's an extraordinarily interesting feature of our empirical nature that we happen to have the capacities to reason about what is happening and what ought to be happening and what we ought (not) to be doing. So it's extremely important to Kant; on the one hand, yes, he wants to focus on what he regards as a Critical metaphysics which consists in *a priori* principles. These *a priori* principles he thinks he obtains by analyzing a logically contingent, empirically given concept – in moral philosophy, the concept of finite, rational embodied agent. But he insists from the *Critique of Pure Reason*, the *Groundwork* and through the *Metaphysics of Morals* that this set of Critical principles, whether regarding theoretical knowledge or regarding morals, requires for its application *to us* a practical anthropology. In exactly this connection in the *Metaphysics of Morals* he says that his metaphysics of morals is *not* a complete ethics. For that we need to bring in practical anthropology and actually sort out what are our human, flesh and blood duties and permissions and prohibitions; in *these* connections as finite rational agents we

wind up having identifiable duties of mutual aid and to develop our own talents. Now, about the division of labor, and various forms of divisions of labor, Kant has unfortunately little to tell us, but the most general issue that your comments raise concerning division of labor, and our avoiding dysfunctionally lop-sided divisions of labor, I think Kant can handle; I went through this point in chapter 6 about coordination maxims. There are many kinds of permissible, elective actions that if universalized across groups would indeed cause major problems. We would completely exceed the capacities of our resources and so we can be quite happy that we do for natural and for social reasons develop different interests and capacities and useful forms – often very useful forms – of divisions of labor. Those will all be, on Kant’s view, in so far as they are legitimate, also permissible forms of activity, individually and institutionally. And, yes, if we take some of those kinds of maxims and run them through overly simplistic universalizability tests, it looks like we wind up with problems. But I think those are problems of mistaking Kant’s actual universalizability procedure and requirements, which has been all too chronic, especially by Kant’s critics, though not only his critics. Issues about coordination maxims were discussed already by Onora O’Neill (1975) in her first book and also by Barbara Herman (1993) and I have nothing to add to their accounts except to restate how their accounts fit with Kant’s criteria. So I don’t think I have, nor need to have, anything new to add to that, so I merely remind you of that point. Does that help enough?

You are right: Once we get into flesh and blood issues about human production, reproduction and economics we confront many quite specific issues of social planning procedures, principles, designations and division of labor. Now Hegel, in line with traditional natural law theory, was also impressed with the extent to which human beings actually conducting their social lives often exhibit far more credible and far better informed versions of rational organization than you get off philosophers’ (or other reformers’) *a priori* drawing boards. This is why first to take up Kant’s Critical principles and then actually to develop the full-fledged moral philosophy, not just the metaphysics of morals, but moral philosophy, in ways that provide determinate answers to what we ought (not) to do, and what we may do. To do so, Hegel brings in not only large measures of what Kant called practical anthropology, but also an enormous amount of political economy, in ways that also Sidgwick did – I’m sure without knowing Hegel had done the same. In these connections Hegel wants to recognize that, of course, in our daily lives we *do* coordinate our activities, we *do* find ways of meeting our needs, and what we need are principles and procedures for monitoring what we are doing, and monitoring unintended consequences of collective forms of action (the sociological law of unintended consequences) – and monitoring the extent to which the intended and the unintended consequences of our social, commercial and economic activities either support or thwart everyone’s legitimate claims to proper, participatory membership within society: everyone’s proper republican citizenship. These are also criteria for evaluating when we must fix some of our procedures in

order to rectify injustices or imminent failings of justice, whenever continuing to behave as we do shall become unjust unless we take proper corrective measures in advance. I think Hegel achieved this in his *Philosophical Outlines of Justice (Grundlinien der Philosophie des Rechts)*. That's a wildly heterodox reading of Hegel, I know. This shall be my second installment on natural law constructivism, which I expect to complete this summer (Westphal 2020). I hope that's some help with questions you raised; thank you for asking!

Kenneth R. Westphal: Response to Rastko Jovanov

Republican rights to citizenship and positive rights of those involved as well as duties, these are issues I'll discuss tomorrow,⁴ so I will come back to them. Kant has more to say about them than is often recognized, yet not as much as most of us would wish. He certainly has some quite direct things to say about acceptable, permissible forms of taxation and about public obligations regarding some forms of social services, *e.g.*, for healthcare, and he also mentions founding hospitals for orphans or abandoned infants. Understandably he is cautious about how much he can suggest in print. I think the principles Kant develops have quite strong implications for, let me say, participatory republicanism; Hegel was absolutely right that these principles require that everyone be provided effective opportunities actually to be recognized as a fellow citizen in good standing. Hegel is crystal clear about that benchmark in print, and he's crystal clear that this is a relative standard, it's no benchmark of mere subsistence, so that it requires providing sufficient opportunities and social resources either to avoid or to counter-act varieties of mishaps, including economic mishaps, that can reduce people poverty and threaten to reduce them below the level of actual, recognized, contributing, active citizenship within (republican) society. I think such measures follow quite clearly and directly from Kant's principles, together with a modicum of practical anthropology and rudiments of political economy; Hegel understood this and argued for just these provisions (Westphal 2017d). So, yes, the first line of complaint about democracy is an old one, an ancient one in fact, about the tendency of democracy to decline into tyranny of the majority or of the vocal minority. In recent centuries and in many regions all sorts of ways of been found to facilitate such degradations of the polity rather than to counteract them. If I could have moved to Canada I would have been happy to do so long ago. Go even a bit North of the northern US border and suddenly you are in civilization again.

In many ways Canada is remarkable because (like Australia) it made such an effective transformation of what had been a monarchical province into, in many regards, a very functional republic, obviously not without its problems – this is what politics is about: trying to identify and resolve our collective problems. So yes, I'm joining forces such as I can with people like Philip Pettit and others who are trying to regenerate the republican inclusiveness without which

4 When presenting Westphal (2017a).

democracy isn't a legitimate form of government; also when this staunch republicanism affords direct criticism of the notion that democracy can only aggregate preferences. The public office called 'citizen' has enormous responsibilities, and those responsibilities are more and more thwarted by mass media which provide only distraction. As for the country where I now live and work, we shall see what happens in the next few years. I hope it remains peaceable and that enough academic freedom is preserved that I can continue teaching there, because – setting aside for now current events – I'm having a fabulous time in Istanbul with my colleagues and students and new friends! Yet we are always on notice, wondering whether the political winds may become a tempest.

The Nordic and Scandinavian countries are the closest to Hegel's political recommendations, and not by accident, but because a student of Hegel's – Johan Vilhelm Snellman – took this staunch republicanism back to Finland, and became not only a leading critic of Swedish rule, and so was barred from academic appointment, but once Finland established its own republic, he was central to its polity and politics, also as Chancellor of the Exchequer, *i.e.*, as the chief financial Minister for years in Finland. And yes, Finland too is having its right-wing upsurge, but what modern Finland has been as a republic indeed is quite directly indebted to Hegel's republicanism, and to Snellman having taken Hegel's republicanism with him back to Finland and managing actually to institutionalize it. In these regards, Finland often been a model for the Scandinavian and Nordic countries.

Jovan Babić

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I'd like to raise several issues. First, it just happened that Ken and I talked about something that I wanted to start with, ethics and justice as separate things (as two different evaluational criteria). But, I may leave that for later, and start now with some other comments and questions. I would like to say at the outset that I enjoyed listening your talk, Ken; I have liked very much your reading, some might say your reinterpretation, of Hume. Actually, I don't think it's reinterpreting Hume *strictu sensu*, but it might easily be perceived as such, because it's not the usual interpretation. That's because you put the focus on principles, not on senses and sentiments, and it's the issue of nominalism. On page 62 of your book you have the following: "...Hume's own analysis of justice shows that certain actions are just or unjust, regardless of any agent's motive or preference and regardless of any observer's sentiments". The issue is how to come to that, how to achieve that; you, I think have to have the position that Hume really has, and that's radical nominalism which is not going to justify particle actions as such, but is aiming to give predictability of whole classes of actions; that would mean that the main reason for justice is to make society as such functional.

On other side, what we share is the Kantian approach to the philosophy and to the reality, to the life actually. You showed very nicely how Kant is relying

on Hume and Hobbes and not on Locke, finding the basis for all that, perhaps surprisingly for a Humean point of view, in freedom, which is the power to make decisions. And the problem there is that making decisions presupposes some kind of identity, a unified entity capable to decide as one, not necessarily personal identity of the individual, as it also could be collective identity – corporations, nations, maybe ideologies or civilizations. And there is obvious problem there, because the moral aspect of the worth of freedom is universal respect which is something that is a reflexive kind of relation – I cannot respect myself without respecting others, and *vice versa*, which imply forbidding me to decide for others. That's very basic principle, I think – we are not allowed to decide for others without their free consent, anytime, because it would be disrespectful to their autonomy. In my opinion this entails that, if you should influence the behavior of others, you are not supposed to make any kind of orders or commands, but only require some restrictions to what they do. That's the issue there. To make cooperation which is Hume interested in, possible or morally invaluable, means that we have, if we want to respect the autonomy and freedom of others, to put some restrictions on our freedom to (decide to) do whatever we want to do by excluding those decisions we are not entitled to, those which would entail deciding for others. Possession is a very fine example.

I would like to make the following comment here. What I think to be the issue in possession and property is something very simple. Persons are having their right to use things, (including themselves as things, but not as persons), for whichever purpose they deem needed. So, persons are giving a value to things by using them and that's the basic starting point for possession. In acting we produce, or create, a value in a thing by using it, and that usage should be predictable, as all the other issues that are creating rules; maxims, according to which we act are already rules, (we cannot avoid the rules anyway). We cannot approach to the substance of the reality in other way than schematic, i. e. by acting which is rule based. Let's go back to the right to possess; you had a very fine example in your talk: you don't possess the glass on the table because it already has been possessed, but not only possessed, it's the ownership of the Institute. Possession should be protected by an institution, which shows that ownership is more than possession. But possession is the most important, basic, part there; ownership is only a kind of additional protection of the possession. Which possession? That possession that is rightful, the legitimate one.

Somewhere in your writings you had an example of a stick lying next to the trail. You have been tired, and you notice the stick, and you like it. You want to use that stick for some time. In such case I wouldn't have the right to tell you at some point – give it to me now, now it's my turn to have it for a while. You may even bring that stick home, and it will be your possession. Will it become a property in a way of ownership is still questionable as it requires the recognition through procedure of getting the (universal) consent of (all) others. But, if we imagine that the stick proves to be something very valuable, something that is not just a thing, waiting to be used, but something which has inherent value, all of sudden my right to take it disappears. Why? Because the

value must have to be established at some prior time, so it's not the thing waiting to be used, it's a thing that already obtained its value. That's the logic that makes the possession that basic, for the predictability and for the rules. Justice and society must rely on some very stable rules and they are there to make predictability really working, not to be interrupted accidentally. That is, I think, the main point in your book, it refers to the point according to which being artificial doesn't imply being arbitrary. That is the basic point.

Now I would like to make some further remarks regarding your lecture, the beginning of it. You followed the course of the book in explaining the distinction between moral motivation and moral justification, and the differences between justification and explanation, and that's all very important... But at one point you specified it as the requirement to injure no one. That's where morality, as it seems, comes to the scene and resides. You said that's sufficient reason for an action, but later specified it as not just sufficient reason for any action, but as a sufficient reason for permissible or legitimate action, the action that could go through the test of not deciding for others. We may say that we are deciding in a negative way, indirectly, for others, even by making restrictions, but that's the point – it has to remain to be indirect, and not to become direct. That's the main part of categorical imperative, I think. That's where moral justification differs from a justification of an action as such. Any action has, or has to have, a justification in an existent reason for that action, which is a purpose, or an end that someone has set for oneself and is trying to realize. That's what makes the difference between actions and mere events. But an action has to be an event as well, not only something that is only imagined or conceived, but something really done, so, actions are events, but not mere events, they are events based in a decision (those events, i. e. actions as events, would not be there without decision, they are produced by a decision). Actions are justified by reasons to set an end which might have been not set and which still does not exist in the moment of making the decision, not even as its direct consequence. What makes the reasons real and valid is the prospect of (future) actuality of the end that has been set and then tried to be realized. But that might be some immoral or illegitimate act with a bad end set to be realized. That's very much visible in analyzing the word 'good'. 'Good' is not a moral term – a good poison is a poison that poisons efficiently, and a good poisoner is somebody who is good in poisoning, which is not necessarily morally right thing to do. So, the actions as such are justified by the end, any end, that someone has set as the goal to be achieved. That's not enough for the moral justification, and moral justification is asking for something more, something additional to be put there. If we remember that we are not allowed to decide for others at all (except on their permission or demand), moral requirement or norm must be a kind of restriction.

Coming back to Kant - my approach is something that I call *via negativa*. Morality is dealing only with restrictions, it only forbids, it doesn't command anything. Why? Because the freedom is full anyway all the time in whatever we do. We are free even in breaking laws or in being immoral; there is only

one condition to become a criminal, for example, you just have to want it. And that's at anyone's disposal. But that's the prerequisite for imputability of responsibility. So, if we differentiate morality from issuing commands, we would, in my opinion, have really pure Kantian approach, and many of those seemingly morally suspect issues of discrimination, like division of labor etc. would disappear because we would be able to say that it is the domain of free decision-making in the realm of (legitimate) happiness; it's up to us to decide whatever we want, on condition that what we want is legitimate and permissible. Morality is dealing only with what's impermissible, with limits, with what's outside of that domain. That's where the moral justification differs from the justification of any act as such.

The ignorance plays, and you mentioned in your lecture, a very interesting and very important role there and that's the point where Kant comes close to Hobbes. You said explicitly: "Ignorance is producing natural order very easily, spontaneously, in a way". So we have that order, initial natural order, here, now, around us at least latently but also, very often actually, not only latently. That's why justice must be public and known. It has to be known, not just proclaimed and kept somewhere hidden. But 'known' here, on the intersubjective level, means shared, being common. Shared sense of justice is *producing* inter-subjectivity, our inter-subjective identification, in the same way in which Hobbesian psychological ego is producing the unity of person. A schizophrenic person wouldn't be a unified free person. So, we have the Platonic or Aristotelian unity of the soul, making possible planning, predicting, acting, deciding, intending, thinking – anything! Everything is dependable on that supposition of the unity of the soul, on identity. And shared sense of justice is producing the same on the level of the society; perhaps less efficiently, less thick etc., but the function is pretty much the same. I would like to emphasize that this is very much showed here, in the book.

I could, in the end raise some specific questions. You said at the very outset of the book that: "One of our most basic ethical duties is to comply with dictates of justice". It's very much true, but not really clear what's said there. At another place, somewhere very late, on page 196, you quote Kant saying: "Freedom is the sole original right belonging to everyone by the virtue of being human." Being a "human" is a specification, but that specification is not biological; it might be, perhaps, robots or extraterrestrials or whichever other "human" it might be. But, it's clear what's meant here. And then, on page 201, you introduce the issue of a need for *mature judgment*. It might look that, on the bottom line, in Kant you have in the end only one basic duty, and that's the duty to think *seriously* (i. e. *to be responsible*) and everything would follow from that. But that's what we all have by virtue of being what we are. So, in a way, we are producing ourselves by thinking either as villains or virtuous persons, whatever we become in the end. In mature judgment it's the condition of the responsibility. So, when you, for example, say that "basic principles of justice are required to form and to maintain society which is indispensable for the human life" (p. 27), that's intersubjective, collective level; and then corroborate

this by the issue of nominalism implying that, for the rules to be functional, we have to restrict ourselves to the formal aspect of the justice and not to go to consider, or reconsider, every act *per se*. That is the only way to have predictability. Predictability is corroborated by the actuality of the capacity of freedom which is the power to rule of the future time, it's overcoming the next point in the time which means overcoming the causality, because we set the end somewhere in the future; the end doesn't exist in the point of time of its setting, it's only in our conceiving power. The freedom is the capacity to find the means to produce that end, by finding causes that will produce that end as a consequence, causes serving as "means". That is connecting knowledge, predictability and unification of the soul and identity and all that is actually functional on the collective level as well as on the individual, and depends on being so regardless of the particular motives, desires and preferences, otherwise it couldn't function. That's why we have the issues you have in your Appendix, the issues of economy, of double book-keeping, of how Greenspan became a dictator without being elected, or being elected in a very odd way, not elected by those on whose behalf he was acting and whose lives were affected... All that comes from the immaturity and lack of serious thinking when they are needed. The irresponsibility we face there is, of course, a moral matter. It entails a kind of necessity of blame for what's done but should not have to be done.

Let me raise only one question more, and that's about terminology. On page 10 you have 'noumenal' as equal to 'normative'. I for myself took 'noumenal' only as a tenet in transcendental approach, meaning that we're fallible, that we do not have a direct access to essences. Empirical approach to the reality is the only one available to us, but it is inductive, it's not perfect, not good enough etc. So, 'noumenal' might be used so as to mean a principle that should show why we, let's say simplistically, put epistemology in front of ontology. If we don't keep that in mind all the time, we became essentialists, which means that we make conclusions that are not necessarily based in valid premises, which is something that transcendental idealism tries to avoid. But here you are connecting noumenal with normative matters. Normative matters are the matters of norms, but norms, and formulating norms, are also something from within the capacity of freedom, namely we are dealing with normative matters always when we are free, because we are setting ends. However, upon been realized those ends are becoming a part of actual reality, and there is nothing normative longer there, they become effects of that process of realizing set ends. Even if those effects are institutional facts they are still real consequence of that process, having the kind of factuality that actually is even more stable than the factuality of natural facts. So, how far are you prepared to go in this equalizing 'noumenal' with 'normative'?

Kenneth R. Westphal

Thank you very, *very* much for your comments and questions and remarks! I am really delighted that you understood what I was doing so well and apparently

we have quite a good deal of common theoretical, moral ground here and it's a great pleasure, so to thank you, thank you very much!

Let me start with the last point first – about normativity and the noumenal. I do stand by what I say in the book that all normative matters as such are noumenal for the reason I indicate: their empirical specifics never suffice to identify, nor to justify, their normative status, whether regarding principles, actions or consequences. I always have fun pointing this out to my students in an introductory class about Kant's ethics. Here's the situation: You see one person racing away as fast as he can run with a fist full of money, you see another guy chasing him and you can catch only one of them. Which one you do you pick? You can't tell, right? You don't know whether in the lead is thief escaping with money he's just stolen, or if in the lead is the rightful owner of the money he just recovered, who is now chased by the enraged thief. Just seeing this mad chase doesn't suffice to specify or to indicate to us who is the rightful owner, if any one, of that money. So, freedom certainly does reside in setting ends, but also in the responsibility to set those ends that we ought, and not to set those ends that we ought not. This aspect of normativity is involved whenever we have issues about human action. That's sufficient for these issues about freedom, action, ends and responsibilities to count in Kant's lexicon as noumenal; this simply has nothing to do with the metaphysics of transcendental idealism. I'm just mentioning that again because too often, particularly by Anglophones, Kant's mention of noumena in connection with principles of justice has derailed commentators. Likewise when Kant describes rights to possession as 'intelligible', well yes they are, *literally*, for just the reasons we're now discussing. I think excess remnants of empiricism have led some Anglophones to misunderstand what Kant is actually talking about here – that, and also egregious neglect of almost all the natural law tradition. One reason Kant's account of the 'noumenal' or 'intelligible' aspect to any norm has been less often misunderstood in Europe, particularly in Germany, is that moral philosophers in Germany certainly, but also commonly in Europe, remain alert to the long tradition of natural law theory. This matters a great deal to how we understand what we're doing as moral philosophers and within moral philosophy.

Yes, it is surprising what we find, if we read Hume's *Treatise*, Book III, very carefully, especially what he actually says about the conventions woven together into the most fundamental rules of justice. These conventions really do concern principles and deciding to act on the basis of those principles and the practices they inform (structure), and also issues of our regularity, predictability and responsibility. In this regard, though Kant didn't know this because he didn't study political economy, Hume's writings on economics launched Scott's political economy. This too is part of how Hegel capitalized upon political economy as a moral science because issues about coordination and issues about how we can at all meet our legitimate ends and needs, together with the strategic question, how can we do so efficiently and reliably, are *all* of them moral issues. We have in fact been solving these problems as a species and as members of our

respective communities in all sorts of ways as long as we've been around. This is exactly why there's more reason involved in customary forms of action than rationalists or empiricists were – and still *are* – willing or able to recognize. Hegel re-examines the results of modern political economy and realizes that these practices are structured in specific ways, and these structures of action we have made for ourselves, and by developing these practices – including the entirety of the economy – we on a daily basis solve problems of basic human existence, for better or worse. The point now is simply that we do this; then the question is: To what extent or in which regards do we do so legitimately, permissibly, or as you say by a conscientious *via negativa*? So, by bringing these Kantian principles and criteria to bear within a much richer moral philosophy, Hegel examines the ways in which customary forms and even habitual forms of action integrate reason, habit, inclination, freedom and responsibility in ways Hume and Kant failed adequately to appreciate.

So, in part Kant's principle of hypothetical imperatives – strategic rationality – provides ample, I will say *prima facie*, justification for doing things in customary ways because they can be effective and efficient. These procedures, resources and forms of interaction are established. That's not a trivial requirement, nor a trivial achievement. So far, I'm merely elaborating more what I discuss in chapter 5 on Hume. Yet these very basic, very general kinds of principles of economics and of course the legal principles that any, even moderately sized economy, quickly bring in, hardly suffice to address pervasive issues of justice. Once we can no longer conduct all of our business literally on a face-to-face basis, then we need contract and law. This is not news; there's been contract law back to Babylon. That was why they were so excited to find the Hammurabi code in 1901–1902. They knew of it, but they re-discovered the stone with a massive inscription of it in 1901–1902. This was immediately translated to all modern languages, twice into English. Comparative lawyers were reading it internationally, as soon as they had it. This is no surprise. There have been far-flung economies for as long as we have human records, and there is clear evidence in pre-recorded history of far-flung – hence carefully structured, organized and monitored – economies. I don't know if you have heard of the discovery of an enormous monument, Gobekli Tepe, in Turkey. It's a monument like a Stonehenge, but much older, carefully wrought, carefully designed, and then after its building and presumably its use, no one yet knows why, it was completely buried. Just the construction of this complex indicates an enormous capacity for coordinated, sustained, long-term social cooperation, and with enough excess resources that they could devote time, energy and materials to building this enormous monument, and then to devote yet more resources to its complete burial. It's truly astounding. So the economic records go back thousands upon thousands of years; the evidence of large-scale economic coordination is prehistoric. The sheer scale of these economies raised issues about justice, the basic issues Hume identified. We know the requirements of justice are quite severe, and they count severely against an enormous range of our current economic and political activities.

Accordingly, part of my concern that comes out of the end of this book and about which I'll say more in the next, is at least to begin to raise some of these issues about how we've allowed what could be, and what could have become, much more representative forms of much more republican forms of democracy to slide into the kind of mass manipulation of voting that has become common in too many countries. Recently I've managed to trace the really quite long-term development of the current academic crisis. The direct and indirect consequences of budget constraints and constrictions, and also managerialist methods, has become acute across the Occident. And yet the forewarnings of these kinds of developments began not later than 1867 with J. S. Mill's inaugural address to the University of Edinburgh, and echoed only a very few years later in Wien by Heinrich Ahrens in the Preface to the sixth edition of his *Naturrecht*. His closing pages are a quite blunt forewarning of what is going wrong with higher education and its neglect of a sufficiently comprehensive education so that people can understand and assess what they're doing in view of all of its ramifications for society, not only for their fractional interests. And Ahrens sees in 1870 just where this is tending; he sees it, crystal-clear. Now, I don't think he has a viable normative theory; that's another issue. Yet he sees why it matters, he sees what's gone wrong with education, that the specialization and professionalization of education, including law, is tending to exactly the kind of centripetal fragmentation of studies, of life and of the professions that in short order will produce collective social disaster. I posted on my website a chronological bibliography of some two dozen pieces of quite clearheaded, informed, specific prognostications of this decline of education away from the kind of comprehensive general education, or liberal arts education – *i.e.*, the education required to be a free citizen, that's what 'liberal arts' came from – the slide away from that kind of liberal education into specialized professionalism, technical disciplines or narrowly vocational training (Westphal 2018c). So, there is one point; and then I've also been sorting out what happened to Anglophone ethics in the 20th century, and also how economics slips from political economy – and political economy conceived as a normative discipline, not only as an empirical social science – how that gets left aside only to focus upon the most technical aspects of macro- and micro-economic analysis.

My preliminary findings indicate that both of these are quite direct results of the highly ideological, individualist, supposedly liberal center, making its vehement case against what it wanted to abuse as fascist collectivism of the right or left wing, yet conveniently swallowing up all responsible forms of community responsibility within those horrid extremes. Witness all the debate about methodological individualism in the social sciences, though especially during the cold war period, while experts in the social sciences knew very well that this was a *methodological* principle only. It was not a substantive claim about whether human beings are fundamentally social; Schumpeter is crystal clear about this in 1908. And clear-headed social scientists in the 1950s saw crystal-clear that this point about methodological individualism is

a specific approach to investigating and trying to explain sociologically various social phenomena. It's not a substantive issue about human nature and whether atomistic individualism is true, or some kind of monolithic collectivism is true, or whether perhaps instead human beings and the groups to which we belong are mutually *interdependent* for their and for our existence and characteristics. Schumpeter knew that we and our groups are mutually interdependent; Hegel knew that we are, Hume knew that we are, Rousseau knew that we are, Aristotle knew that we are – and so did Plato: please reread his *Laws* at of your first opportunity! And of course Dewey and Meade knew that we are. In just this vein I've also found a wonderful book written by a fellow who trained at Oxford, but wound up in the government program at Harvard named Elliott, who only gives his first initials, being British at least of academic pedigree. He writes a tremendously lucid analysis published in 1928 of the developments within politics, within jurisprudence and even the early phases of Italian fascism; he sees exactly what's going on and he sees it going wrong because it had already turned into this ideological debate between an atomistic individualist center and monolithic collectivism of the right- and left-wing totalitarianists. Elliott said plainly that this premise is just false. So he introduces a different term, not a very elegant term, so I'm not surprised that didn't catch on, but he calls it 'co-organization', but he explicitly uses this term to designate the mutual interdependence of groups and their members for their existence and their characteristics. Elliott sees what's coming; this is after the first world war and he sees the next one is coming, there's no question about that. Part of what I've been uncovering with this kind of historical research is coming across the really quite alarming and deeply troubling phenomenon of finding during these very turbulent and crucial periods examples of absolutely lucid, clearheaded, cogent analysis, theoretical and practical both, of exactly what's going wrong and what are the mistakes and what are the dangers and yet those analyses are simply lost in the ideological melee. The weaknesses of Carl Schmitt's *Verfassungslehre* were known at the time. There is a brilliant review of it by Hartung, who sees exactly what's going wrong with Schmitt's views and his whole approach. Problems with German jurisprudence are very clearly analyzed, explained and criticized in detail by Hermann Kantorowicz, among others. After reading those I've understood better how stuff like Carl Schmitt's could ever be regarded as serious jurisprudence, because at that time there is fabulous jurisprudence and philosophy of law available from before and after the first world war, and it's just ignored, swept aside by a flood of over-heated, simplistic ideological nonsense. And yes, this looks all too much like what's going right now in my own homeland (the USA), and not only there.⁵

In the latter 19th century a professor of education pedagogy in Kiev edited all of Hegel's comments and writings on education: Gustav Thaulau – three stout volumes on education written by Hegel (1853–54); I'll show you these in

5 I detail and analyze these points in Westphal (2019).

the morning.⁶ Heidegger talks about education, but he is talking about education at the time when he and also people like Jaspers had hopes that the Nazis would actually *act* on what they proclaimed, namely that they would actually help to regenerate German culture; they hoped Nazi Germany would establish an elite university to promote German culture. Well, that's of course the last thing the Nazis would ever do. And beyond that, I'm sorry, I simply can't be much bothered, nor impressed, by whatever Heidegger might have said about education at that point.

Olga Nikolić

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First of all, after reading your book, I was very much convinced that the most fundamental moral problems are problems of social coordination, i.e. problems concerned with the question of what kind of universal normative principle should we adopt for society. So, my comments will revolve around this issue and the related concepts you discuss: justice, freedom and property.

Let me start with justice and property. What I find interesting is that if we compare Hume's and Kant's concepts of justice, we come to see that they have a different relation to property. Namely, Hume's concept of justice is derived from property relations, directly from the demand for more stable and regular property relations, necessary for the preservation of society and for enjoying the benefits of it. On the other hand, Kant's concept of justice, at least according to the universal principle of justice as cited in your book, is formulated independently from property relations. It is instead derived from the concept of freedom. It requires freedom of will to coexist with everyone's freedom in accordance with the universal law. This principle is only subsequently applied to property. So, Kant's concern is actually how to regulate property in order to preserve freedom in society. It seems to me that whereas Hume's concept of justice is limited to property relations, Kant's concept is broader, in that it concerns law in general, as the guarantor of freedom in the society. I don't know if you agree with this and if you do, do you think that this distinction between founding justice on property, on the one hand, or founding property on a more fundamental concept of justice has any practical significance, in terms of norms and principles that we adopt in our society.

Let me clarify this as I go on to my next question, I think that this issue becomes especially interesting if we consider the concept of social justice. On

⁶ Dum and Guay (2017) argue that neither Hegel nor Honneth properly understand the non-instrumental aims and importance of education. They fail to note Thaulow's volumes, and so fail to note most of Hegel's extensive concerns with education and pedagogy. Criticism requires accuracy, which requires information and understanding. This should not be necessary to remark, but it must be emphatically re-stated because training in the field, and consequently also peer assessment, have deteriorated so sharply. The referees, too, neglected Thaulow's massive edition.

the one hand, demand for social justice is the demand for redistribution – it concerns property, it proposes that more equal distribution of property is more just. On the other hand, if we want to understand reasons behind this demand regarding property, if we want to morally justify the demand for social justice, we have to go beyond simply stating that more equal distribution is more just. That is, we must go beyond property relations and into the realm of freedom. This is where the previously mentioned distinction between Hume and Kant I think plays a role: whether we base justice on the stability of property or derive it from freedom. Namely if we think the stability of property relations defines what is just, we can allow for a society in which grave inequalities exist, because what matters is only that in Nozick's words "everybody is entitled to the holdings they possess under the distribution," that they acquired their holdings in a lawful way. This is what justice means. It isn't concerned with inequalities and consequences of inequalities.

On the other hand, I think Kant's conception can be used to justify social justice demands, because it appeals to human freedom, which is *de facto* endangered in the circumstances of grave inequalities. In light of this, my question is: do you think that social justice as the principle for a society is morally justifiable and if so on what grounds? Should we appeal to basic needs, should we redefine concept of property, these are all question that come to my mind, especially because freedom, although it can be used to justify social justice, can also be used, like Nozick and Hayek showed, precisely to criticize policies of social justice.

Kenneth R. Westphal

So far as Hume develops his account of justice and of property rights, we cannot get very far with issues about social justice; indeed this was one of my points, that there is not yet enough to the principles and practices – much less to their justification – in Hume's analysis, to get very far with issues about social justice. So I think it's no surprise that he had little to say about that topic. Kant had somewhat more to say about that topic, not all of it satisfactory. This topic doesn't belong directly to what he regards as the main text of the *Metaphysics of Morals* in the section on justice; it's part of the quasi-empirical elaborations in his indented remarks. There he draws his infamous distinction between active and passive citizens, and says that it always must be allowed to work oneself up from the status of passive to active citizenship, where an active citizen has enough of his own income to be civilly independent, in contrast to laborers who must seek employment from someone else, and perhaps perform their services on someone else's land, home or facilities. Kant is concerned about how easily people in that kind of an economically dependent position might be coerced by their typical employers. That's an issue, but it's hardly solved by Kant's suggestion, and of course the other grand classification for passive citizens is: everything to do with women. Kant doesn't stop to explain how anyone can work her way up from the status of woman to the

status of an independent citizen, and there can be no such explanation. This is unhelpful. I do think, however, that Kant's principles and particularly the sole innate right to freedom sets exactly the kind of stringent benchmark for socially (un)acceptable disproportions of wealth: not only opportunity, but wealth. That's indicated already by Rousseau, who requires that, whatever may be the disproportions of wealth, they must be kept within the limits whereby no one can use wealth to command unilaterally anyone else's decision or action. Kant doesn't spell that out in his metaphysical elements of justice, which I think is not surprising. But Hegel knows that Rousseau's Independence Requirement is directly entailed by Kant's sole innate right to freedom, and he knows that entailment pops out as soon as we realize that we are economically and socially interdependent beings. Take just those two premises together with sole and innate right to freedom and the foreclosure of frontiers by contiguous national boundaries, and then from Rousseau's Independence Requirement follows a decisive corollary: The institutions, practices, procedures and legislation, and also the unintended consequences of economic activity which produce differential wealth or opportunity, must be kept within whatever limits, and in accord with whatever means, enable everyone within society to participate and cooperate with others by his or her own independent, considered choice, which requires the effective power (opportunity) *not* to engage in social activities or social coordination within the civil sphere. So, this Requirement directly rules out what Marx castigates as wage slavery. Hegel was explicit about this: Once we have an industrializing economy and a nation-state that completely occupies a designated territory, where these are contiguously bounded nation states, everyone within that nation state is now denied access to uninhabited nature by recourse to which an individual could, at least in principle, manage to survive (see Westphal 2017a).

Once society has removed that prospect, which occurred long ago, every society owes it to everyone within that society that she or he be provided sufficient genuine opportunities to earn his or her livelihood and to participate as a fully recognized, independent citizen in good standing, including political representation. Now, Hegel doesn't think we should arrange political representation by districts, for very good reason: he realizes that the district representation divides political from economic life and ensures that people enter the voting booth disregarding the economic structure and the political structure of their own societies and disregarding the kinds of indirect, unintended consequences of economic activities that create exactly the kinds of miseries we've been discussing today. Hegel's system of political representation by corporations, where corporations are for each region, township and church, and also for each sector of the economy (where economic corporations include both management and labor), whereby these corporations are to provide representatives to the legislature, to the lower house. Hegel's design aims to ensure that the entirety of the political economy is represented within the legislative process, so that people can know that the entirety of their political economy is taken into account in legislation, to protest through their representatives

if it's not, and their representatives are trained experts, not at being re-elected by district, but at the economic activities they represent on behalf of their corporation, to which they too belong. Though Hegel doesn't advertise the fact, he proposes a robust system of *universal*, inclusive representation. The only sore point is casual day laborers. How sore that point is, I think, has been over estimated by Hegel's critics, partly because once you see the kinds of civil services Hegel advocates, the administration of justice and public authorities, it's very easy to come up with the relevant solution for those who are and (for whatever reasons) remain casual laborers: namely an employment office which can help coordinate non-contract casual labor. Marxists have said this is the beginnings of a proletariat, but that's not so. The town of Hann-Münden has a very unusual geographical situation, at the intersection of three major rivers which also are not all at the same altitude. Consequently, it was a major transportation hub and a huge amount of loading and unloading of cargo occurred in Hann-Münden. Hence there were lots of jobs available even without long-term labor contracts in Hann-Münden; – by the way: give yourselves a chance to go there, it's a beautiful city, the old part of the city is really gorgeous. In one of the main streets there's a four-story house, with a grill on the front door made of iron, formed as a history tree of the owners of that building. One of them was a day laborer; in Hann-Münden a day laborer (*Lohnarbeiter*) was wealthy enough of to buy that house! That's not exactly working scum on the bottom of the proletariat. So we must be careful about work classifications (*Lohnarbeiter*) and socio-economic status. Now, perhaps that owner was the only such exception there's ever been. But we must be careful about our interpretation of these categories of employee or casual laborer, or whatever else. Actual economic history is much more interesting than the rhetorical battles about it. Unfortunately, my attempts to photograph that front door failed, and so far I have not been able to relocate it using google street view, but at some point I'll manage to get back there and get the pictures I want. (On the other end of the socio-economic spectrum, I once had the pleasure of flying from Germany to Chicago with a German banker sitting next to me. We discussed politics and policy and he volunteered his firm conviction that, of course, any corporate executive ought to be paying some 50% of his or her salary in taxes. Yes, a banker!) Is this an answer to your question?

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First of all, I would like to express that I'm honored to meet you in person. In my opinion, this book is one of the most precise interpretation of Kant's and Hume's practical philosophy I've ever read. The fact that my main research interest is Kant's normative theory, even more underlines my mentioned opinion.

Because I'm doing my research on Kant's ethical, and his possibly meta-ethical theory, parts of the book that cover these areas particularly caught my

attention. I have to highlight that I completely agree with your constructivist thesis, because that's the position I would also like to defend in my PhD thesis, defending Korsgaard's interpretation primarily. So, thank you again for this great contribution that also serves as inspiration, this book will definitely take high priority in my work.

However, I have one dilemma. In the chapter "Kant's Principles of Moral Constructivism", 22.1. section "A Contradiction in Conception" you present the 'two steps' argument that saves universalization test from parodies. This argument is, in my opinion, at least extraordinary, and it solves some of my personal dilemmas, so thank you for that too. But I have one more dilemma – I don't think that we need the first column of that argument. To be precise – I don't think that we can (or at least I cannot) find an example for 'Ought!' – a maxim that is consistent with corresponding universalization and its opposite maxim that is inconsistent with its corresponding universalization. I know that Kant in his work splits our acts into permissible, prohibited and obligatory, but I think that, if he has an obligatory act, he cannot save strict formalism, and your table (and I'm very glad of it!) expresses Kant in strict formalistic sense. According to formalism (if I'm right), moral criteria represents a border between permissible and prohibited acts (or if you like permissible and impermissible acts), so there's no room, without implementing content, for obligatory acts. You can say that it is our obligation, for example, to return back money when we promise to return back the borrowed sum, but I don't think that is the "real" example of an obligatory act. This is rather the case of prohibited (impermissible) act, because what is wrong in that act is a lie (promise violation), and lie is something that we ought *not* to do. I'm not inclined to call an obligatory act our obligation to restrict us from some acts.

Furthermore, I think that request for "real" obligatory acts entails danger of paternalism because we cannot say that someone did something wrong from obligation, and not from interests for example, without looking at his or her intentions. To emphasize my point, let me give you an example: Kant's famous example for "real" obligatory act (Ought!) is to help others whenever we can. I think that such an example passes the first step in your 'two steps' argument, but also the second one, because there is no contradiction in conception when we consider a world in which nobody helps nobody, so that will be just 'May' act, not an 'Ought!' act.

To underline the point, I think that your solution for universalization test is even more greater, because I think that it implicitly shows that we cannot (or at least I cannot) find an example for the first column and, in that matter, we saved Kant's strict formalism, and consequently minimalism. The only thing that I disagree with is existence of the first column (we have to have sufficient reason for infiltrating the first column), but, as I mentioned many times, methodology for universalization test and the other two columns, are at least extraordinary. Thank you.

Kenneth R. Westphal

I think you can realize why it took me so long to figure out even this much about these issues. About intentions and moral worth at that first column (§22.2, on Kant's universalization tests), I deliberately omitted issues about motives and moral worth. I'm ready to let motives fall where they may and, for the purposes of this book, tried to identify, as directly as I could, issues about whether, how or on what basis we can credibly distinguish obligatory from prohibited from permissible actions. It's not that I think motivation is unimportant, or that issues about moral character or moral worth are unimportant; but I think that the proper relations between actions and motives are not to be forged by conceptual analysis in the way people debating internal or external relations between motives and reasons suppose. These relations are really matters for moral education and our moral self-understanding, which is to say, really: the moral dimensions of *all* our education. To properly frame, pursue and assess those aspects of education, we need rather clear-cut principles to distinguish between obligatory, prohibited and permissible forms of action. Then the further issue comes in about how these procedures, and the pure *a priori* principles that Kant thinks help to constitute these procedures, need to be used in connection with who we are as finite rational embodied agents: Kant's practical anthropology. In that connection, all three columns, or actually all four columns in the chart, are necessary. As you know, Kant's own discussion of the distinction between what's consistent in conception and what's consistent in willing concerns this issue about our obligation to lend aid to others in distress, and his own account of it already in the *Groundwork*, but I think he doesn't revise it later, I think Kant retains this account, that precisely because we are such finite beings, simple precaution requires us to be careful about and, in the event, to be prepared to deal with our own falling into distress in one way or another; at this point enters the principle of hypothetical imperatives: as rational beings, we are committed to willing whatever resources are sufficient to relieve us of that distress. Given our finitude and our social existence, among those resources is the possible voluntary assistance of other people. What the universalization test rules out is anyone willing that others aid oneself, though one refuses to aid them. That's exactly the kind of exception in one's own case to the universal requirement Kant's test is designed to rule out. Yet you're right: None of the broad duties can be specified only at the level of formalism. Even property rights only matter to us because part of our finitude lies in the fact that we can do nothing *ex nihilo*; for us to do anything, we must make use of material resources – space, time, a whole variety of things. So, right there we're stuck with the task of sorting out how we can effectively and legitimately coordinate our actions so that we each can make sufficiently reliable, appropriate use of sufficient resources to maintain our own freedom of action. The obligation to truthfulness also depends on our practical anthropology. Kant makes this very plain in the last section of the anthropology lectures; probably you know this passage. He asks us to imagine a species on some

other planet that are mostly like us, except for one thing: this race of rational beings can only think by speaking aloud. That's a race who cannot engage in deceit because they can only execute a planned deceit by planning aloud and announcing their plans while carrying them out, including announcing it to their intended victims. It's almost as bad as trying to lie to the Omniscience. You can prove you're an utter fool who understands nothing; but no one can act effectively on the deranged attempt, either to deceive someone to whom you're blathering all of your deceitful plans, or by trying to lie to the Omniscience who already knows what you're trying to do, and by the way also knows the truth of the matter. So, I think that Kant's practical anthropology must be taken into account, especially so for broad duties of virtue; Kant's view is not, and never was, a mere formalism. I'm trying to think of an example, and I think the example of truthfulness will actually do here; I wanted example that doesn't depend upon legal institutions.

We're obligated to speak the truth, but that doesn't always necessarily require us to speak the whole truth, and we know that Kant acted on that policy. The other point, thanks for reminding me, about the two columns (§22.2), is that if we appeal to some features of Kant's account of judgments and negation, we could eliminate one of the columns, but then we would have to run the tests twice over, depending on where we put negation into the relevant maxim. Yes, that can be done, but given the specifics and intricacies of Kant's tests, I much prefer risking a bit of redundancy to losing how precise is Kant's test to the often quite silly misreadings too often presented as *reductios*. I hope you forgive me; you're certainly right, we could deal with it by more rigorous logic, but then all we've done is complicated the use of the one remaining column.

Kenneth R. Westphal: Response to Rastko Jovanov

I should go back and look at that part of Rawls and see what I want to say about his distinction between 'basic' and (merely by contrast) non-basic structures of society, or of justice. To make this distinction in abstraction from actual kinds of actual institutions frustrates analysis and understanding; whose institutions these are matters vitally, and if republicanism (small 'r' republicanism, please!) is indeed justified, *we* are responsible for our institutions, and no one else can be. This too is completely Hegelian; I want to be careful about which aspects of the development or initiation of institutions matter normatively. Typically institutions get started because at least someone is able, and some group is able, by developing this institution to achieve some of their free aims; then the issue is whether their so doing is justifiable, acceptable, legitimate, or may even be something we ought carefully to protect because it in fact contributes to everyone's legitimate freedom of action.

So I'm entirely with Hegel against the historical school of law, and again with Hegel against confusing issues of historical origins or development with issues of normative assessment or justification. Certainly we can identify various social institutions that were instituted by corrupt, impermissible means,

just as Hume surmises that, historically, institutions of government grew out of military conquest. This is one regard in which Hegel points out that many of our customs, laws and institutions develop much more locally and without premeditation, and yet may in fact achieve legitimate purposes, and may (or may be modified to) meet them legitimately. This is why the issues of our assessment matter so much in justice and in justification. Certainly on Hegel's account of the institutions he identifies within civil society, the administration of justice and the public authorities, all of these institutions are on Hegel's view required by principles of justice and can be and must be assessed in accord with principles of justice; this holds too for the entire legal structure of a society, including the administrative law which allows the formation and operation of those institutions called corporations and foundations, and so forth. So we can get very quickly into some real nuts and bolts issues about what kinds of institutions we're talking about. My guess is that Hegel's theory of justice will get us into those nuts and bolts a lot quicker and with much better criteria for assessment than Rawls'. I think that's what I can say now, but I will come back to it tomorrow. Thank you all very much for your interest, your kind remarks and questions; thank you, thank you all very much.

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II

STUDIES AND ARTICLES

STUDIJE I ČLANCI

Paul Guyer

FORMALISM AROUND 1800: A GRUDGING CONCESSION TO AESTHETIC SENSIBILITY

ABSTRACT

This paper compares the outwardly similar structural formalisms of Marc-Antoine Laugier and Arthur Schopenhauer (who uses many of Laugier's examples). Laugier purports to base his aesthetics on an historical argument from the "primitive hut"; but his preferences are really based on aversion to structurally and programmatically non-functional elements. His preferences show disregard for purely aesthetic considerations, such as pleasing proportions. Schopenhauer's formalism is based on his cognitivist approach to aesthetics, according to which architecture is above all supposed to demonstrate relations between load and support, but in spite of this shows greater sensitivity to sensory beauty.

KEYWORDS

architecture,
Marc-Antoine Laugier,
Arthur Schopenhauer,
aesthetics, "primitive
hut"

1. Introduction

Formalist theories of beauty emerge in aesthetic theory during the eighteenth century, where by formalism I mean the theory that spatial and/or temporal form in a natural object or a work of human art is that which triggers the pleasure that leads us to call the object beautiful, and thus that which properly constitutes the beauty of the object. An oft-quoted statement of formalism is found in the "Third Moment" of the "Analytic of the Beautiful" in Immanuel Kant's 1790 *Critique of the Power of Judgment*, where Kant states that:

In painting and sculpture, indeed in all the visual [*bildenden*] arts, in architecture and horticulture insofar as they are fine arts, the drawing is what is essential, in which what constitutes the ground of all arrangements for taste is now what gratifies in sensation but merely what pleases through its form. [...] All form of the objects of the senses (of the outer as well as, mediately, the inner), is either shape or play: in the latter case, either play of shapes (in space, mime and dance), or mere play of sensations (in time). The charm of colors or of the agreeable tones of instruments can be added, but drawing in the former and composition in the latter constitute the proper object of the pure judgment of taste. (KU, AA 05: 225)

But Kant was not the first to express such formalism. Half a century earlier, the Scots-Irish philosopher Francis Hutcheson, who was an important influence

on Kant, especially in aesthetics, had attributed our pleasure in the “Absolute or Original Beauty” “perceiv’d from Works of Nature, artificial Forms, Figures” and even “Theorems” to “Figures [...] in which there is Uniformity amidst Variety,” indeed, “to speak in the Mathematical Style, [...] in a compound Ratio of Uniformity and Variety: so that where the Uniformity of Bodies is equal, the Beauty is as the Variety; and where the Variety is equal, the Beauty is as the Uniformity.” (Hutcheson 2008: 17, 28–9) In the case of animals, a pleasing ratio of uniformity amidst variety may consist in “a certain Proportion of the various Parts to each other, which still pleases the Sense of Spectators, tho they cannot calculate it with the Accuracy of a Statuary,” (Hutcheson 2008: 33) and

As to the Works of Art, were we to run thro the various artificial Contrivances or Structures, we should constantly find the Foundation of the Beauty which appears in them, to be some kind of Uniformity, or Unity of Proportion among the Parts, and of each Part to the whole. As there is a vast Diversity of Proportions possible, and different Kinds of Uniformity, so there is room enough for the Diversity of Fancys observable in Architecture, Gardening, and such like Arts in different Nations; they all may have Uniformity, tho the parts in one may differ from those in another. (Hutcheson 2008: 41)

Now, Hutcheson does not *explain* why unity amidst variety or proportion among parts and whole should be the source of our pleasure in beauty, or in his view the pleasure in the perceiver that literally constitutes the beauty that is improperly attributed to the object (Hutcheson 2008: 27); he is content with the empirical observation of a connection between pleasure and proportion that “would probably hold true for the most part, and might be confirm’d by the Judgment of Children in the simpler Figures,” (Hutcheson 2008: 30) or the “Experience” that “all Men are better pleas’d with Uniformity in the simpler Instances than the contrary, even when there is no Advantage observ’d attending to it.” (Hutcheson 2008: 63) Kant does attempt an explanation, namely that the perception of suitable forms triggers a “free play” of imagination and understanding, which pleases because it feels to us as if the ordinary goal of cognition, namely the union of the “manifold” or diversity of inputs or information presented to us, is being achieved, surprisingly, without the means that ordinarily guarantees this achievement, namely the application of a determinate concept of an object to this manifold.¹ An important point about Hutcheson’s observation and Kant’s explanation is that neither turns on claims about the nature or goal of any particular form or medium of art; both are claims about the psychology of the human response to forms or proportions, although Hutcheson would have been content with the (anachronistic) designation of his observations as claims within empirical psychology while Kant would have insisted (in my view implausibly) that his theory was part of “transcendental” psychology.

¹ See Kant, *Critique*, Introductions, sections VI–VIII (KU, AA 055:187–91); §9 (KU, 05:217–19); General Remark following §22, (KU, AA 05:240–1); and §35 (KU, AA 05:286–7). For commentary, see Guyer 1997: 60–105, and Guyer 2005.

A second point to notice about these forms of formalism is that neither pretends to be a *complete* account of our pleasure in works of art. Both include architecture among the arts in which form pleases us, but neither claims that form is the only thing that pleases. Kant in particular recognizes, in time-honored tradition, that works of architecture, “such as a church, a palace, an arsenal, or a garden-house,” have different intended functions, and that our overall pleasure (or displeasure) in such a work is a complex response to both its form and function, or to a relation between them that may be that of compatibility or perhaps something more intimate (KU, AA05: 229–31). Further, Kant argues in his actual theory of fine art that all such art has intellectual *meaning*, or expresses what he calls an “aesthetic idea,” (KU, AA05: 313–19) and in his most extensive comment about architecture, where “a certain use of the artistic object is the main thing,” or “the appropriateness of the product to a certain use is essential,” he also insists that architecture must satisfy the condition of expressing an aesthetic idea as well – although he is not explicit about what sorts of content the aesthetic ideas expressed by architecture might have (KU, AA05: 322). Even so, both Hutcheson and Kant recognize that a work of architecture can please us in a variety of ways, and although both hold that pleasing form is a *necessary* condition of our pleasure in a work of architecture neither attempts to restrict or reduce our pleasure in architecture to pleasure in form alone.

The two theorists upon whom I want to focus here do exactly that, however, or at least try to do so. These are Marc-Antoine Laugier (1713–1769) and Arthur Schopenhauer (1788–1860), the first of whom published his *Essay on Architecture* in 1753 and the second of whom addressed architecture in the first edition of his magnum opus *The World as Will and Representation* in 1819 and then expanded upon his treatment in the second edition of the work in 1844. Their approaches to architecture thus straddle the turn from the eighteenth to the nineteenth centuries. It may not be common to link these two figures, although Schopenhauer’s examples suggest that he was familiar with Laugier; but whether or not he was, a comparison of them may be interesting. I will argue that Laugier is not very clear about the real reason for his advocacy of formalism, but that his actual reason for it is above all functionalist, and that he then excludes all departures from functionalism for the sake of other potential pleasures in architecture, including the pleasure of pleasing forms and proportions. Schopenhauer has a different reason for his version of architectural formalism, one that is not connected to function, indeed it radically forswears considerations of function in genuine architectural pleasure, but is more closely connected although not identical to the intellectualist or cognitivist element that Kant had brought out with his theory of aesthetic ideas. But even though this does not sit entirely easily with his theory, Schopenhauer makes more of a concession to the sheer pleasure of sensibility in form or proportion than does Laugier, and thus leaves more room for a less rigid approach to architectural pleasure than does his predecessor. Or so I will argue is the lesson of this comparison.

2. Laugier

Laugier's essay on architecture was published just seven years after Charles Batteux's *The Fine Arts Reduced to a Single Principle* (1746). Batteux's single principle was that beautiful art should imitate nature, although in fact he meant *la belle nature*, that is, not particular objects in nature as we actually find them, but idealized nature, which is more a product of human imagination guided by our experience of nature than mere reproduction of what we experience. Batteux's paradigm for the arts was poetry, but he meant his thesis to apply to all the arts. He touches upon architecture only briefly, but meant his thesis to apply to this case as well. However, he applied the thesis to architecture in a surprising way. First, like any Vitruvian, he considered architecture a "useful art," and said that "In the useful arts, the decoration takes a useful turn; everything must seem to serve our needs." In other words, all other aspects of architecture must be compatible with, indeed subservient to, the work's properly serving its intended function. Thus we "demand [...] a beauty that is actually useful." That part of Batteux's view is not surprising. What is surprising is his next statement, namely that "There are, however, occasions when . . . architecture may take flight. This is when heroes are to be celebrated and temples built. Then it is the responsibility" of architecture "to imitate the greatness of their subject and excite admiration." (Batteux 2015: 23) It is not the appearance of objects in nature, such as a canopy of leafy branches, that is to be imitated, but something that cannot be seen at all, such as greatness, which is to be "imitated" by recreating the mood such greatness triggers, our emotional response to greatness, by different means. A monument or temple does not imitate the appearance of a hero or god (even if the latter is thought of as having an appearance, as in primitive thought); emotions of admiration, or "grandeur, majesty, and elegance," are produced by the very different means of powerful columns, lofty ceilings, and so on.

Laugier's adoption of Batteux's approach is complicated. He begins by seeming to take the thesis that art must imitate nature more literally than did Batteux himself, at least if we count early humans, their raw materials, and their first efforts as pretty much part of nature: Laugier's thesis is that the essential elements of architecture are those already found in the "primitive hut," the conjectural earliest form of human building, and that any departure from the use of those earliest elements of building is a mistake that compromises architectural beauty. This seems to commit what philosophers call the "genetic fallacy," that is, assuming that the original meaning or function of something must always remain its meaning or function; in our wisdom, we know that to be a fallacy from biology itself, for we know that evolution is constantly adapting structures that originally evolved for one purpose to different purposes in later organisms struggling to reproduce in different circumstances. Likewise, there are numerous cases in which it would be an error to insist that the current meaning of a word is determined by its meaning at some earlier period – just think about the English word "bank." However, Laugier's criticisms of various

departures from the structural logic of the primitive hut are not really motivated by his original historical argument, but by his abhorrence of the merely decorative use of architectural elements without a proper function, that is, without reference to their proper *current* function, not necessarily their original function. This comes closer to Batteux's actual position about architecture, namely that decoration must be subservient to utility. But then Laugier fails to follow Batteux on the further point that our pleasure in architecture can "take flight" and derive from more than mere utility. However, it is not just the further layer of emotional import attaching to such ideas as heroism and divinity that Laugier neglects, but also the possibility that we have aesthetic preferences for forms and proportions that may have to be balanced with our demands for utility and the appearance of utility. Or to put it another way, Laugier's version of formalism privileges the forms that serve structural and programmatic functionality over forms that might be found by experience to be aesthetically pleasing instead of arguing that these two kinds of form have to be balanced for maximally pleasing work.

Laugier's allegiance to the general thesis that art should imitate nature is immediately evident: the first sentence of his first chapter is "It is the same in architecture as in all other arts: its principles are founded on simple nature, and nature's process clearly indicates [art's] rules." (Laugier 1977: 11) His next sentence clearly indicates that he regards early man as part of nature: "Let us look at man in his primitive state without any aid or guidance other than his natural instincts."² Then, following the hoary precedent of Vitruvius (Vitruvius Pollio 1914: 38–9), he imagines that early humans, having discovered the limitations of the completely unimproved shelters that might be offered by forests and caves, and wanting to make shelters that would protect them without burying them, figure out how to erect four sturdy fallen branches, lay four other branches across these naturally formed posts as equally natural beams, then used some more branches to erect two adjoining rows of rafters across which they could lay "leaves so closely packed that neither sun nor rain can penetrate," and finally figured out to dress the sides of their hut to get further security from cold and heat (and perhaps prying eyes as well, Laugier 1977: 11–2). Thus primitive humans, from natural needs and natural materials, invented columns, beams, and pitched roofs that yielded triangular pediments by the inexorable laws of Euclidean geometry (not yet formulated by them, of course). Laugier's thesis is then that it is only by continuing to use these elements for their original functions, and even when replacing wood with stone preserving the original appearance of the wooden members, that beauty in architecture can be achieved. As he puts it,

Such is the course of simple nature; by imitating the natural process, art was born. All the splendors of architecture ever conceived have been modeled on the little rustic hut I have just described. It is by approaching the simplicity

2 I will not attempt to update the gendered language of the eighteenth century.

of this first model that fundamental mistakes are avoided and true perfection is achieved. [...] From now on it is easy to distinguish between the parts which are essential to the composition of an architectural Order and those which have been introduced by necessity or have been added by caprice. The parts that are essential are the cause of beauty, the parts introduced by necessity cause every license, the parts added by caprice cause every fault. (Laugier 1977: 12)

The essential parts are the columns, beams, and pediments; the parts introduced by necessity are such things as walls and windows for different climates; and the parts introduced by caprice are any other decorations. The first are the source of beauty; the second always put beauty at risk; and the third always compromise beauty.

This seems like a straightforward example of the genetic fallacy: because early humans had and needed only posts, beams, and roof-members, the beauty of our buildings too can derive only from those elements, even if we have replaced wood with stone, and everything else risks or actually compromises beauty. “Any device – even if approved by great men – which is either contrary to nature or cannot be convincingly explained is a bad device and must be proscribed.” (Laugier 1977: 21) There is no possibility of adaptation or addition to what was originally necessary for a primitive hut to remain erect and to perform its function of sheltering. However, an examination of several examples of Laugier’s criticisms of subsequent architectural innovations that have departed from the primitive model suggests that he is not really objecting to the departure from history as such but to the current disfunctionality of such innovations, that is to the fact that they are necessary neither to the function of a building as shelter nor to helping the building maintain its functionality by keeping it erect. In Vitruvian terms, we could say that he is objecting to anything that is not necessary for *utilitas* or *firmitas*, making no room for any independent sources of *venustas*.

One example is Laugier’s objection to doubled pediments on the same facade or to pediments added along the long dimension of a pitched roof. The purpose of a pitched roof is to shed rain, pediments are the consequence of constructing a pitched roof with a single ridge to shed rain, and any other use of a pediment can only compromise the beauty of a building. Thus he claims that it is a “fault” “to erect the pediment on the long side of a roof,” as was done in “the design for the peristyle of the Louvre,” for “Since the pediment represents the gable of a roof, it must be placed so as to conform to the thing it represents,” a strict application of the principle of imitation. Likewise it is a fault “to make pediments that are not triangular,” for since a roof that is intended to shed rain must always “end in a more or less acute angle,” so “the pediment which is its representation must strictly imitate this shape.” And it is also a fault “to pile pediments on top of each other,” as at St. Gervais, for since a pediment always implies a roof, and it would be absurd to pile a second roof on top of a first, and “It is even worse when the pediment is placed under the entablature” when the roof must be above the entablature, this practice is “absurd.” (Laugier 1977: 26–7) The problems here are not that the proscribed

practices fail to imitate the practices of the ancients, but that they neither have nor represent any *current* function. A pediment placed on the long side of a roof is not nor does not represent a roof that is necessary to shed rain (if anything, the additional valleys created increase the probability of leaks); a second pediment placed beneath the pediment belonging to the actual roof of a building is not part of a second roof necessary to shed rain. What Laugier objects to is not the departure from history but the departure from function.

The same is true in his criticisms of recent deployments of columns. He starts his discussions of columns with several principles. The first, that “The column must be strictly perpendicular, because, being intended to support the whole load, perfect verticality gives it its greatest strength,” insists on strict structural functionality. A second, that “The column must be freestanding so that its origin and purpose are expressed in a natural way,” insists that both origin and function must be clearly expressed by the architectural element. The remaining principles, that “The column must be round because nature makes nothing square,” “The column must be tapered from bottom to top in imitation of nature where this diminution is found in all plants,” and “The column must rest directly on the floor as the posts of the rustic hut rest directly on the ground,” assert that later buildings must imitate the natural materials and methods of the primitive original builders. (Laugier 1977: 14) Keeping to these “simple and natural” principles is “the only road to beauty.” (Laugier 1977: 19) Now, some of Laugier’s objections to later practices depend only on these principles; thus that even where walls are necessary columns should not be engaged but must be freestanding assumes that they must always express their original function and character of just holding up the entablature and roof (Laugier 1977: 15), and “Pilasters are only a poor representation of columns.” (Laugier 1977: 16) But other objections are that later innovations have no necessary function, for example “The pilaster is a frivolous ornament” that does not do any work, especially when it is “even married to a column” that does. (Laugier 1977: 17) Likewise, it is absurd to raise columns on pedestals rather than resting them directly on the ground because the columns are the legs of the building, holding up the torso and the rest, and one pair of legs does not need to stand on another in order to do its job. (Laugier 1977: 20) Again, the problem is not really that the primitive hut did not have pilasters as well as columns or columns on pedestals; the problem is rather that pilasters do not have a structural function in the way that columns do, and it is not necessary to place columns on pedestals in order for them to hold up the parts of the building that rest upon them.

In all of these criticisms, Laugier seems simply to ignore that our pleasure in a building may depend upon aesthetic considerations as well as functional ones, in both the senses, structural and programmatic, of function. Thus, he seems simply not to consider that adding a properly proportioned pediment to the long side of a roof might be a pleasing way to break up what would otherwise be monotonous and boring, a way to give the eye a place to rest or a diversion as it traverses the long stretch of roof, which is presumably necessitated

by the length of the building, itself necessitated by its program. And he seems simply not to consider that placing columns on pedestals might be necessary to preserve the proportions of the column, that is, the ratio between its diameter and its height, which have been proven to be pleasing over time. The case of columns is complicated: perhaps the favored proportions of the order of columns to be used could have been preserved without pedestals if the entablature of the building had been lowered, but then the functionality of the building, the desired height of the interior floors, might have been compromised; or perhaps the desired height of the floors could have been preserved if a different order of columns with its different ratio of height to diameter had been used, but that might not have been consistent with the desired mood to be created by the edifice. The point is that Laugier seems to be overlooking all of these perfectly plausible aesthetic considerations with his rigid insistence on the imitation and expression of the original character and function of these structural components.

Perhaps this criticism is too strong. Sometimes Laugier does criticize practice on aesthetic grounds, that is, simply on grounds of whether we like the way something looks, whether as a matter of nature or of nurture. Thus he objects not only that pedestals beneath columns are structurally unnecessary but also that “Nothing makes a building look more heavy and clumsy than these huge angular masses which serve as substructures to the columns,” as at the Hôtel Soubise, (Laugier 1977: 20) and he objects to a second pediment not only that it is structurally unnecessary but also “that the pediment cuts into the balustrade,” which is “awkward” and “a miserable way of joining them.” (Laugier 1977: 26) What is miserable here seems not to be that the pediment cutting into it will make the balustrade structurally unsound, which Laugier does not suggest, but simply that it looks awkward. (What is the function of the balustrade in the first place? to prevent roofers from sliding off the roof? or is that there as a nice-looking way of finishing the facade and making the transition to the roof?) However, although Laugier does appeal to these purely aesthetic considerations, he does not admit that he is doing so. That is why I call his concession to aesthetic rather than historical and functional considerations grudging, at best.

The grudging character of Laugier’s concession to aesthetic considerations, or to put it more politely perhaps his severe subordination of such considerations to his favored ones, can be confirmed by looking at his unacknowledged revision of the Vitruvian triad. At least one way of understanding Vitruvius’s insistence that buildings (at least public buildings) must be built with “due reference” to *firmitas*, *utilitas*, and *venustas* or beauty is that the factors of structural function, programmatic function, and purely aesthetic considerations can all play a role in our pleasure or satisfaction in a building and need to be balanced with one another. (Vitruvius Pollio 1914: 17) But Laugier replaces the third of these requirements, the aesthetic requirement of beauty for its own sake although compatible with the satisfaction of the other two: although without any explicit reference to Vitruvius, Laugier states that “One

must build with solidity, for convenience, and according to *bienséance*.” (Laugier 1977: 68) “Solidity” is obviously Vitruvius’s *firmitas*, and under this rubric Laugier discusses “choice of materials and [their] efficient use.” (Laugier 1977: 69) as of course Vitruvius does at length; “convenience” is obviously *utilitas*, and under this heading Laugier discusses “the situation, the planning, and the internal communications” or disposition of rooms, entrances, stairs, and so on in a building. (Laugier 1977: 81) But Laugier silently replaces Vitruvius’s requirement of *venustas* with his own requirement of *bienséance*, which the translators leave untranslated but which could be translated with the term “good sense” which David Hume would use a few years later (Hume 1987[1757]), and which Laugier defines thus:

Bienséance demands that a building is neither more nor less magnificent than is appropriate to its purpose, that is to say that the decoration of buildings should not be arbitrary, but must always be in relation to the rank and quality of those who live in them and conform to the objective envisaged. (Laugier 1977: 90)

This requirement of appropriateness between the appearance of a building and the station of those who are to inhabit it or the functions to be housed in it is a descendent of the concept of *dignitas* that Alberti added to the Vitruvian triad (Alberti 1988: 35), and can actually be considered part of the “convenience” of the building, that is, its suitability to its intended function. It is not the same as *venustas* or beauty. The only place where that seems to appear within Laugier’s version of the triad is in the passing remark in his discussion of solidity that “The great secret of true perfection of the art consists in joining solidity to *délicatesse*,” (Laugier 1977: 75) and here he is referring specifically to the desirability of limiting the thickness of walls as much as is compatible with their necessary strength in Gothic architecture. The “art” to which he is referring is the art of Gothic architecture, not architecture in general. Thus this remark does not seem to be a general recognition of the equal importance of *venustas* to that of *firmitas* and *utilitas*, and even if the remark were intended generally it would still place aesthetic considerations in a very subordinate position beneath the structural and programmatic functions that Laugier favors on his historical or pseudo-historical grounds.

3. Schopenhauer

Let us now jump ahead some decades and look at another formalist, although one who arrives at his formalism on quite different grounds from Laugier. Schopenhauer’s post-Kantian intellectual world is an altogether different one from Laugier’s, and his idiosyncratic approach to aesthetics adds to that distance and dictates a novel approach to architecture in particular. The most obvious difference is that Schopenhauer rejects utility as a goal of genuine architecture altogether, thus departing radically from the Vitruvian paradigm that Laugier had merely modified. A brief review of Schopenhauer’s general

philosophy and aesthetics will show why he dismisses any concern with utility on the part of genuine architecture and thus why his formalism must take a very different form from Laugier's, which as we saw was based more on an assumption of the primacy of utility in architecture than on his stated thesis that successful architecture must imitate its own historical genesis.

For our purposes, the most relevant of Schopenhauer's underlying philosophical assumptions is that both the human will and reality in general are irrational, in particular that human beings are doomed to unhappiness because of the nature of human desire: either our desires go unsatisfied, in which case of course we are unhappy, or they are satisfied, but we quickly become bored with their satisfaction and come up with new desires, which are either satisfied or not, in which case . . . *ad infinitum*. For Schopenhauer, there are only two ways out of this fate: either the *ascetic* attitude, in which, aided by the metaphysical realization that our individuality and all its concerns are just mere appearance, we rise above all desire and its dissatisfaction, or the *aesthetic* attitude, in which, aided by the contemplation of beauty, we leave the realm of desire and its dissatisfaction aside at least temporarily. Turning to the details of aesthetic disengagement from desire, Schopenhauer proposes that the experience of beauty consists in the contemplation of essential forms of appearance, which he calls Platonic Ideas, rather than the particulars of experience: since desire is always the desire of an individual in particular circumstances for something particular, contemplation of Platonic Ideas or universals is supposed to release us, at least for a while, from concern for our desires and their satisfaction. In the experience of beauty "We *lose* ourselves entirely in [the] object [...] we forget our individuality, our will, and continue to exist only as pure subject, as clear mirror of the object," and if the object has "passed out of all relation to something outside it, and the subject has passed out of all relation to the will," the locus of desire, then "what is thus known is no longer the individual thing as such, but the *Idea* [...] at the same time the person who is involved in this perception is no longer an individual, for in such perception the individual has lost himself; he is *pure* will-less, painless, timeless, *subject of knowledge*." (Schopenhauer 1958: 178–9[1]) Unlike the ascetic attitude, this aesthetic state of release is not enduring: "willing, desire, the recollection of our own personal aims, always tears us anew from peaceful contemplation"; but it is renewable: "yet again and again the next beautiful environment, in which pure, will-less knowledge presents itself to us, entices us away from willing." (Schopenhauer 1958: 250[1]) In the case of artistic rather than natural beauty, the essential forms are wrested from the particularity of ordinary appearance by the exceptional cognitive power of the artist and also by the strength of will of the artist to rise, paradoxically, above the ordinary concerns of will – this is Schopenhauer's reinterpretation of the eighteenth-century conception of genius (Schopenhauer 1958: 185–6[1]) – and the rest of us can benefit from the contemplation of the Platonic Idea presented by the artist.

Schopenhauer's theory of aesthetic experience as merely a release from the pain of desire is an innovation in the history of aesthetics, for heretofore

the experience of beauty had always been described as a positive pleasure, not merely relief from antecedent pain – even the conception of pleasure in beauty as disinterested proposed by Hutcheson and Kant still posits a positive feeling of pleasure.³ Or at least Schopenhauer’s avowed theory of aesthetic pleasure as only relief from pain is an innovation. In fact, Schopenhauer recognizes that aesthetic pleasure can take two forms: “the source of aesthetic enjoyment will lie sometimes rather in the apprehension of the known ideas, sometimes rather in the bliss and peace of mind of pure knowledge free from all willing, and thus from all individuality that results therefrom.” (Schopenhauer 1958: 212[1]) Thus Schopenhauer does allow positive pleasure in knowing as well as the relief from pain that knowing is supposed to allow. This positive pleasure in knowing will play a role in Schopenhauer’s account of our pleasure in architecture. Further, we will see that Schopenhauer pays enough attention to the way buildings *look* to us to leave room for an element of sensory pleasure in architecture, something as we saw that Laugier almost entirely left out of his account.

Schopenhauer’s account of architecture immediately follows the section just quoted in which he recognizes the twofold nature of aesthetic pleasure. It begins with a further metaphysical premise, namely that the underlying reality of all objects that appear to us, ourselves included, which he calls will in analogy with the human will, appears at different levels of “objectification,” ranging from the elementary force of gravity to animal and human behavior. At each level of objectification there are essential forms that can be captured in different Platonic Ideas, with the negative and positive effects already described. Schopenhauer classifies the different arts on the basis of the different levels of objectification the Platonic ideas of which they present. Architecture is the most basic of the arts because it presents Platonic Ideas of two of the most fundamental and universal forces of nature, namely gravity, along with cohesion and rigidity, and light (while tragedy and music are the highest of the arts for him because they present Platonic Ideas of the highest objectifications of the will in appearance, namely the human will in the case of tragedy and the will as such in music). If we consider architecture as a fine art then we must consider it “apart from its provision for useful purposes,” for in the latter capacity “it serves the will and not pure knowledge, and thus is no longer art in our sense,” for in serving the will it can ultimately always produce only pain, not pleasure. (Think about trying to keep your roof repaired!) This is where Schopenhauer simply dismisses utility from the Vitruvian triad. Instead, as a fine art we can assign architecture “no purpose other than that of bringing to clearer perceptiveness some of those Ideas that are the lowest grade of the will’s objectivity”; “Such Ideas are gravity, cohesion, rigidity, hardness, those universal qualities of stone, those first, simplest, and dullest visibilities of the will, the fundamental bass-notes of nature; and along with these light, which

3 The idea of a negative pleasure, that is, of pleasure merely as relief from pain, is introduced by Edmund Burke, but only in his characterization of pleasure in the sublime, not in the beautiful; see Burke 2015: 31–2.

is in many respects their opposite.” (Schopenhauer 1958: 214[1]) The point of architecture as an art and of every aspect of a structure is to make the nature of these basic forces and phenomena of nature apparent to us, so that by contemplation of them we may enjoy the twofold pleasure of relief from the pains of our own individual wills but also of knowing for its own sake. Properly speaking, Schopenhauer claims, “the conflict between gravity and rigidity is the sole aesthetic material of architecture,” and the purest expression of this conflict is the structure of column and entablature, the weight of the entablature pressing down on the column expressing the nature of gravity and the column resisting that weight expressing the nature of rigidity. Everything else in a building, particularly any concession to mere utility, risks distraction from this goal of achieving pleasure through cognition. Thus Schopenhauer writes:

Therefore the beauty of a building is certainly to be found in the evident and obvious suitability of every part, not to the outward arbitrary purpose of man (to this extent the work belongs to practical architecture), but directly to the stability of the whole. The position, size, and form of every part must have so necessary a relation to this stability that if it were possible to remove some part, the whole would inevitably collapse. For only by each part bearing as much as it conveniently can, and each being supported exactly where it ought to be and to exactly the necessary extent, does this play of opposites, this conflict between rigidity and gravity, that constitutes the life of the stone and the manifestations of its will, unfold itself in the most complete visibility. (Schopenhauer 1958: 215[1])

Thus Schopenhauer arrives at a formalism similar to Laugier’s, but on an entirely different ground: whereas the earlier writer had argued explicitly from history and implicitly from an assumption about our pleasure in utility, Schopenhauer dismisses all consideration of utility from the pure aesthetics of architecture and instead celebrates what he takes to be the benefits of cognition of the purely structural function of the most elementary parts of building.

Indeed, Schopenhauer uses Laugier’s examples of objectionable elements – he does not cite Laugier (or any other authority) but the examples strongly suggest that he knew the work of his predecessor. But the basis of his criticism is very different. He says that “The column is the simplest form of support, determined merely by the purpose or intention” – structural purpose, that is – while “The twisted column is tasteless; the four-corned pillar is in fact less simple than the round column, though it happens to be more easily made.”⁴ But the reason is not that the primitive hut used only naturally grown, neither twisted nor square but round trunks as columns; it is rather the premise that “it is absolutely necessary for an understanding and aesthetic enjoyment

4 Schopenhauer repeats his rejection of twisted columns and four corned pillars in the second edition addendum (Schopenhauer 1958: 412-13[2]). At p. 414 he explicitly rejects Vitruvius’s account of the primitive origins of architecture, which had been adopted by Laugier. This makes it even harder to believe that he was not borrowing from Laugier.

of a work of architecture to have direct knowledge through perception of its matter as regards its weight, rigidity, and cohesion.” Schopenhauer’s cognitivist approach also leads to an insistence upon truthfulness that can remind one of Ruskin’s “lamp of truth” in *The Seven Lamps of Architecture*, published just five years after Schopenhauer’s second edition, although surely without knowledge of it: Schopenhauer states that our pleasure in a work of architecture “would be greatly diminished by the disclosure that the building material was pumice-stone, for then it would strike us as a kind of sham building,” as would a wooden building disguised to look like stone. (Schopenhauer 1958: 215[1]) From Schopenhauer’s metaphysical point of view, of course, all of this – stone, gravity, rigidity – is mere appearance, not underlying reality; nevertheless, he insists upon truthfulness to appearance. He does not say why sham is inconsistent with the presentation of a Platonic Idea, but he assumes that it is.

Schopenhauer’s dismissal of any other kind of functionality than pure structural function is even more evident in the further chapter on architecture that he included in the second edition of his work. Here he writes:

In Italy even the simplest and plainest buildings make an aesthetic impression, but in Germany they do not; this is due mainly to the fact that in Italy the roofs are very flat. A high roof is neither support nor load, for its two halves mutually support each other, but the whole has no weight corresponding to its extension. It therefore presents to the eye an extended mass; this is wholly foreign to the aesthetic end, serves a merely useful purpose, and consequently disturbs the aesthetic, the theme of which is always support and load alone. (Schopenhauer 1958: 412[2])

It is not that Schopenhauer does not know that peaked roofs serve to shed rain and snow, and may even look to us like they serve that function, or serve it well; it is rather that this functionality can never bring us even moderately enduring relief from pain (again, think about the inevitable leaks), and only by focusing us on the essential character of the elementary forces of gravity and cohesion, or load and support, can architecture as a fine art bring us its proper pleasure. Indeed, to take the argument a step further than Schopenhauer actually does, but which twentieth-century modernism would, in practice even if without benefit of adequate theory, we might as well build with flat roofs even in northern climes, because we are never going to get much satisfaction from merely shedding rain after all. But we can get the insight and enjoyment of insight from flat roofs that Schopenhauer promises.

At the outset of his discussion, Schopenhauer had also mentioned light as a fundamental objectification of the will, or force of nature as it appears to us, and this would seem to imply that works of architecture – at least some if not all – should also reveal the essence or Platonic Idea of light, contemplation of which could please us in its own right as well as releasing us from obsession with our own individual desires. But this is not exactly what he does with the theme of light. He does say that “architecture is destined to reveal not only gravity and rigidity, but at the same time the nature of light, which is their very

opposite.” But he actually begins with a more fundamental and a more plausible point. He writes:

Now architectural works have a quite special relation to light; in full sunshine with the blue sky as a background they gain a twofold beauty; and by moonlight they again reveal quite a different effect. Therefore when a fine work of architecture is erected, special consideration is always given to the effects of light [...] The reason for all this is to be found principally in the fact that only a bright strong illumination makes all the parts and their relations clearly visible. (Schopenhauer 1958: 216[1])

The proper use of light in architecture is to more fully reveal the structural logic of load and support, not to present an independent Idea of light itself. However, when Schopenhauer says that in full sunshine against a bright blue sky architectural works gain a *twofold* beauty, he seems to be assuming that there is some form of beauty in architecture beyond the presentation of the Platonic Idea of load and support. Since he does not say that this is the presentation of the Platonic Idea of light, maybe it is just sensory pleasure itself, perhaps the warm glow of Sicilian sandstone in the temples at Agrigento.

Perhaps Schopenhauer walks such a suggestion back when he continues the passage just quoted thus:

Hence this pleasure will consist preeminently in the fact that, at the sight of [a favorably illuminated] building, the beholder is emancipated from the kind of knowledge possessed by the individual, which serves the will and follows the principle of sufficient reason, and is raised to that of the pure, will-free subject of knowing. Thus it will consist in pure contemplation itself, freedom from all the suffering of will and of individuality. (Schopenhauer 1958: 216[1])

Or perhaps by using the term “preeminently” he means not to entirely walk back the previous suggestion; maybe he wants to argue that negative pleasure as release from pain is the primary pleasure of architecture, as of any other art, but that there is also room for a positive, purely sensory pleasure in some appearances, such as the warm glow of sunlight on stone, that is independent of all that.

Schopenhauer does not return to the subject of light in the additional discussion of architecture in the second edition of *The World as Will and Representation*, but he makes a few more comments that suggest that he does recognize a positive, sensory pleasure in the experience of architecture. Further discussing his thesis that the gravity and rigidity of stone entablatures and columns are “the proper aesthetic material of architecture,” he says that “such material requires large masses, in order to become visible, and indeed to be capable of being felt. As was shown [...] in the case of columns, the forms in architecture are primarily determined by the immediate structural purpose of each part.” But then he continues, “insofar as this leaves anything undetermined, the law of the most perfect perceptibility, hence of the easiest comprehensibility, comes in. [...] This comprehensibility, however, always results

from the greatest regularity in the forms and the rationality of their proportions.” (Schopenhauer 1958: 414–5[2]) Again he seems to be making two separable points here: the primary pleasure of the experience of architecture is the negative pleasure that comes from the comprehension of the Platonic Ideas of gravity and rigidity, clearly presented; but there is a second pleasure, perhaps secondary but real nonetheless, in perception as such, in this case in the perception of pleasing proportions. This impression is heightened a page later when he speaks of the potential *grace* of a work of architecture, demonstrated in a “good antique style of architecture in every part, whether pillar, column, arch, entablature, or door, window, staircase, or balcony, attain[ing] its end in the simplest and most direct way.” (Schopenhauer 1958: 415[2]) Here Schopenhauer seems to be going beyond necessary conditions for comprehending the Platonic Ideas of gravity and rigidity through the clear structure of entablature and column, and allowing that there are further perceptible qualities of works, such as grace, that are pleasing in their own right.

4. Conclusion

We have now seen two different theories that conclude with a similar emphasis upon structurally functional form as the essential element in architectural beauty. Laugier started from his historical argument, but really seemed to be assuming that we are pleased with the appearance of functionality and displeased with whatever does not contribute directly to that appearance. Schopenhauer, by contrast, argued from his distinctive theory of the cognition of universals as the source of relief from the pain of ordinary existence that architecture should clearly reveal the fundamental forces of nature that are at work in it. We have also seen that while Laugier only tacitly allowed for an element of sheer sensory pleasure in architecture, Schopenhauer comes closer to explicitly acknowledging pure pleasure in perception, even though it complicates his theory to do so.

What lesson should we draw from all this? I always favor a pluralistic approach to aesthetics, so my own preference is to exclude none of the accounts of pleasure mentioned from a legitimate role in our experience of architecture: we can enjoy the history of its own building or building more generally that we might be able to read in a building; we can enjoy the appearance that the elements of a building are well-suited to their structural functions, as indeed we can enjoy the appearance of the building as a whole as well-suited to its programmatic function or functions; we can enjoy other knowledge that we might gain from the experience of a building, whether it is scientific or metaphysical knowledge as Schopenhauer supposes, or any other kind of knowledge; and we can enjoy sheerly perceptual pleasures, such as the glow of stone in sunlight, grace in the design of individual features of a building and in their harmonious combination, and so on. Why limit ourselves to any one of these in the name of a theory?

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Pol Gajer

Formalizam oko 1800: škrti ustupak estetskoj senzibilnosti

Apstrakt

Ovaj članak poredi naizgled sličan strukturalni formalizam Mark-Antoan Ložijea i Artura Šopenhauera (koji je koristio mnoge Ložijeove primere). Ložije zasniva svoju estetiku na istorijskom argumentu polazeći od „primitivne kolibe“, ali njegove preferenciju su ipak zasnovane na averziji prema strukturalno i programski nefunkcionalnim elementima. One otkrivaju nehaj za razmatranja koja su čisto estetska, kao što su to proporcije koje izazivaju zadovoljstvo. Šopenhauerov formalizam zasniva se na njegovom kognitivističkom pristupu estetici prema kome bi arhitektura, pre svega, trebalo da demonstrira odnos između opterećenja i oslonca, ali uprkos tome pokazuje veću osetljivost za čulnu lepotu.

Ključne reči: arhitektura, Mark-Antoan Ložije, Artur Šopenhauer, estetika, „primitivna koliba“

Aleksandar Fatić

CAN MEMORY ERASURE CONTRIBUTE TO A VIRTUOUS TEMPERING OF EMOTIONS?

ABSTRACT

The paper deals with a perspective of Christian philosophy on artificial memory erasure for psychotherapeutic purposes. Its central question is whether a safe and reliable technology of memory erasure, once it is available, would be acceptable from a Christian ethics point of view. The main facet of this question is related to the Christian ethics requirement of contrition for the past wrongs, which in the case of memory erasure of particular troubling experiences and personal choices would not be possible. The paper argues that there are limits to the ethical significance of contrition in the writings of the leading Christian fathers on the theme (e.g. St. Thomas Aquinas), where excessive suffering and inability to forgive oneself for one's actions is an impediment to the achievement of tranquility of mind and spiritual redemption, rather than a prerequisite for it. The paper thus concludes that there is no hindrance in principle from the Christian ethics point of view to pursuing a voluntary and selective memory erasure as a psychotherapeutic technique once a fully adequate technology is available.

KEYWORDS

Christian ethics, contrition, tranquility, redemption, suffering, wrongdoings, memory erasure, psychotherapy

There are numerous practical arguments in favor of artificial memory erasure. Victims of traumatic events such as genocide or rape are likely to benefit from a partial memory erasure or modification by being able to integrate their 'life script' more quickly and effectively. Additionally, many of the somatic consequences of the stress associated with traumatic memories might be avoided: thus memory erasure might help prevent the risk of psycho-somatic illnesses ranging from high bloodpressure to cancer.¹ Finally, memory erasure might improve the quality of life of many victims of trauma, with all of the social, economic and moral consequences such improvement would bring.

1 In her moving autobiography Susan Brison (1997) narrates all of the personal identity issues arising from her own 'disruption of life narrative' after she had been raped while hiking in the South of France and left for dead in a cave. The social conditions for the reintegration of 'life narrative' based on Brison's and similar accounts were discussed by Jaqui Poltera (2010).

On the other hand, arguments against memory erasure mainly revolve around its impact on the authenticity and completeness of personal identity. If the erasure of some experiences from one's conscious autobiography would compromise one's 'proper' personal identity, memory erasure might blur the autonomy of future decisions and reduce the quality and sustainability of any emotional 'closure' achieved after trauma. If such closure is not achieved by 're-processing' the traumatic experiences and integrating them in one's perception of one's life as a whole, but by simply deleting some of the particularly intractable experiences, the sense of peace so achieved might be easily destroyed by similar experiences in the future.

While the issue of any impact memory erasure might have on the quality of emotional closure is an empirical one, I argue here that memory erasure, if voluntary, does not militate against personal autonomy and is in principle compatible with Christian values. Furthermore, I argue that such memory deletion or modification can enhance personal autonomy by allowing the person to freely choose what kind of person one wishes to become. Thus I will argue that, on philosophical grounds alone, memory erasure should be freely available to everyone once a safe technology is fully developed.

From a Christian point of view contrition plays a key role in character development. Whilst the emotional and volitional aspects of contrition are equally important, and the certain 'emphatic' nature of repentance is expected, what really matters in the context of development of Christian virtues and character is the person's ability to leave the sinful ways behind and change their ways. The concept of forgiveness, apart from its obvious soteriological meaning, plays a crucial functional role of encouraging the moving on after the confession and repentance. The Greek term for contrition is particularly illustrative here: the term 'metanoia' literally means a 'transformation', suggesting a change of life and personal values (Walden 2010). The Christian promise of forgiveness is a powerful encouragement to move on and transform the past. Perhaps the most often cited example from the Scriptures is Jesus's being anointed by a sinful woman (Luke 7.36–50), where the repentance shown by the woman is not emphatic, but peaceful and implicit, full of hope, as is the generosity of Jesus. Only when questioned, Jesus makes it clear that he not only knows her past, but has released her from her sins. Her actions are an example of humbleness in asking for forgiveness and of faith in accepting it.

The dominant understanding of contrition, which is well established in traditional theology of both the Eastern and Western Christianity, suggests that the amount of remorse and sorrow (thus emotional suffering) that arise from the recognition of one's sins can well be excessive and detrimental to a person's overall wellbeing (Aquinas 2007: 2569; St. Macarios of Egypt in Chrysostomos et al., 1988). Aquinas writes:

Contrition, as regards the sorrow in the reason, i.e. the displeasure, whereby the sin is displeasing through being an offense against God, cannot be too great; even as neither can the love of charity be too great, for when this is increased

the aforesaid displeasure is increased also. But, as regards the sensible sorrow, contrition may be too great, even as outward affliction of the body may be too great. In all these things the rule should be the safeguarding of the subject, and of that general well-being which suffices for the fulfillment of one's duties; hence it is written (Rm. 12:1): "Let your sacrifice be reasonable [*Vulg.: 'Present your bodies ... a reasonable sacrifice']." (*Summa Theologiae*, Third Part, Supplement, Question 3, Article 2 — Aquinas 2007: 2569).

Aquinas makes a difference between the sorrow arising from contrition which is connected with the feeling of guilt (displeasure 'through being an offense against God'), which, according to him, can never be too great, and the strictly emotional, 'embodied' part of that sorrow ('the sensible sorrow'), which may be too great because the emotions triggered by the sin might compromise the body and the person's physical and mental health. Indeed, one of the major problems encountered by Christian pastors is the inability of those who repent to 'move on' because of a persistent sense of guilt which is unaffected by absolution after confession. Especially when the events, including one's own wrongdoings, are traumatic, sometimes they tend to 'stick' in the person's mind, thus making it difficult for the person to believe that one is forgiven and to muster the strength to focus on the future (Worthington 2006, Aten et al. 2011). All of these difficulties militate against the person's autonomy more than a circumspect practice of memory erasure would. There is a common understanding of ethics, and especially religious ethics, which ties the rationality of beliefs to the process whereby these beliefs have been acquired, rather than to the evidence that supports or refutes the belief (Jung 2017). While the fact that memory erasure might disrupt the continuity of a process of acquisition of (moral) beliefs might on the surface make the practice morally suspect, on the substantive level, responsible memory erasure has the capacity to address the hindrances to a person's future moral agency which arise from their inability to deal with past problems. The problems in dealing with a sense of guilt occur on the level of what Augustine calls 'sorrow in the reason'. On this level, the sense of guilt may destroy one's life narrative without immediately, or visibly, causing an emotional stir that would be significant enough to compromise the body in the short term. After all, many people who attend counseling do not show any symptoms of psychological, and much less physical problems, but have unresolved issues that make them feel permanently 'stuck' and profoundly threaten their identity, ability to mobilize their creative energy, or create close and intimate relationships.

The counseling techniques that address this issue focus specifically on reducing the sense of guilt, rather than dealing with emotions directly. They are close to cognitive and behavioural models of counseling and take the form of educated discussions about the ethics of the Scriptures and a practical Christian ethics (Clinton and Ohlschlager 2002).

To show that autonomy is compatible with and, sometimes, increased by memory erasure, I argue that *personal identity* and *personal autonomy* do not

help define each other. I thus argue that a stable personal identity is not interrupted by a prevailing heteronomy in decision-making. The sense of personal identity I rely on here is that of a 'life narrative'. This is a common way in which most people perceive their identity and it has been persuasively argued for by a number of philosophers (Schechtman 1996, Ricoeur 1991, Nelson 2001, Hutto 2007, Dennett 1992, Brunner 2003, Kircher and David 2003, Rudd 2009, Taylor 1989, Wollheim 1984, Woody 2004). Critiques of the narrative view of identity, on the other hand, have mainly touched on the metaphysics of persons rather than targeting the functional appropriateness and intuitiveness of narrative as 'autobiographic identity' (e.g. Strawson 2004).

Memory in the Narrative Identity

The narrative concept of personal identity is the self-perception based on an autobiographical life story, which is laden with values and interpretations that the person considers vital to how she sees herself and the world. According to Marya Schechtman, the personal narrative must satisfy two basic conditions: (i) the articulation condition (it must be reasonably intelligible and portray a comprehensible life story), and (ii) the reality condition (the narrative must be consistent with 'basic observational facts and interpretative facts' (Schechtman 1996: 114, 120). By satisfying the two conditions the personal narrative allows people to relate to each other by acknowledging the same type of reality that connects them. In times of identity crisis it is usually this type of perception of self-identity that is damaged or threatened, and its re-articulation or re-building (e.g. by psychotherapy or counseling) often helps restore the person's self-confidence and ability to project a healthy first-person perspective on the present and the future (Fatić 2013). The narrative concept of identity is appropriate for my present purpose simply because it is *prima facie* intuitively appealing in light of the ordinary way in which we tend to define who we are: by 'narrating' the experiences, values and attitudes that we believe define us as persons.

Some traumatic experiences clearly have the capacity to destroy one's personal narrative. We all have certain concepts of who we are and becoming the victim of extreme violence, for example, can shatter those concepts. Whether or not the personal narrative can be reconstructed through psychotherapy and/or counseling is doubtful, and even if this is possible, it can never be guaranteed. Thus we are left with the possibility that a once flourishing personal identity could be damaged or altered by arbitrary victimization which the person will have physically survived.

If there was a ready technology to actually effect memory modification, some people might choose to erase or modify their memories in response to experiences the memory of which threatens their sense of identity and even mental health. Assuming that memory erasure involves elements of autobiographic memory which are significant for one's development as a person, and not just irrelevant memories such as having read a newspaper or paid a bill, the narrative identity is likely to be modified by loss of memory. If I was able to

delete the memory of a conflict or a period of suffering that marked a significant portion of my life experience, or of a trauma that has made me reflect on fundamental values and relationships with others, my personal story will *ipso facto* change. Strictly speaking I will no longer be the same person that I was while I still had these deeply challenging experiences. Thus it seems that the idea of memory deletion militates against the continuity of personal narrative in its linear, continuous form that tends to be associated with a highly functional and integrated persona.

Memory and Autonomy

The situation with the relationship between autobiographic memory and personal autonomy is different, and this has important logical consequences for the relationship between autonomy and personal identity. Unlike the concept of personal identity as a (preferably relatively linear) narrative, which is fundamentally diachronic (it is partially defined by a continuum in time and thus depends on memories), autonomy is essentially synchronic: it marks decisions that are made 'here and now'. Autonomy is not defined by previous decisions or experiences. Thus autonomy is possible for different people who make different decisions in the same situation, as much as for the same person who makes different decisions in the same circumstances at various points in time. While the continuity of person in terms of the narrative requires, as Schechtman points out, a certain consistency, autonomy does not: it is possible to make contradictory decisions, arising from contrasted values, all of which are fully autonomous. Trivially, if I take position A on a theoretical problem at moment x, I may equally autonomously, based on my own contemplation of the issues involved, take position not-A on the same problem at moment y. There are no grounds for challenging the autonomy of any of the two contradictory positions on the grounds that they are contradictory or lack synchronic continuity. Depending on the arguments and circumstances involved, however, there may be grounds for challenging my intellectual identity and/or integrity, e.g. if such changes reflect contradictory values against a relatively stable background of other relevant assumptions.

On a more controversial level, imagine a woman who at young age was a pornographic actress, but subsequently decides to become quite conservative, marry a conservative spouse and raise her children in a traditional way. The circumstances force her to keep her past from her family and friends, and the revelation of that past threatens to shatter the life she has now chosen for herself. She is understandably so troubled by her autobiographic memories that she decides to try to forget her youth. If her past is discovered, clearly all kinds of moral issues would come into the open with her husband: ranging from 'who she really is' to respect of his dignity and right to know relevant facts about her to the sincerity of her conservative values. This type of situation has been known to have presented itself in counseling and more often than not the outcome was divorce and suffering for all parties concerned.

Imagine now that the woman has the option to safely erase memories from her past, that indeed this is technologically feasible, and that she freely chooses to do so in a well-informed manner. Subsequently she is able to live her life *as though* she has always been the person she is now. Does this decision undermine her personal autonomy?

There appears to be no philosophical reason why her decision to erase the memories could not be construed as a clear and autonomous expression of her authentic value-position towards the decisions she had (perhaps fully autonomously) made in the past. Imagine, finally, that the woman is confronted by her husband who happens to find out the truth: in this case he would know more about her past than she would, and her decision to erase the memories would bear clear witness to her sincerity of belief and her ultimate rejection of her previous 'identity'. In this context she would appear to have acted in a way similar to deciding to take drugs in order to 'remove' an illness from the body. In a sense, the autonomous decision to remove the memories at least partly removes the presumably negative moral value attributed to decisions taken earlier in life. Thus memory erasure makes it possible to both functionally and, to some extent, morally reconstruct one's identity.

The decision to remove some of the memories, and thus interrupt the continuity of the person she once was is not in principle different, with regard to autonomy, from a decision to change one's behavior, thus trying to factually 'become a different person'. The difference is clear in terms of continuity of persons: if one changes one's behavior to the level of unrecognizability, thus desiring to appear as a completely 'new person' (e.g. by changing one's temper or abandoning a bad habit, such as drug use or cigarette smoking), one remains the same person one was and only appears different because one's behavior changes. However, if one decides to make an incision into one's memories, thus cutting out a part of one's life narrative, then in a real sense one modifies one's personal identity. This interruption to the continuity of person would occur even if there is little behavior change, just as in the former case the continuity of persons would persist even with a most radical behavior change. However, from the point of view of autonomy of decision-making, there is no difference between the two cases. If the means are available to treat trouble memories in the same way as an illness, and such decisions are voluntary and well informed, then there are no grounds to argue that memory erasure diminishes personal autonomy.

Furthermore, there are convincing grounds to argue that memory erasure in such cases in fact *re-enforces autonomy*, by preventing situations where, despite the transformation of values and self-perceptions, the person would remain *imprisoned* by past experiences which she rejects, but they nevertheless stubbornly determine her narrative. Voluntary memory erasure is both emancipatory and revitalizing for the sense of self-invention that lies at the core of our perception of personal autonomy.

The argument presented here depicts memory erasure as merely a radical form of personality enhancement. Philosophical arguments have recently

been put forward in favour of a compulsory use of drugs to enhance the personalities of entire communities. Such personality enhancement may be seen as necessary in order to avoid ‘the ultimate harm’, which can range from a situation where life is no longer worth living because of inter-personal conflicts to the obliteration of life on the planet by war (Savulescu, Persson 2008, 2013). Others have argued that personality enhancement can only be a feasible option if it is voluntary, because only in such a way do personal autonomy and the moral quality of actions fully survive (Rakić 2014).

The idea of memory erasure is usually seen as being a more ‘core issue’ than e.g. the propensity for empathy or solidarity, which according to some research might to some extent be influenced by drugs such as oxytocin (Rodrigues et al. 2009, Wu N. et al. 2012). However, from the point of view of personal autonomy, there is no difference between memory deletion and, for example, empathic personality enhancement. Assuming that this becomes possible, a person might decide to have her memories erased in the same way as one might decide to take a drug in order to feel greater empathy for others. There is, however, a structural difference between the two in that memory erasure is entirely self-referential. One decides to become more empathetic because this will benefit others, and only secondarily would the same decision, if taken by others, benefit the agent herself. The reference in personality enhancement in the context of preventing the ultimate harm is primarily to collective well-being. On the other hand, memory deletion, if possible, would be primarily (not exclusively) a self-referenced decision: one decides to delete or modify one’s own memories in order to improve one’s own sense of identity and integrity, and this only secondarily impacts others (e.g. the family, in the cited example). In this sense, while being a more ‘core issue’ than the usual forms of personality enhancement, memory erasure conduces to autonomy because of its ability to consolidate one’s identity in essentially self-referential context and with enormous emancipatory potential for the free self-reinvention of personality.

Another difference between memory-erasure as a form of personality-enhancement and the use of medication to increase empathy or inter-personal bonding is that memory-erasure involves the ultimate negative value judgment of one’s own experiences and thus part of the past: this judgment is so radical that the experiences are deemed totally unacceptable from the point of view of one’s current life-plans and value system, thus they must be erased. The ability to make ultimate judgments is predicated on a strong moral subject, with clear concepts of the moral right and wrong. It is also additionally autonomous in the sense that it is not motivated by external pressures to ‘be good to others’: one will not necessarily be a better person towards others once one erases one’s trouble memories, however one is likely to be a freer, more autonomous and happier person. It is therefore in a sense improper to debate the availability of memory erasure on the level of social policy, which is currently the case with pharmacological moral, cognitive or mood enhancement. Memory erasure is much less relevant to social policy as it remains a highly individual

issue. However, it impacts directly the most traditional philosophical questions of what it means to have a good life and how far one is justified in going to secure a good life. While the very question of memory erasure does not in any way prejudice the question of what it is to have a good life, clearly it has the capacity to serve its achievement if it is made available as a free choice.

Is Memory Erasure Acceptable from the Point of View of Christian Ethics?

The most obvious problem with, or objection to the idea that one should have free choice to erase part of one's life narrative (at least as it is understood in close connection with autobiographic memory) is the impact of such erasure on responsibility. It might be argued that the ability to deal with one's past and to cast an adequate value-light on it is so integral to the Christian faith that removing unbearable aspects of the past, or those that threaten one's present life-choices, falsifies the person's Christian life's authenticity.

While arbitrary memory erasure certainly does become a legitimate target of this objection, a circumspect and responsible decision-making on when to erase memories, especially one that would be able to be procedurally monitored, perhaps by ethics boards in hospitals, is vulnerable to the objection. While memory erasure, if freely available outside institutionalized controls, might be used out of a variety of motives, from a desire to avoid criminal prosecution or public acknowledgement of one's moral responsibility for actions, to becoming an illegal 'tranquilizer' that could be offered on the black market, the specific context in which I advance the proposal of free memory erasure is not this. I suggest that, in situations that satisfy the criteria arising from the Christian view (which is obviously common to many other religions as well) of the desirability of human flourishing in the moral realm, and, relatedly, of human emancipation from own moral wrongdoing, memory erasure may be a perfectly acceptable tool for the achievement of these ends. In some situations repentance, both in its soteriological and in its related psychological function, may be entirely impossible due to the person's inability to deal with the past.

The very concept of repentance (*metanoia*) implies not just the acceptance of guilt, but the volitional effort to systematically change one's choices in the future (Nicodemos 1989).² The moral or intellectual side is accompanied by the volitional aspect of repentance. However, the latter is not possible without the emotional aspect, namely the ability of those who repent to overcome the anxiety or depression that often follow the moral recognition of wrongdoing or sin and arrive at an emotional stage where they can change their ways, while achieving at least a minimally functional emotional equilibrium. If the

² St. Nikodemos is the author of the Orthodox version of the seminal work on asceticism, *Unseen Warfare*, from the Venetian original written by the Catholic author Lorenzo Scupoli. He was canonized in 1955.

emotions are so stirred up that the very thought of wrongdoing overwhelms the person to the stage that she is unable to think rationally and act decisively, repentance is practically impossible.

Discussions of the emotional side of repentance in Christian scholarship often focus only on the emotions that follow the value-recognition of the wrongfulness of one's actions. So according to Stephen Graham:

Repentance includes three elements – intellectual, emotional and volitional. The intellectual element involves a change in thought and an act of moral conscience – recognition of sin, acceptance of guilt, and a realisation of the sin's consequences. The emotional element includes a change of feelings. Contrary to the proverb that says, "Sinning is the best part of repentance," we feel genuinely sorrowful and remorseful for our sin and our failure to meet moral standards. (Graham 2013: 3).

The above is but one part of the emotional identity or signature of repentance. Without the ability to 'react badly' to our own wrongs it is almost impossible to consider one's 'metanoia', or transformation, as genuine repentance. Between two people who 'repent' for the same deed, one of whom however expresses regrets without visible emotions, while fully following through with behavior change, while the other changes behavior to the same level, however expresses emotion of remorse, the latter will likely be considered by many as having 'genuinely' repented. In this sense, negative emotions may be considered *definitive* of true repentance. *Catechism of the Catholic Church (CCC)* thus states: 'Contrition is "sorrow of the soul and detestation for the sin committed, together with the resolution not to sin again' (CCC 1451). The expression of emotions both lends credibility to the act of repentance and represents a way towards the development of Christian virtues (CCC 1770).

On the other hand, when the experiences or one's own wrongdoings are so grave (in the mind of the persons themselves) that they cause extreme anxiety and instability, these emotions can in fact *inhibit* repentance unless the very act of repentance credibly promises to relieve the anxiety. The person from the example given earlier in the text might feel such anxiety because of her pornographic past, and may find her own actions so repulsive, that the act of full repentance might in fact be possible *only* if it comes with a promise of memory modification. In such situations, if the anxiety is caused by moral misconduct repentance should lead to emotional equilibrium, at least to an extent. With drastic emotional reactions caused by one's own moral wrongs in the past, the functionality of one's cognitive and volitional capacities could be, and often is, so impaired that only the promise of an immediate relief will facilitate the emotional 'facing up' to the totality of one's guilt involved in the moral wrong. This, after all, is why people take tranquilizers, alcohol, or drugs to calm the emotional fury that is unleashed in them when they recollect some of the particularly 'bad' things that they have done in the past. There is no principled problem with repentance if the person takes tranquilizers in order to confess fully and retain sufficient calmness and cognitive functionality in order to

complete the 'turn' of repentance: confession – *metanoia* as a lasting change of heart. However, the effect of tranquilizers passes away and the memories and emotions caused by them come back – sometimes with greater force than before. Furthermore, the person who takes tranquilizers prior to confession knows that they only have a temporary effect, and this affects her conviction in her own ability to put the experience behind her in a sustainable, permanent manner. Only too often sufferers of such moral nightmares confess, repent on the level of values and cognition, but then fall back into the trap of guilt, anxiety, depression, and sometimes psychosis. This makes the act of repentance incomplete as the leap of personal redemption, in this life too.

While memory erasure remains a controversial topic in bioethics, mainly with a view of its alleged impact on personal autonomy and responsibility, and a topic that has hardly been broached in Christian ethics, pharmacological means to effect such erasure are advancing rapidly. Some recent research has suggested, at least tentatively, that the use of the popular drug used to treat cardio-vascular problems, propranolol, might affect the structuring of autobiographic memories, especially after traumatic events (Pitman et al. 2002, Brunet et al. 2008, Henry et al. 2007). This is a common drug used by millions of people, and if adequate regimes of administration for the purpose of memory erasure or modification are developed it could be readily applied in this vein. This is particularly easy to imagine given that the decades of clinical usage of propranolol have established it as a relatively safe drug, with few side effects. At the same time, new pharmacological research is continuing along the avenue of 'moral enhancement', which has become a fashionable topic in bioethics. Numerous studies have been published on the use of oxytocin for encouraging empathy and bonding, and the drug has been described as an agent of 'character improvement' (Kosfeld et al. 2005, Domes et al. 2007, Feldman et al. 2007, Guastella et al. 2008, Neumann 2008).

While from a Christian point of view (and from the point of view of traditional ethics) it is doubtful whether behavior enhancements such as these, if they can indeed be brought about by medication alone, really qualify as true 'moral' or 'character' enhancements, memory erasure is different. It is an area where pharmacological interventions are morally less problematic than in enhancement projects *per se*, although dealing with memory modification or erasure links the discourses of therapy and enhancement. The reason is twofold: memory erasure is not subject to public policy, such as enhancement might be: the decision to erase memories in the delineated context is limited to the person's own conviction that this is the only way to deal with the unacceptable past. It is thus a self-redeeming action with both therapeutic and enhancement consequences for the person. This decision, when made in a legitimate way (not in order to avoid criminal prosecution or for thrill, by using black market services, etc.) is entirely in accordance with Christian morality. Most importantly, it is a decision that not only leaves personal autonomy intact (although it admittedly impacts the continuity of person), but also has the capacity to enhance personal autonomy. Memory erasure achieves this by offering the

promise of liberation from the past and thus fostering greater confidence in lasting autonomous change, however difficult and emotionally upsetting might be the experiences one feels one must forget.

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Aleksandar Fatić

Da li brisanje sećanja može doprineti moralno poželjnom uravnoteživanju emocija?

Apstrakt

Tekst se bavi perspektivom hrišćanske filozofije na pitanje o veštačkom brisanju pamćenja u psihoterapeutske svrhe. Centralno pitanje oko koje se konstituiše argumentacija teksta je da li bi bezbedna i pouzdana tehnologija brisanja sećanja, onda kada bude raspoloživa, bila prihvatljiva sa tačke gledišta hrišćanske etike. Osnovna dimenzija ovog pitanja odnosi se na glašavanje pokajanja u hrišćanskoj etici. Kada je reč o brisanju sećanja na posebno mučna iskustva i lične izbore, takvo brisanje sećanja bi onemogućilo pokajanje. U tekstu se argumentiše da postoje granice etičkog značaja pokajanja u spisima vodećih hrišćanskih očeva o ovoj temi (npr. Sv. Tome Akvinskog), te da oni preteranu patnju i nesposobnost da se oprost sebi samo za sopstvene radnje opisuju kao prepreku za postizanje duševnog mira i duhovnog spasenja, a ne kao uslove za to spasenje. Tekst stoga zaključuje da nema u principu prepreke, sa hrišćanske tačke gledišta, za dobrovoljno i selektivno brisanje sećanja u svrhu psihoterapije onda kada bude na raspolaganju potpuno adekvatna tehnologija za to.

Ključne reči: hrišćanska etika, pokajanje, duševni mir, duhovno spasenje, patnja, pogrešni izbori u prošlosti, brisanje sećanja, psihoterapija

Miša Đurković

CHRISTIAN PERSONALISM AS A SOURCE OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS¹

ABSTRACT

To mark the 70th anniversary of the adoption of the Universal Declaration of Human Rights, the author embarked on an attempt to analyze the theoretical and historical framework that contributed to the adoption of the document. The first part of the article discusses the development of the philosophy of personalism from Mounier to Maritain and analyzes Maritain's views on human rights. In the second part of the article, the author shows the decisive influence of the personalists Charles Malik and Rene Cassin on the adoption of the document, which clearly bears the mark of the Christian personalistic discourse and notions.

KEYWORDS

personalism, human rights, Universal Declaration, Christianity, Maritain, Malik

Last December we celebrated exactly seventy years since the Universal Declaration of Human Rights was adopted on December 10, 1948 by the United Nations General Assembly. Today human rights have grown into a kind of secular religion, and there are even those who claim that human rights should be a substitute for religion. They are understood predominantly in an individualistic way, as a framework that protects privacy, the rights of individuals in relation to various collective bodies, and are increasingly associated with the so-called individual rights of the last generation involving LGB and especially transgender rights. This direction in the interpretation and understanding of human rights, which spread on the horizon of Roman-Kantian philosophy of autonomy in the mid-sixties, and started to dominate since, has little to do with the original context and philosophy in which, during the 1940s and especially after the Second World War discourse, the documents and practice of human rights were established. The philosophy and background of the reconstruction and development of the human rights theory at that time was deeply Christian, associated with the personalistic school of Christian philosophy.

Several important researchers, including probably the most important historian of the human rights phenomenon today, Yale professor Samuel Moyn, have recently reminded us of this original context and framework for understanding

1 Abbreviated UNDHR.

human rights.² In the series of works followed here, Moyn notes that human rights at the time of the adoption of the UNDHR were not seen as part of a radical, revolutionary and republican tradition, but that they were more closely related to the serious reconstruction of conservatism during the forties, and to personalism and Christian democracy. He also suggested that this reminder of their original context and meaning might be useful for their current reevaluation and understanding.

In this article, we will first recall the complex relationship of Christian churches, and especially the Roman Catholic Church with the idea of human rights; we will then point out that during the thirties and forties, with the development of the Christian philosophy of personalism, the idea of natural law and human dignity was also restored within the church, and will then discuss how this new philosophy spread through international institutions and fundamentally contributed to the creation and adoption of the Universal Declaration of Human Rights seventy years ago.

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In today's Western world it would be difficult to find a Christian denomination in which the idea of human rights has not been appropriated. But this was not always the case: the history of the relationship of individual denominations toward the idea of individual human rights or inalienable human rights is very complex and controversial. As the Roman Catholic Church for a long time in the nineteenth century and for much of the first half of the twentieth rejected this idea, seeing it as originally associated with the Freemasonry movement, liberters and other enemies of Christianity and the Church, so a significant number of evangelists, for example, thought that this idea came from deism, and that therefore there was no place for it in the true Christian tradition (Traer 2001, second chapter). In other Protestant traditions, there was strong resistance to the idea of human rights because of the violation of the idea of *agape*, or love, as the basis of Christian relations between people. The idea of human rights as related to the notion of justice is rejected because it violates the principle of *agape*.

Contrary to the thinkers who seek to show that Christian churches have difficulty and are relatively late to integrate the idea of human rights, Wolsterstorff (2011) insists that this complex relationship and partial hostility of Christianity

2 After his important 2010 book *Human Rights as the Last Utopia*, Moyn developed ideas on the Christian, personalistic background of human rights in a series of articles and lectures, to synthesize the project in the extraordinary manifesto work *Christian Human Rights* (2015). Especially important is the Introduction in which he precisely presented his basic thesis. In addition to Moyn, Mary Ann Glendon should also be mentioned. See Glendon 2001. Mazower 2004 is significant because he also refuted the contemporary apocryphal image of the Declaration as an unhindered triumph of goodwill and liberal spirit. In his important study, he showed how much cynicism, trade-off, and controversial actions of the great Western powers were involved in this process.

in the twentieth century was some kind of aberration, because the very idea of natural law as the basis for human rights derives from the Christian tradition. The Enlightenment did not invent human rights, he argues: it only took this concept over from the Christian tradition of the Middle Ages.

This is no doubt true, but this tradition has long been obscured and suppressed within the Roman Catholic Church itself. The entire intellectual, social and political development in the interwar period prompted the general perception of human rights as individualism, atomism, liberal anarchism that ruled in the nineteenth century and because of which the European civilization collapsed into the abyss with the Great War. Therefore, everyone was trying to find a path leading away from this disadvantaged heritage. The Christian churches were part of this entire movement until the end of the 1930s when a very complex, spiraling movement began to restore the tradition of natural law, which only later led to the full affirmation of the idea of human rights and its codification in a series of documents such as the Universal Declaration of Human Rights (1948), the Basic Law of the Federal Republic of Germany (1949) and the European Convention on Human Rights (1950).

The most important name throughout this process is Jacques Maritain, a great Roman Catholic philosopher, who was very influential during the forties and fifties, and whose academic and ideological development – from being a member of *Action française*, through emigration and support of De Gaulle's resistance movement, and influencing the writing of the UN Declaration of Human Rights – best illustrates the path of restoring and developing the concept of human rights. The author who in an extraordinary way has recently reconstructed the Christian and personalist basis of the post-war human rights discourse, demonstrating that the modern left liberal secular discourse has fully usurped and covered the original meaning of human rights is the already mentioned Samuel Moyn, professor at Yale University, who also encouraged this research. Johannes Tavernian from the Catholic University of Leuven in Belgium is also a prominent name in contemporary personalism research. From our region one should single out the recently defended doctoral dissertation of Ivan Čulo *Influence of Personalism on Modern Legal Formulation of Human Rights*.³ With the help of their works and the views of Maritain himself, we will now summarize briefly how, above all, the Roman Catholic Church and its intellectuals formed a personalistic and communitarian discourse on human rights in the period 1935–1950.

Wolsterstorff rightly draws attention to a series of relatively recent works – as many as four books that trace the Christian tradition of natural law from

3 With Ivan Šestak and Vladimir Lončarević, Čulo also edited the very interesting and current proceedings *Odjeci filozofije personalizma (Echoes of the Philosophy of Personalism)*, based on the papers presented at the conference held in 2017 at the Faculty of Philosophy and Religious Sciences in Zagreb.

the twentieth century to the Renaissance⁴. The goal is to remind the audience that Hobbes, Locke and the Enlightenment tradition only took over and did not invent the idea of natural law and natural rights. But Moyn is also right when he points out that until the end of the 1930s, and especially during the nineteenth century, the Roman Catholic Church made a serious departure from this tradition and left the entire idea of natural rights to the liberal tradition⁵.

Preparations for the renewal of this tradition occurred, however, in the early thirties with the emergence of the so-called *personalist* movement. This tradition is today most closely associated with the names of French thinkers Emmanuel Mounier and the aforementioned Maritain. But there is another significant name that should be mentioned. De Tavernier (2009) begins his narrative on the development of personalism until 1939 with the German professor Rudolf Hermann Lotze, who through Rudolf Eucken made a major impact on Max Scheler. Another of his students was Borden Parker Bowne, who is considered the founder of the American branch of personalism. Eucken visited Boston and New York in 1912–1913 as a visiting professor. His criticism of Protestant individualism is especially emphasized, against which one should affirm personality, which always implies a connection with the community.

But the most important name in this early development is the French philosopher Charles Renouvier who in 1903 published a book called *Personalism (Doctrine of Person)*. At the center of his philosophy is the conception of freedom that must be defended from the heteronomy imposed by the doctrines of social sciences. He pointed out that everyone sees the need to rebuild relationships between an individual and a society. But his central concern is still to preserve the individual from the excessive meddling of the state and social order in his freedom. In order to preserve this, it is necessary to reform both the institutions and the individual at the same time. He, like later personalists, tries to discard any absolute, preserving the task of searching for justice and truth. Instead of looking for absolute perfection in this world, we should fight for even a little more justice, Renouvier argued.

Čulo in his work brings a very good overview of different personalistic traditions, introducing the significant influence of Russian thought, which is not always the case with historical reviews and reconstructions of personalism.

4 Wolsterstorff 2011: 42. These are the books by Brian Tierney, Charles Reid, John Witte Junior and Richard Tuck, dealing with natural law, canonical law in the Middle Ages, the Calvinist perception of natural rights and theories of natural law in the Middle Ages. Brian Tierney, *The Idea of Natural Rights. Studies on Natural Rights, Natural Law and Church Law 1150–1625*, Scholars Press, Atlanta, 1997, Charles J. Reid, *Power over the Body, Equality in the Family. Rights and Domestic Relations in Medieval Canon Law*, Grand Rapids, MI: Wm. B. Eerdmans Pub. Co., 2004, John Witte, Jr, *The Reformation of Rights*, Cambridge University Press, 2008, Richard Tuck, *Natural Rights Theories. Their Origin and Development*, Cambridge University Press, 1979.

5 The change of attitudes towards the idea of European integration has had a similar evolution. Between the two wars the League of Nations was rejected as a Masonic project, but after the Second World War, the Roman Catholic Church became one of the promoters of this process, along with Free-mason organizations like Bilderberg.

He rightfully emphasizes the influence of Alexander Mark (Lipjansky), who was a direct connection with Mounier, as well as Berdjajev's colossal figure, very influential in certain Western circles in the period between the two wars after his arrival in Paris in 1924. Let us add that in 1925 the renowned St. Sergius Orthodox Theological Institute was founded in Paris and became an important base of theological and philosophical thought. Čulo (2018: 38) is well aware that, unlike the French and other traditions, they have never flirted with Marxism or demonstrated any understanding for such experiments.

In the early thirties (from 1932) Mourier published the rather influential magazine *L'Esprit*, which attracted the attention of important names like Gabriel Marcel, Denis de Rougemont and Maritain. The basic idea was the critique of bourgeois individualism, an idea in which the individual is extracted from all social relations, separated from God, the family, the community, and tied in to the materialistic system of values. Also rejecting communism as a variant of the same materialism, Mounier sought spiritual restoration and a system in which an individual, as God's image, would be integrated and returned to a system of communities that respect human dignity.⁶ He suggested returning to the point in which the Renaissance took the wrong path, and restoring Christian humanism that would free Europe from the mistakes of liberal and secular individualism.

A similar search was pursued by the great German philosopher, Max Scheler, and Louis Jansen, a thinker from Leuven who in 1939 published the notable book *Personne et société*. Some of the less prominent names De Tavernier cites include Cardinal Mersie, Dietrich von Hildebrand and Heribert Doms, author of the *Meaning of Marriage* (1939).

The quest for the overcoming of bourgeois liberalism led the personalists in different directions, so Maritain claimed in 1947 that there was a group of movements essentially connected only by the fact that they build their system around the idea of a *person*. However, Mounier's action aimed at restoring communitarianism and rooting the individual into a wider framework, above all religion, had the most important role until the church's leadership entered the game again. Moyn rightly points out that throughout this period, until 1942, neither Mounier nor Maritain referred to *human rights* but rather renewed the tradition of natural law and human dignity. Moreover, for Mounier, individual rights – as claimed in the *Personalist Manifesto* – are only a reflection of the bourgeois worldview. They are the legacy of the tragic ideology of 1789 (Moyn 2010: 89). During the twenties Maritain was a member of the French Action, and even in the 1930s, when, like a considerable number of Roman Catholic intellectuals, he started his transformation toward more

6 Mounier, (1936), Chapter I, "Bourgeois and Individualistic Civilization". See also the entry on personalism in the Stanford Encyclopedia of Philosophy, <https://plato.stanford.edu/entries/personalism/>, as well as Raush's comprehensive monograph on Mounier's work in the period 1932–1950 (Rauch 1972). Also, De Tavernier 2009.

moderate positions, he still does not mention human rights (for example, in his book *Integral Humanism* of 1936).

Pope Pius XI, however, at the end of his pontificate felt the need to react to totalitarian movements which he clearly recognized as forces that systematically destroy human dignity and act against religion. In two encyclicals published in 1937, he began to use the discourse that had been developed in personalistic circles and reaffirmed the Thomistic idea of natural law. First on March 14 the encyclical *Mit Brennender Sorge* was published, which concerned the persecution of the church and other victims in the Third Reich; merely five days later it was followed by the encyclical *Divini redemptoris, On Atheist Communism*. With this, the Pope condemned both types of totalitarianism. While the second encyclical particularly emphasized the right to property as part of general human rights, the first explicitly stated that “a man as a person (persona) possesses rights he holds from God and which any collectivity must protect against denial, suppression or neglect”.⁷

That same year, as Moyn notes in his book from 2015, the Irish revolutionary leader and President of Ireland Eamon de Valera, succeeded in integrating a personalistic view of the world into the constitution of this young republic, as well as a discourse on human rights. He incorporated it into the preamble, but also in the normative part of the text. The preamble formulation in an extraordinary way reflects this original communitarian and personalist background of the idea of human rights and human dignity.⁸

Although Pacelli as Secretary of State in the same year followed this direction in his performances, after being elected pope, he made a reversal by opening various options for the church, including those that in some problematic systems had worked well with the government or even supported it. But in America, the personalistic direction and discourse of rights had already largely come to life, so Maritain, during his war emigration, strengthened his movement toward the discourse of individual rights and did a tremendous job to restore human rights as part of the Christian tradition (Moyn 2010: 94). For the first time in 1942, in his articles, and then in the book *Natural Law and Human Rights* (Maritain 1944), he stated that the renewal of the idea of natural law implied a broad set of pre-existing human rights. In his Christmas speech of 1942, Pius XII spoke in terms of human dignity and human rights.

This Maritain’s discourse was clearly also addressed to those who had accepted the theory of fascism and Nazism as a lesser evil that might be useful in the fight against communism. Together with human rights, he again legitimized democracy, rejecting discourses (including Mounier’s and his own earlier

7 http://w2.vatican.va/content/pius-xi/en/encyclicals/documents/hf_p-xi_enc_14031937_mit-brennender-sorge.html

8 “... and seeking to promote the common good, with due observance of Prudence, Justice and Charity, so that the dignity and freedom of the individual may be assured, true social order attained, the unity of our country restored, and concord established with other nations...”. See Constitution of Ireland, original text, [https://en.wikisource.org/wiki/Constitution_of_Ireland_\(original_text\)](https://en.wikisource.org/wiki/Constitution_of_Ireland_(original_text))

ones) that saw both concepts as elements of the Western world's hypocrisy, capitalism and general degradation. With Pacelli's famous Christmas speech of 1944, even formally from the head of the Church, democracy was accepted and supported, as well as human rights and the alliance with the victorious liberal democracies of the West. Of course, the rights are accepted and defended from the Roman Catholic, personalistic and communitarian perspective, as a necessary element of the renewal of Christian societies. In the post-Second World War period, even Mounier briefly incorporated the discourse of individual rights into his personalism, but then again began to attack Maritain for that, from an extreme leftist position.

Moyn shows how a new discourse spread among various personalists after the war. Discussions of crimes against humanity were introduced in Nuremberg (François de Menton, a student of Mounier's, led the French prosecuting team). Maritain expanded his influence first to UNESCO, creating the philosophical basis for the UN Declaration of Human Rights, then as the French ambassador to the Vatican, and finally as a professor at Princeton University. In addition to Maritain, a great contribution was made in 1948 by Charles Malik, a Christian and personalist from Lebanon, who shaped the essential identity of the text of the Declaration, clearly building on a Christian basis.⁹ At that time Malik served as the Secretary of the Commission on Human Rights and the President of the Economic and Social Council of the UN. With him, there was René Cassin, a French Jew with remarkable sympathies for Christian democracy.¹⁰

The personalist discourse also marked the period of the creation of the European Community, when mainly Christian-democratic parties led the reconstruction of their countries and at the same time created a united European space¹¹. Even the Belgian socialist Paul-Henri Spaak came from a branch of the personalist movement. Under this influence, the European Convention on Human Rights was also written, a Convention which once emerged as a sharp protest against the materialist civilization, and is now used to promote the hedonistic aspects of contemporary global ideology. The same approach can be found in the Basic Law for the Federal Republic of Germany from 1949, where it can be seen that the Protestants also accepted the personalist discourse of dignity and rights. Moyn extensively demonstrates this phenomenon by presenting the work of Gerhard Ritter, who also insisted that the entire complex

9 See Carlson 2015.

10 The second part of this article offers a detailed overview of both of their contributions to the Universal Declaration. For Cassin see the recently published monograph Winter, Prost 2013.

11 Here Moyn rightly points to the works of Wolfram Kaiser, the most prominent contemporary historian of the Christian democratic movement and the role of Christian democracy in the creation of unified Europe after the war. But he also recalls the Italian and French contributions made by Papini and Philippe Chenaux respectively. See Moyn 2010: 100. Kaiser's bibliography is included in the references at the end of this paper; the monograph Kaiser 2007 is particularly relevant here.

can be meaningful only if it separates itself from abstract discourses of equality and from the atomistic heritage of the earlier mercantile civilization.

As Moyn concludes, in this period a fundamental transition from individual to person is seen, i.e. the individual as a dignified person of God deeply rooted in and bound up in divine natural law and customs and the moral norms of his (Christian) community. From the sixties onwards, however, a radical departure began, which resulted in the complete suppression and forgetting of this original, communitarian, moral and Christian basis of human rights.

With these works Moyn almost went against the complete academic mainstream and the intuition of the general public. He of course is aware of this, and himself cites competing narratives about the origins of human rights, such as Straus's famous book *Natural Law and History*.¹² But his work is very well-founded and based not only on documents, but also on the very clear logic of the post-war situation that we have forgotten today. Neothomism and the personalistic tradition of natural law were indisputably if not the only one then certainly one of the most important intellectual incentives for the birth of the modern human rights discourse and its codification in internationally accepted documents and agreements.

What seems to be the developed, subtle and almost scholastic philosophical basis of this discourse can be found in the fourth chapter of Maritain's book *Man and the State* that discusses human rights.¹³ Although the author defends and advocates the pragmatic approach that prevailed during the adoption of the Universal Declaration, the most important contribution, in fact, is his insistence on the fact that the natural law by which the rights are inspired is fully objectively and realistically taken (understood) in the best Thomist tradition, directly against any nominalistic, Occamian tradition from which pragmatism originates. He explains that for the purposes of adopting the Declaration for strategic reasons it was necessary to find the pragmatic minimum between the parts of mankind that belong to various religions, cultures and worldviews. So they all give up the need to impose their own interpretation and foundation of human rights in order to enumerate and accept a common minimum of rights that would be binding for everyone. This, however, does not prevent him from saying in the next step that we need a clear understanding in the Western culture, but also (a metaphysical) explanation of the concept, and according to him, it has to be sought in the tradition of natural law, which must be renewed (Maritain 1951: 80, 85).

Maritain clearly defies Condorcet's Enlightenment ideas of universal laws that can be copied from nature; he also rejects deism, and demands that the real theory of natural law be restored following the trail of Suarez and Vitoria. The fact that there is a natural law which a person can access and slowly reveal does

12 One such criticism of Moyn for exaggeration is the extensive review of Professor John Witte Junior. See Witte Jr. 2016.

13 These are six lectures held in Chicago, published in English in 1951, and in French two years later. The book was translated into our language and published in 1992 in Zagreb. See Maritain 1992. This article uses the original English edition, Maritain 1951.

not mean that it can be transcribed, easily intelligently discovered and adopted. Moreover, Maritain argues that it is not seen by reason, but by inclination or intuition, and reason can only clarify, explain and develop this perception.

Natural law, he claims, is at the same time clearly ontological and ideal in nature (Ibid: 89). The main principles are, of course, published in the Decalogue, and their content is primarily moral. Every positive law can obtain its legitimacy only on the basis of this natural law. Values for Maritain are clear, real in nature, and their foundation in natural law is metaphysical (Ibid: 96).

Of course, due to the limited human cognitive capacities, some flexibility in their interpretation, construction, gradual detection and development is necessary. These rights are inalienable, but in a *prima facie* sense. Rights which are both substantially and absolutely inalienable in reality can be temporarily alienated because, due to the potential damage that can stem from their unlimited exercise, states and societies must have the right to suspend them partially, postpone their realization, etc. This clearly shows the purely communitarian foundation of the conception and the dependence of human rights on the state of the community. At the end of his text Maritain mentions three types of societies: liberal-individualistic, communist and personalistic, based on the natural law, which he advocates (Ibid: 106). So even though natural law is an unchangeable ontological law, it is also relative in terms of man's awareness of this law, so progress can be made in its acknowledgement. That's why people are actually debating the extent of the law in practice.

Maritain attempts here to reconcile the old and new rights, with family rights being particularly important (he claims they are older than political and positive rights), as well as labor rights. He ultimately argues that international law draws its strength from the basis of natural law (despite the advocacy of the pragmatic foundation) and on page 100 lists basic human rights as he sees them.

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Only the experience of brutality perpetrated in the Second World War, and especially by the Nazi regime, could have explained such a strong need of humanity to return to the idea of universal, divine natural law. The Enlightenment tradition in all its political forms believed that by secularizing the world, its disenchantment and by promoting the constructivist methodology and ideology, on the basis of which man creates himself, his concepts, relations and the world, it will elevate human nature and stimulate the realization of the greatest possible technological and political achievements. However, it turned out that man, when deprived of his supernatural duties, fear and foundations and left to his own devices, deconstructed etc, showed the worst traits of his nature. Nazi death camps, eugenics and Mengele's unimaginably brutal experiments on living people have shown that by depriving itself of the divine foundation, humankind quickly reverted to its animal nature deprived of dignity and sacralization, thus enabling some to see other members of their kind as consumable, expendable cells, flesh and bones.

That is why the terrible need was felt for the human being not only to be returned to dignity, but also to re-establish it in the tabooed area of the supernatural, or Divine transcendent natural law. Christian personalism, which, as shown above, developed greatly in the 1930s and early 1940s, with its renewal of natural law and the return of the idea of human rights since 1942, was the most satisfactory and the most convenient existing philosophical and metaphysical framework for the development of the human rights culture after the Second World War. This worldview was imposed immediately after the formation of the United Nations and UNESCO, and in 1946, a secretariat in the form of a commission of 18 members was formed with the idea of compiling a global list of rights according to the model of the American Bill of Rights. This endeavor, as described below, ended with the adoption of the UNDHR.¹⁴

Of course, the Secretariat and the General Assembly, which adopted the declaration, were international institutions made up of representatives coming from different cultures, religions, countries and peoples. Hence, the discourse of the Declaration and the manner of explaining and defending its solutions needed to be acceptable to all. But as Malik explained later,¹⁵ in the spirit of Maritain's approach, the personalists who led this process knew very well what they were doing, and in the end, through a certain kind of diplomacy and negotiations, succeeded in including most of their ideas in the document.

Eleanor Roosevelt, the wife of the recently deceased US President, was the chair of the Commission. She first led the US delegation in the first UN establishing meeting in London in January 1946. Immediately she had a conflict with the representative of the USSR Vyshinsky about the fate of millions of people who were displaced at the time, about former camp prisoners, etc. The issue of the right to asylum in the declaration would also become one of the numerous points of contention between communist and non-communist countries.

The first session of the Commission itself was convened in January 1947 and it was decided that the draft be submitted by Roosevelt, Peng Chung Chang, the representative of China, and Charles Malik as the representative of Lebanon. The Commission was slowly expanded to include 18 members. Rene Cassin, the representative of France and John Humphrey, the Canadian delegate, would play a particularly important role. Charles Malik, born and educated in a Christian family in Lebanon, received a doctorate in philosophy from Harvard University. The most important intellectuals in the Commission were Malik, who based all of his arguments on the theory of natural law, and P.C. Chang, who at one point suggested that the Commission should take some time and, for example, familiarize itself with Confucianism, i.e. with the value and metaphysical basis of the Chinese and other non-European cultures.

14 The narration is reconstructed according to the following works: Jacobson 2008, Habib 2000, Glendon 2001, Glendon 2011, Winter, Prost 2013, Čulo 2018, Muadri Darraj 2010, and in particular Morsink 1999, which is so far the best overview of the whole drafting process with all of its conflicts, struggles and debates.

15 See Malik 1980. Disputes about the extent to which the Declaration is a product primarily of the Western tradition are still ongoing.

Malik, in contrast to the presidents who put emphasis on the economic and material needs of people, insisted on the intellectual and moral basis of human rights: “If we do not emphasize the true nature of man, his mind and spirit, protect them and promote, the fight for human rights will be a shame and irony.” René Cassin was a French Jew and judge who would receive the Nobel Peace Prize in 1968 for his efforts in the composing of the final draft of the UNDHR. During the war, the Germans had put a price on his head, and 29 members of his extended family were killed in concentration camps.

The first draft was made by John Humphrey and his associates. It was actually a list of some 48 areas, that is, the rights that needed to be regulated and pointed out. For every right there was a sub-commentary and explanation, which all eventually covered the 400-page material. Humphrey started out from the traditions familiar to him: the Magna Carta, the Declaration of Independence, the Bill of Rights, and the French Declaration of the Rights of Man and the Citizen. The fact that this was the material that provided the starting ground for future debates and efforts just strengthens the arguments about the Western character of the Declaration.

Eleanor Roosevelt herself wanted to make some sort of Universal Bill of Rights, while others sought a document that would have a higher binding legal force. After numerous debates and Humphrey’s material, the task of writing the draft of the Declaration was entrusted to Cassin. He was at that time at the top of the French supreme court or the Conseil d’État and was a well-known jurist and philosopher, with great sympathy for the idea of Christian democracy. His draft was completed in June 1947, with the preamble, six introductory articles, and thirty-six normative ones divided into six parts, and two articles on their implementation. Among other things, there was a claim that would later be removed, insisting that there would be no peace in the world if human rights and freedoms were not respected.

In December 1947, the next meeting of the entire commission was held in Geneva. The Indian delegate Mehta asked that gender issues be discussed, and that instead of the Declaration of Human Rights they speak of the rights of persons or human beings; her suggestion was not adopted. After Geneva, the next meeting was scheduled for May 1948, and a smaller commission continued to work on the draft. However, Malik and Cassin had a serious disagreement over the first Israeli-Arab war, which was just beginning. The Soviets also made a lot of problems, and Roosevelt accused them of trying to destroy the draft declaration altogether.

Malik revised the preamble and in June the draft was ready for the next instance (ECOSOC, the Third Committee, and finally the General Assembly). There were many dilemmas and debates in the meantime: how will the declaration and rights be implemented; would the declaration necessarily undermine the sovereignty of states; whether the rights were natural or obtained from God, etc. In the end, however, the committee decided to rename the document from the International to the Universal Declaration. The draft was adopted on December 7, and the Declaration was presented to the General

Assembly by Malik, who had already become a highly respected person. The declaration was adopted by 48 states, and 8 including the Soviet Union and Yugoslavia abstained from voting.

The idea of dignity that appears in the preamble and in the famous first article ('human beings are born free and equal in dignity and rights'), as well as its separation from the rights bears a deep personalist stamp. Today, especially due to the development of bioethics, there are intensified debates in which transhumanists, for example, insist on removing the idea of some special dignity of man (Rosen 2012: 120) and claim that the evolutionary list of rights is all that is needed. Precisely because of this kind of tendencies Malik and Cassin insisted on the introduction of a special affirmation of dignity, as was also done in the German Basic Law.

The second basic concept of personalism is the idea of a person, where, unlike individualism, it insists on the communitarian nature of man, as integrally embedded within the community. Mary Ann Glendon aptly defines this model of understanding the human by commenting on Malik's vision: "Malik saw man as uniquely valuable in himself, but as constituted in part by and through his relationships with others – his family, his community, his nation, and his God". (Glendon 2000: 3)

Malik and Cassin, along with Maritain's mediation, happen to be most responsible for two key personalist contributions, articles 16 and 18, which have been the subject of great struggles and harsh debates. Strongly opposed to these contributions were the Soviet participants, as well as some representatives of the Western countries (Great Britain, for example), who included the "spirit of modernity" and whose ear, as Malik said, did not like the notions of nature, mind and conscience that the drafters fought for, in spite of pressures.

In his later speeches, Malik emphasized the importance of winning the fight for Article 16, which he proposed in several versions. The importance of this victory would become apparent some six decades later, when the Obama administration on several occasions tried unsuccessfully to initiate the process of removing this article from the Declaration. What bothered them the most was the definition of family in paragraph 1, which defines marriage as the union of man and woman, and paragraph 3, which determines that the family is a natural and basic cell of society and that as such it has the right to protection from society and the state.

During the drafting of the text, British representatives and some US delegates argued that there was no need to emphasize the significance of the family, and that this article should be removed, as allegedly such rights were covered by the provisions of the right to association and social protection. In this way they sought to equate the family with political parties or joint stock companies. Cassin and Malik reacted together against this, and they succeeded in securing the majority to eventually accept a somewhat more moderate formulation than the one in which Malik mentioned "A Creator as the one who endowed the family with inalienable rights that precede positive laws" (Morsink 1999: 254). Cassin very precisely clarified that these were two types

of philosophy, and that it is not good that the human being is mentioned only as an individual who chooses to get in touch with other people. In the end, the continental personalistic perception which insists on the communitarian nature of humans and sees the family as the most basic and most important community emerged victorious.

Malik made this clear by offering explanations coming from the classical Christian, that is, the Christian-democratic perspective of the importance of intermediary institutions. He first criticized the idea of seeking rights only from the state, noting that family, church and other natural groups of people come before and independently of the state, and therefore their rights should be recognized as basic and inalienable, even in relation to the state. At the session of the Commission held on January 1, 1947, Malik explained that we must defend man against the tyranny of the state, "... and the tyranny of systems, because man has other loyalties than his loyalty to the state. He has loyalty to his family, to his religion, to his profession; he has his loyalty to science and to truth. These loyalties are as exacting on him as his loyalty to the state. And, in my opinion, the fight for freedom today consists primarily in asserting the rights of these intermediate institutions." (Malik 2000: 26, Jacobson 2008: 2) In a speech in February 1948, Malik said: "Where and when are we really free and humane? ... Is not it true that we enjoy the deepest and the most authentic freedom and humanity in our family, in the Church, in the intimate circle of friends, when we are embedded in the joyful forms of our people's lives, when we seek, find, see and accept the truth? These intermediary institutions between the state and the individual are the real source of our freedom and our rights." (Malik 2000: 95, Jacobson 2008: 4)

Another extremely important communitarian article is Article 18 of the Declaration, which is today severely under attack; a neglected but, as Matthew Jones remarked ten years ago, fundamentally important dictum. Unfortunately, he noticed, in the UN this right is not only one of the weakest developed over the decades, but is directly under attack due to anti-defamation laws, declarations, provisions, and the spread of allegedly anti-discrimination legislation, which is reduced to discrimination of Christians and believers wherever possible and also the deprivation of the rights to freedom of thought and conscience (Jones 2008). This article reads as follows: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."¹⁶

Morsink explains that the entire spirit of the Declaration is based on the personalistic idea that communities, or intermediary institutions as Malik terms them, are "a cradle of human rights" because they teach people about the reciprocity of rights and duties (1999: 252). After the family, the other two most important institutions of this type are the religious community and the

16 UNDRH, article 18, https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf

educational institution which a child is attending. Therefore, together with the freedom of religion, this article also affirms the freedom of religious teaching and freedom to educate children in one's own faith.

During the preparation of the Declaration, this article was a major point of contention. By the way, it should be noted that here too, any speech on minority rights was avoided, that is, there is no mention of the rights of religious minorities. As a result of Hitler's abuse of the minority discourse and minority rights in the case of Czechoslovakia and Poland, the matter of minority rights is avoided throughout the text of the Declaration (Morsink 1999: 269–280).¹⁷

Some states were fundamentally bothered with this provision of the possibility of changing religion. Saudi Arabia was thus one of the eight countries that had abstained on December 10, 1948. However, these were not only Islamic states, but also Sweden, which at that time had a state religion and a legal ban on abandoning the Lutheran denomination. Similar concerns were shared by Greece. On the other hand, some secular Western countries and the USSR demanded that no religious rights be mentioned or that the right to atheistic propaganda be recognized. But eventually a compromise was reached and so this article together with Article 2, provides an adequate combination of communitarianism and pluralism when it comes to clearly defining the right to religion, its practice and transmission to children.

The communitarian and personalist nature of the text of the Declaration is also apparent in the first paragraph of the last article 29, which reads: "Everyone has duties to the community in which alone the free and full development of his personality is possible." And this position deeply stems from the so-called spirit of modernity of which Malik speaks as the main obstacle in the process of elaboration, and which today solely affirms the rights, and negates any idea of obligation, duty and responsibility. That is why this final article is important: it reminds us that without the communitarian basis and the existing order of the community, there can be no other appropriate rights. So, in order to enjoy the rights, we must respect the obligations imposed on us by the community. Therefore, in his speeches before the General Assembly as well as later on, Malik insisted on the close bond between freedom and responsibility.

A great battle was also fought around the perception of the origin and source of human rights. Here is how at the end of his presentation of the Declaration on September 27 Malik presented this issue reflecting views of the majority of the Commission that had prepared the draft: "Finally, there is a question of their origin, where do they come from? Has it been given to me by any external visible power like the state or the UN so that what has now been granted to me can easily be confiscated? Or do they belong to my nature so that if they are violated in any way, I cease to be a human being at all? If they really

17 Mazower 2004, devotes the entire first part of his article to the analysis of the process in which from the promotion of minority rights after World War I, politicians came to the affirmation of universal human rights as a way to avoid dealing with minority rights at all.

belong to my essence, then should not they also be founded in the Supreme Being who, being the Lord of history, could guarantee their meaning and stability?" (Malik 2000: 115, Jacobson 2008: 4)

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The UN Declaration of Human Rights remained the most important monument to this personalistic, Christian foundation of human rights after the Second World War. But since the 1960s, a complete change in the metaphysical, moral and content nature of this idea has begun. The evolution of human rights today has gone in the direction of completely opposing the aforementioned personalist sources. Western Christian denominations, however, continued to indefinitely defend the universality of human rights and natural law, although secularist, anti-Christian fundamentalism and very dangerous concepts are now often pushed under this guise.

Seven decades after the adoption of the UNDHR we live in a world of no less turbulence and fear. We have seen in this area that the very idea of universal human rights can be instrumentalized and abused for political purposes, just as Malik warned, appealing for responsible handling of this issue. But today's atheist fundamentalism seems to be radically progressing and, as Scruton notes, the human rights religion is used as a cover for the advancement of new totalitarianism and the suppression of the rights of traditionalists and people of faith, even though this directly violates Articles 16 and 18 of the UNDHR. Or, let's take a look at, for example, the third paragraph of Article 26, which states that "Parents have a primary right to choose a type of education for their children." The draft of the Civic code in Serbia, however, directly violates this right by transferring it to children, claiming that a child, for example, can alone choose in which high school to enroll. In short, the entire contemporary generation of rights that are now spoken of as the rights of the fourth generation directly goes against some of the basic postulates of the Universal Declaration, further confirming its personalistic and essentially Christian background and framework.

This presentation was an attempt to remind us of this suppressed and obscured original spirit of the Declaration of Human Rights, as well as a call to wake it up and ensure that human rights again get a meaning and a responsible implementation framework, rather than being instruments for the destruction of particular societies and the entire international order. It is worth recalling the following warning words of Malik: "The superficial folk mocked the classical ages of faith: today they pay the price of their unguarded superficiality ... It is dangerous to ignore the mind and spirit of man and mock the logos." (Malik 2000: 115)

Malik, a true Christian, saw the catastrophe of the Second World War as a logical outcome of human deviation from God, from the supernatural source of natural law and law, and therefore he did everything to stop this process and restore a framework that gives holiness and dignity to man as well. Today,

unfortunately, we live in a time that violates the divine frame and dignity of man, brings back paganism, eugenics and the possibility of playing with the human genetic code.

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Miša Đurković

Hrišćanski personalizam kao izvor Univerzalne deklaracije o ljudskim pravima

Apstrakt

Povodom 70. godišnjice usvajanja Univerzalne deklaracije o ljudskim pravima, autor je pokušao da analizira teorijski i istorijski okvir koji je doprineo usvajanju dokumenta. Prvi deo članka razmatra razvoj filozofije personalizma od Munijea do Maritena i analizira Maritenove poglede na ljudska prava. U drugom delu članka autor pokazuje odlučujući uticaj ličnosti Čarlsa Malika i Rene Kasana na usvajanje dokumenta, koji jasno nosi oznaku diskursa i pojmova hrišćanskog personalizma.

Ključne reči: personalizam, ljudska prava, Univerzalna deklaracija, hrišćanstvo, Mariten, Malik

Szilárd János Tóth

JUSTIFYING REPUBLICAN PATRIOTISM

ABSTRACT

My paper is on the republican version of patriotism and its justification, as developed most systematically by Philip Pettit and Maurizio Viroli. The essence of the justification is as follows: patriotism is to be viewed as valuable insofar as it is an indispensable *instrument* for the upholding of the central republican ideal, namely freedom understood as non-domination. My primary aim is to evaluate the normative force of this justification. In the first section, I introduce minimal descriptive definitions of the concepts of patriotism and the patria. Second, I reconstruct the republican patria-ideal to which patriotism is linked to. In the third section, I reconstruct the republican justification of patriotism. Finally, I ask what we justify when we justify republican patriotism. Two views are prevalent in this regard. According to the first, republican patriotic motivation, similarly to its justification, ought to be instrumental itself too (Pettit, Viroli). I argue that this view is untenable, since it is in tension with the minimal definition of patriotism. The conclusion is that the other view – according to which the patriotic motivation ought to be of intrinsic character (Miller) – possesses greater normative force.

KEYWORDS

republicanism,
patriotism, freedom as
non-domination, love,
loyalty

Famously termed the ‘last refuge of a scoundrel’ by Samuel Johnson, the moral and political credentials of patriotism have been widely contested in the history of philosophical thought. Above all else, it has often been considered a kind of particularism prone to be permissive of the unjust actions of existing governments, even murderous wars. Given that millions of self-declared patriots have indeed been permissive of such actions, a substantial burden of proof lies on anyone who intends to defend patriotism today. The question to be answered is this: can patriotism be tamed? Republican theorists propose that it can. The following paper scrutinizes this very proposition: it is on the republican version of patriotism and its justification, developed most systematically by Philip Pettit and Maurizio Viroli. The essence of the justification is as follows: patriotism is to be viewed as valuable insofar as it is an indispensable *instrument* for the upholding of the central republican ideal, namely freedom understood as non-domination. The point is regularly put by the famous, though slightly less precise, ‘my country for the values it realizes’ formula. My primary aim

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is to evaluate the normative force of this justification. The argumentation is structured in the following manner. In the first section, I introduce minimal descriptive definitions of the concepts of patriotism and the patria. I define the former as love of and/or loyalty to country, and the latter as a specific sort of political entity. Second, I reconstruct the republican patria-ideal to which patriotism is linked to. This ideal is the *republic* that upholds the conditions of freedom. In the third section, I reconstruct the republican justification of patriotism. This justification – as I implied – is instrumental and refers to the noted freedom ideal. Finally, I ask what we justify when we justify republican patriotism. Two views are prevalent in this regard. According to one – shared by both Pettit and Viroli – republican patriotic motivation, similarly to its justification, ought to be instrumental itself too. Through examining two issues – the object and the character of motivation – I argue that this view is untenable, since it is in tension with the minimal definition of patriotism. The conclusion is that the other view – according to which the patriotic motivation ought to be intrinsic – possesses greater normative force.

1. Patriotism and the Patria

As a meaningful *minimum*, patriotism could be described as *love of and/or loyalty to country* (Viroli 1995, MacIntyre 2002: 44, Primoratz 2002: 188, Dietz 2002, Canovan 2000, Nathanson 1993:30, Nathanson 1989). Correspondingly, it involves the acceptance of certain – perhaps biased (Keller 2007) – views or narratives concerning the patria, its past, its future, its place in the world, and its virtues (Primoratz 2007: 18). Above all however, to be patriotic means to accept certain moral standards, and *discriminative* ones at that. Namely, it means the acceptance of the standard according to which the needs and interests of compatriots must take precedence over – or at least receive special consideration in contrast to – the needs and interests of outsiders (Miller 2016, Soutphommasane 2012: 22). To be sure, neither the discrimination, nor the love and/or loyalty constituting its ground may be merely of the sort that is in common parlance called ‘platonic.’ Quite the contrary, these must encompass the undertaking of certain positive obligations, a degree of willingness to act, even self-sacrifice (Primoratz 2015: 74, Kleinig 2007: 37–41). However, they should by no means be regarded as absolute obligations. Not all failures to act should be viewed as constituting disloyalty, or betrayal. For – according to a more abstract definition – only those deliberate acts committed by members should be considered to constitute betrayal that aim to undermine the thickness of human relations, that aim – as Avishai Margalit puts it – to deliberately unglue the glue of these relations (Margalit 2017: 47). The injuries caused by such acts are far more severe than those caused by the occasional failures to fulfill the positive obligations undertaken.

What all this means concretely, depends on what sort of patria we are dealing with. As an absolute minimum the patria could be defined as a self-governing *political* and not merely geographical entity, the membership of which

is – to a degree – committed to its upholding (Gilbert 2009: 325; Soutphomasane 2012: 18–19, Primoratz 2007: 18). Of course, beyond this minimum, patria-formations show an incredible diversity in the world, as do the degrees and variations of the moral demands that they put forth to their respective memberships. If you say you are a patriot of a Northern-Albanian clan, you mean something quite different than someone else who would say they are a patriot of the Iranian theocracy, and probably both of you would mean something entirely different from someone who would say they are a patriot of the Cuban dictatorship. Most importantly however, all three of you would have very different ideas of patriotism compared to the one linked to the political order idealized by republicans, namely the *republic*.

2. The Republican Patria

The republic is a territorially bound polity that defines membership on the basis of civic (rather than ethnic, religious, or other) ties, and that upholds the status of *freedom* with the help of various institutional and non-institutional means. The condition of freedom – according to the republican view – is the *absence of domination*. This means that a society may be considered free just as long as there are no radical inequalities of power (domination) in individuals' relations versus other individuals, individuals versus collective agents, or collective agents versus other collective agents. For domination breeds fear: it makes the weak vulnerable, places them at the mercy of the strong. He who is vulnerable, may only be immune from the (arbitrary) interferences of others if these others treat him with goodwill. The condition of freedom is that agents enjoy a status of relatively equal power, which would give them the ability to make their choices – concerning preferred and potentially preferred actions, strings of actions, non-actions, states of affairs or other objects of freedom – without regard to such goodwill. In short, that the power of the strong be contained and their ability to interfere arbitrarily with the weak diminished.

The status of freedom so understood is undeniably quite demanding, but at the very least more demanding than the rival view according to which freedom is constituted merely by the *absence of interference*. It does not merely demand immunity from arbitrary interference, but also the absence of radical inequalities of power that would give way to such interferences. Not merely, in other words, that agents be at liberty of doing as they wish, regardless of their wishes as the rival view supposes (Berlin 1990), but also – to borrow Pettit's formula – that they be at liberty of doing what they wish, regardless of what they wish, and also regardless of what others wish of them (Pettit 2014: 46). Simply put, it demands that they enjoy a status of fairly *equal power* relative to other agents, and thus retain *democratic control* in a significant sense concerning their choices.

This does not imply, by any means, that according to the republican view, freedom can have no limits that would not be detrimental to freedom itself. On the contrary, at least three such limits are enumerated by Pettit. One is the

freedom of others: thus, freedom for one agent must not constitute the domination of another. The second limit concerns the *spheres* of freedom. Namely, the above formula according to which freedom requires that agents be at liberty of doing as they wish regardless of what they wish, but also regardless of what others wish of them is not entirely precise. A more precise formula would be that freedom requires that agents be at liberty of doing as they wish regardless of what they wish, but also regardless of what others wish of them on the spheres recognized as relevant, and only there. What count as such spheres is a famously difficult question. According to Pettit for example it may be contended that such are thought, conscience, speech, assembly, property, movement, and leisure time. The list of course may be thought too long or too short, but according to Pettit at least, the complete disregard of any of the above mentioned would seem reasonably hard to justify. Finally, the third limit is composed of *non-dominating interferences*: interferences in other words, over which agents exercise control and that are thus not the results of the arbitrary choices of others. The classic, and – therefore in the republican literature – recurrent example is that of Odysseus. Odysseus, as is well known, fearful of the enchanting singing of the sirens, commanded his sailors to tie him to the mast of his ship and keep him there regardless of what he might command them to do later on. He knew that when the time came, he would experience the ropes as some sort of constraint. Nevertheless, he also knew that their presence would not be the result of alien interference but rather of his own commands. In other words, what he knew is that he would retain his freedom since ultimate control would still be his.

But what does this imply concretely in the case of modern political communities? What are the minimal conditions to be met in order for us to consider any such community free, thus one, in which democratic control is exercised effectively by the citizenry? Two sorts of conditions tend to appear in the republican literature. The first is the existence of *good institutions*: such is the so-called mixed constitution and the separation of powers. And such are the widespread network of basic liberties, the system of checks and balances, or the laws that guard the weak from the strong. But most notably, such are the channels through which citizens – organized from below so to speak – are able to effectively contest government policies and law-making. Absent any of these, power is concentrated, and freedom diminished. The second condition is non-institutional. It is the widespread *political participation* of citizens, by which I roughly mean some sort of realized, active engagement in the formation of political practices, thus, the self-government of the community.

If individuals are not prepared to let the state or others know what their interests are, how can others or the state not dominate them. (Maynor 2003: 120)

Two approaches are prevalent concerning this latter condition. According to one of them, participation possesses *constitutive* value with relation to freedom. In other words, freedom is constituted by none other than civic engagement,

constant presence in the legislative bodies, completely ruling out the possibility of decisions being made ‘over the heads’ of the members of the political community (Sandel 1998: 325, Honohan 2002: 188–213). In contrast, the other approach states the primacy of institutional guarantees and attributes a merely *corrective* role to political participation (Pettit 2012). To be sure, however, both of the approaches agree that there is a logical link between freedom and political participation. Both agree therefore that the status of freedom in modern societies is unattainable without the active engagement of citizens.

It should be clear by now what are the minimal conditions to be met so that an agent may be regarded free on the republican account. But who exactly are these agents? Agents fall into two categories: they may be individual on the hand, and collective on the other. The first category is composed of individual citizens, the second of the many kinds of collective entities formed by individual citizens. Among the latter we may list both particular communities within the republic and also the republic itself as particular among other polities. According to the republican reading, there are strong *positive links* between the freedom claims of the two types of agencies: thus, the claims of the individual cannot be separated from the claims of the communities of which he or she is a member. If the freedom of a group is infringed upon, the status of its membership is inevitably affected too. This is the point that makes intelligible some 18th century English republicans’ general hostility to colonialism (Priestley 1993: 140), and support for the American settlers’ claims in opposition to the Crown. Furthermore, this is also the point that makes intelligible the entire supposition according to which freedom requires some sort of collective sacrifice in the political order. (I elaborate on this point in the next section.) Still, it is difficult to deny that the correlation between the freedom claims of the individual and those of the community may also turn out to be *negative* and not only positive. In other words, the broadening of communal freedom may on occasion reduce individual freedom and vice versa. These are potentially conflicting situations. Though it is hard to set a universally overriding principle, I believe that a general orientating principle can be derived from the republican theory in question. Namely, in the event of conflict, the freedom claims of the individual must take precedence over the freedom claims of particular communities within the republic, and then, the freedom claims of both must take precedence over the freedom claims of the republic (Pettit 1997: 247–257, 2014, Andronache 2006). As we shall see, this principle will have consequences regarding the justification of patriotism as well. Namely, the justification is effectively linked to the freedom claims of the individual and of the small-scale particular communities within the republic.

3. The Republican Justification of Patriotism

In the second section of my paper I reconstructed the specifically republican patria to which patriotism is linked to in the republican theoretical framework. This patria is the republic, the central *ethos* of which is freedom as

non-domination. In the next section, I turn to the question of how republican thinkers propose to justify patriotism. Which of course immediately begs the related question, namely: why ought it be justified at all in the first place? The answer to this is that it encompasses a sort of moral discrimination according to which the claims of compatriots should potentially override those of all other inhabitants of the planet merely because they are what they are, namely our compatriots. And to be sure, moral discrimination in general, but also of this specific sort, is not something self-evidently endorsable. It usually needs to be *justified*.¹ And not just in any way either: the patriotic disposition (love and/or loyalty) cannot by itself constitute a normative argument in favor of discriminative ethics. Justification ought to involve reason as well (Heller, 1994: 174-178).

The republican proposition is that patriotism has no intrinsic, but merely instrumental value in relation to a good that is *external* to it. This aspect, of course, does not make this justification peculiar in any way. Aside from certain contemporary variants, most notably the one developed by Rawls (Pogonyi, 2012: 80-85), the contractarian thought experiment – meant to justify a notion similar to patriotism, namely *political obligation* – is also instrumental in this manner (Huoranszki, 1999). The genuine peculiarity of the republican justification lies in the peculiarity of the definition of the external good. For the external good may not only be defined in a single manner. On the contrary, both patriotism and political obligation may be justified with reference to a wide variety of such goods. I believe that these could be divided into two analytic categories. The first category of goods is comprised of those that every political order *equally* provides and that are therefore usually cited in order to justify the claim according to which any order – in general – is preferable to the lack of it. Such goods are peace and relative economic prosperity. The second category of goods on the other hand are those that individual political orders provide to a *varying degree* and which, therefore, usually serve to help us decide which order is the right one, or at the very least the most bearable compared to all the alternatives. It is the one that best provides goods of this second category, the most notable examples of which are justice and happiness. It is important to note that the distinction I draw is only an *analytic* one. Most theories in effect make use of both categories of goods. So, on the one hand even those theories – influenced by the works of Hobbes – that primarily wish merely to prove the preferability of order over disorder, also contain at least certain – if not more, a few – ideas on what constitutes a good order. On the other hand, however, every theory that aims to lay down the conditions of the good order already implicitly presuppose the truth of the claim according to which order is preferable to disorder. For how could we intelligibly speak of the good order without presupposing that some kind order already exists?

1 Arguably, not all moral discrimination requires justification. Certain special duties – the ones we have towards our children for instance – may simply be considered ‘natural.’

So, as I implied, what in fact *does* make the republican justification peculiar is the peculiarity of the external good to which patriotism is linked to in this theoretical framework, namely the republican ideal of freedom. Thus, according to this justification patriotism should be viewed as valuable *precisely insofar* as it is an indispensable instrument for the upholding of the central republican ideal, namely freedom understood as non-domination, within the confines of the political order (Viroli 1995: 9, Maynor 2003: 198, Honohan 2002: 171–174, Laborde 2002, Andronache 2009: 71).

There can be no hope of advancing the cause of freedom as non-domination among individuals who do not readily embrace (...) communal solidarity. (...) To realize republican liberty, you have to realize republican community. (Pettit 1997: 126)

On what precisely is this view grounded upon? In short, on the previously mentioned assumption according to which the only way citizens may attain their liberty is through the making of *collective efforts*, or more specifically, through political participation. But efforts will only count as collective if they are relatively widespread. This is a problem of collective action. Suppose that the enterprise of the upholding of the republic does not require the participation of all citizens. It will still seem probable that it *does* require the participation of a sufficiently large number of them. Which means that freedom for any individual citizen is in a way *dependent* on compatriots' willingness to do their part. But efforts can only be what they are – namely efforts – and thus necessarily involve certain sacrifices. They involve for instance the sacrifice of some of the time, energy, and attention that most of us would otherwise devote to our private lives: to taking care of our children, our gardens, to go to church or the forest, etc. Given that time, energy, and attention are all finite in human life, most of us will make the sacrifices in question only if they seem worthwhile, and probably quite reluctantly even then. So why, and for the sake of whom would the burden seem worthwhile? Certainly not for those – goes the argument – towards whom we are totally indifferent. Rather, only for those who we identify with, see as engaged in a collective enterprise with us, and on whom we are therefore dependent on.²

However, patriotism is by no means given by nature (or God). On the contrary, it requires perpetual cultivation, a perpetual process of education. Through this process, citizens must identify with one another, come to appreciate that they genuinely *are* dependent on their co-citizens and that the upholding of freedom as non-domination requires their mutual commitment. Once this appreciation comes to pass on a wide-scale level – as it must – patriotism will

2 I would quickly add an important point of clarification to this: unlike Viroli or Cécile Laborde, Philip Pettit *does not* employ the concept of patriotism in his works, but rather that of *civility*. This however does not constitute a significant methodological problem for – as he himself points it out in a passage – the two concepts, patriotism and civility, denote essentially the same things (Pettit, 1997: 260).

provide a strong *motivating force* for the required collective efforts (Viroli 2002: 86, Laborde 2008: 232, Honohan 2002: 171–174). Simply put, the “laws [will] give support to the norms and the norms [will] give support to the laws” (Pettit 1997: 242). Which is not to say of course that patriotism is the only possible motivating force for collective sacrifices. It is not improbable that some might chose to undertake these according to, say, solidary or altruistic motives. Nevertheless, most republicans – certainly traditionally – have claimed that patriotism is the strongest and most stable motivation (Viroli 1995).

To sum up, the justification goes as follows. Freedom is an intrinsic good (Pettit 1997: 83) and is the central ideal of republicanism. The upholding of freedom within societies is a collective enterprise in which citizens are dependent on one another: they have to make joint efforts to maintain it, otherwise it crumbles. Joint efforts, then, presuppose a strong kind of commitment. The strongest commitment is patriotism. *This* is what justifies the otherwise not self-evidently endorsable discriminative ethics that it encompasses. But what exactly does it mean that freedom as non-domination is the ‘central ideal’ – or as Pettit puts it: the ‘moral compass’ – of republicanism? Generally, it means that the republican theory of (distributive) justice is very closely linked to it. A theory which ultimately comes down to *one* core egalitarian principle, according to which a polity can only be considered just if it equally provides its membership with the status of non-domination (Pettit 2014: 77). More concretely, it means that freedom is an instrument that helps us make judgments concerning political practices, laws, and measures. Whether a given political practice, law, or measure should be maintained or not depends on whether it promotes freedom or not. The same compass helps us decide what sort of new arrangements are to take the place of certain old ones in case they are deemed wrong to maintain. Namely, ones that promote freedom more effectively.

4. What we Justify when we Justify Republican Patriotism

To repeat the foregoing discussion, on the republican reading, only the republic can be considered a good order, or at the very least, one preferable to all the alternatives. As we have seen, there is no republic without the patriotism of its citizens. This is what justifies patriotism. And perhaps the appreciation of this point may put us in a position to provide an answer to the question implied at the end of the first section: what are the precise kinds of moral obligations demanded by the republican patria? I believe that the most general obligation that derives from the above theory is that citizens ought to give special consideration to the *freedom claims* of their compatriots in contrast to those of outsiders. However, no obligation of blind love of and/or loyalty to actually existing governments follows. This is because governments may on occasion put into practice arrangements that restrict rather than promote liberty. In such cases a *critical attitude* – if possible, an active critical attitude – is expected of the patriot idealized by republicans (Viroli 2002: 14–17). Furthermore, due to the rising interconnectedness of contemporary societies, it may even be argued that

a version of republican *cosmopolitanism* may also be derived from the above formulated justification of patriotism. In fact, it may even necessarily follow from it. As we have seen, this justification refers to the assumption that the upholding of freedom is a collective enterprise in which citizens are dependent on one another. If it can be shown that in some respects the upholding of freedom is not merely dependent on the collective efforts of citizens within certain republics, but also on international efforts, then it would seem probable that commitment is required with the citizens of other states too. The dominating potential of international business corporations – to name a straightforward example – is clearly something that cannot be controlled without the joint efforts of at least several states, or without the engagement of international civil movements. What this implies is that in certain power relations the issue of membership becomes complicated: it is not evident who are ‘insiders’ and who ‘outsiders’, who we are engaged in a collective enterprise with, who we are dependent on, and for the sake of whom efforts seem worthwhile, etc.

All this aside however, if we wish to define the content of the republican patriotic disposition/motivation, there is one further question we ought to answer. And it is this: how ought citizens relate to the republic? Or put differently: how ought citizens to value the republic? Two views are prevalent in the republican literature on this issue. According to the first, the patriotic motivation should be instrumental just like its justification (Pettit 1997, Viroli 2002). Recall the formula: ‘my country for the values it realizes.’ Thus, the republican patriot ought to see the patria merely as an instrument for the upholding of the ‘highest good of common liberty,’ as Maurizio Viroli puts it (Viroli 2002: 17). According to the second view, patriots ought to attribute intrinsic value to the republic as well (Miller 2016). In this section, I argue that the latter view possesses greater normative force. This is because unlike the former, it is not in tension with the minimal descriptive definition of patriotism, introduced in the first section. I show this through the discussion of two issues. The first concerns the object of the patriotic motivation. As we have seen at the end of the second section, according to the above reconstructed justification, it is primarily the promotion of individual and small-scale communal (sectional) freedom claims that constitutes the ‘ideals’ that the republic purportedly ‘represents.’ And a degree of tension may follow from this: if the patriotic motivation does not attribute intrinsic value to the freedom claims of the republic too, the eventuality might come to pass that it degrades into the perpetual promotion of individual and sectional claims. The other issue concerns the character of motivation. I argue that instrumental valuation is difficult to reconcile with either love or loyalty. And according to the minimal definition, patriotism must precisely encompass either or the both of these.

4.1 The Object of Patriotic Motivation

The claim according to which the republican justification of patriotism is effectively linked to the freedom claims of the individual and those of the particular

communities within the republic does not stand alone: on the contrary, it fits into a wider theoretical framework. Within this – as we have seen – the desirability of certain political orders depends on their providing the status of freedom as non-domination. We have also seen that this status has some specific preconditions. Most notably, only a democratic order may be considered genuinely free. Democracy however – according to the republican reading – necessarily encompasses the promotion of the *common good*. How then is the common good to be conceptualized? At least two influential views could be listed here. According to the first, inspired by the works of J. J. Rousseau, the common good may be conceptualized even without regard, strictly speaking, to the stated (freedom) claims of the flesh and blood membership of the polity. According to the second, which is the view regularly shared by contemporary republicans, the case should be the exact opposite (Pettit 2004). Thus, the common good is to be conceptualized precisely with some sort of reference to the *explicitly stated (freedom) claims* of the membership.

These freedom claims, to be sure, tend to have a particularistic nature. Nobody is interested in all public issues, and certainly nobody states explicit freedom claims on all spheres. The reason for this lies in the finiteness of time, energy, and attention noted above. There are at least two ways of formulating this thesis too. On the one hand it may be formulated as a *normative* claim, taken to mean that citizens ought to formulate individual freedom claims, and also certain communal freedom claims on behalf of communities that they – similarly – ought to identify with. The basis of identification then should be ascribed membership in certain *vulnerability classes* of society (Maynor 2003: 81). What conditions need to be in place to identify a given group of people as such? The most general condition is that the individuals ascribed to the group be approximately equally – either equally positively, or equally negatively – affected by given governmental interferences such as laws, taxes, policies and the like. So, for example such groups would seem to be the working class, the various kinds of national, ethnic, cultural, and religious communities, women, et cetera. For all workers are affected approximately equally negatively if the labor law is modified to strengthen the position of employers and positively if it is modified to strengthen theirs in opposition to employers. All Hungarians in Serbia, say, are equally negatively affected if the government restricts minority language rights. All Saudi women are approximately equally positively affected if the king rules to abolish the law according to which the driving of cars is a male privilege. A multitude of such examples could be listed, but it is important to note of course that individuals can always be ascribed membership in more than one – but nevertheless a finite number of – such collective entities concurrently. On the other hand, however, the particularity thesis may also be formulated in a *descriptive* manner. Stated thus, it would simply mean that all individuals as a matter of fact formulate individual freedom claims, and also communal freedom claims on behalf of certain communities. To decide just which communities these will be is not left to any external actor, but to individual choice. Nevertheless, it

is likely that they will be the communities that possess the strongest constitutive value for their individual identities.

No matter how we formulate the thesis, the essence of it is that freedom claims in one way or another tend to be particularistic. And it is precisely these claims that constitute the *content* (or input) of citizens' – if possible, widespread – political participation without which the upholding of a free and democratic order that promotes the common good is untenable. We have also seen that the justification of patriotism in question also refers back to these claims: patriotism should be viewed as valuable precisely insofar as it is an indispensable instrument for their promoting within the confines of the political order. The question is, whether any tension arises from this in the wider theoretical framework? Presumably no, as long as we assume that the relation between various kinds of claims is by and large harmonious. But this assumption would be highly unrealistic. Harmony of this sort is not common, while tensions between various freedom claims are. For example, there may be tension between the freedom claims of individuals. Also, there may be tension between the freedom claims of particular communities within the republic on the one hand and their respective memberships on the other. Such tension arises if, say, the Hungarian National Council³ in Serbia demands from the state authorities that a law be passed which not only guarantees the right of education in the language of the minority, but also makes it mandatory for members of the minority community. For such a law would restrict the individual rights of Hungarian parents to choose an education for their children according to their own discretion in the name of certain purported communal interests, such as the protection of communal identity. Then, there may be tension between the freedom claims of various particular communities within the republic. Such would be a dispute between a conservative religious group and a feminist one concerning the driving of cars, or between trade unions and employers concerning the labor law. But finally, and most importantly for us, there may be tension between the freedom claims of the republic on the one hand and particular communities within the republic on the other, and even between those of the republic and those of individual citizens as well. Such would be a dispute between a secular state and a religious minority contesting the secular policies, and such was the dispute between capitalist governments and certain communist parties in Western Europe during the fifties.

The presence of such tensions within society is not, of course, something that contemporary republican theories would dispute (Pettit 2017). My claim is certainly not that these theories are marred by the lack of a degree of realism, but merely that the acceptance of these tensions seems to be at odds with the instrumental version of patriotic motivation, but not the intrinsic one. For the former assumes a strong hierarchical ordering of various claims: it treats patria-level claims merely as instruments for the promotion individual and

³ The Hungarian National Council is the autonomous body and arguably the key political representative of the Hungarian minority in the Republic of Serbia.

sectional claims, which means that the latter must override the former in case of tension. Since such tensions – as we have seen – are quite common, the eventuality might come to pass that what is purported to be ‘patriotism’ degrades into the perpetual promotion of individual and sectional interests and claims in the end. And to be sure, this would be, to a degree, contrary to our intuition. For as we have seen, patriotism according to the minimal definition involves the undertaking of certain positive obligations, and even *self-sacrifice*. And just what may this self-sacrifice be directed against if not exactly individual and sectional claims? Thus, it is not at all clear, how the advance of various sectional claims converts into the promotion of the claims of the republic, and consequently why we could denote the instrumental republican disposition a meaningful form of ‘patriotism’ at all in the first place (Andronache 2006: 116–117). The intrinsic motivation is not marred by such tensions, since it assigns independent value to the claims of the patria and does not order them so hierarchically under individual and sectional ones.

4.2 Love, Loyalty, and the Patriotic Motivation

As we have seen, the patriotic disposition according to the *minimal* definition encompasses love of and/or loyalty to country. This has to concern the republican interpretation too. And if I am right about this, then a further tension arises for the instrumental version of it. I claim that both love and loyalty seem to be at odds with purely instrumental valuation in general, but also – consequently – with the purely instrumental valuation of the patria as well. In order to understand why, it might be useful to recall what instrumental valuation means. In short, an agent values a given object instrumentally in the event that it holds no intrinsic value for him or her, but *merely* value with reference to some external good that it provides. It logically follows that in such cases, as soon as the object ceases to provide the given good, the very ground of its value ceases to exist as well. So, for example if the patria ceases (even temporarily) to maintain the institutions of freedom, both love and loyalty towards it would become difficult to justify. I believe that there is something suspicious about this conclusion. Namely, it brings instrumental republican patriotism dangerously close to what is commonly called ‘fair-weather friendship,’ and the phrase of course is meant to demonstrate that love and/or loyalty that is dependent on the presence of an external good can never be considered *real*.

Even if we reject the Kantian suggestion according to which it is precisely the non-instrumental valuation of a given object that *constitutes* love (Velleman 1999), it still seems fairly plausible that it needs to involve it in one way or another (Singer 2009: 52–54). Furthermore, it needs also to involve identification and resilience, perhaps even to an irrational degree, thus perhaps even when nothing is gained from it strictly speaking. The same applies for loyalty. Among other things what makes loyalty what it is, is precisely the undertaking of the eventual costs that it involves. These costs – according to John Kleinig – constitute the *tests* of loyalty. And their undertaking presupposes at least three

things. First, it presupposes *resilience*: to be loyal means to stick to the object even if that involves no particular benefits for us. Second, it presupposes *identification*: an agent can only be loyal to an object that he considers his own in a way. Third, loyalty presupposes a specific kind of *motivation*: namely, that the agent act on the behalf, or in the interest, of the object, rather than on his own behalf, or in his own interest. I believe that this triple system of conditions adds up to a form of valuation that is clearly non-merely-instrumental (Kleinig 2007: 37–41, Kleinig 2014: 17–21, 82–84, Kleinig, 2015: 27–28). The point becomes even clearer if we examine the issue from the perspective of the negativity of loyalty, namely *betrayal*. Is the sentence “Carl betrayed one of the stonemasons working on the construction of his house, when he sent him away, and employed somebody else in his place” in any way intelligible? As long as we suppose that he kept the stonemason around only for instrumental reasons, or the goods – such as mortar, mixed in a workmanlike manner – that he provided: *no*. For instruments can only be replaced by other instruments that, say, provide the goods required in a more efficient way. The sentence can only be intelligible, if we suppose that the relation between the two was more than this. If we suppose, metaphorically speaking, that the stonemason is not anonymous for Carl. Rather, he identifies with him, considers him his own in a certain – for example friendly – manner. Only in this eventuality would it be intelligible to speak of betrayal (Margalit 2017: 47).

One might respond to this by arguing that what certain republican theorists *implicitly* employ are simply radically different conceptualizations of love and loyalty. Different, that is, from usual philosophical articulations, but also from our commonly held beliefs. This would, to be sure, neutralize the objection that I raise here. However, it would also lead to extremely impoverished understandings of the two concepts, ones that most republican theorists, arguably, would not *explicitly* endorse. If I am not mistaken about all of this, and rich and intuitively acceptable understandings of both love and loyalty seem at odds with pure instrumentalism, then so does the minimal definition of patriotic motivation with the instrumental republican one. With a slight exaggeration, we might even go so far as to label the latter in its present form a version of goal-rationality rather than patriotism. I would add a crucial point of clarification to this. Namely, none of what I have said so far implies that there is no possible circumstance that would render love of and/or loyalty to country morally unjustifiable. Naturally there is. In the case of fascist Germany or Stalinist Russia this would seem evident. I only meant to imply that in the eyes of citizens the setting of standards concerning what minimal conditions may count as morally sufficient for the patria to forfeit love and/or loyalty cannot be as rigid as it would *logically follow* from the instrumental version of republican patriotic motivation. For this would as a consequence render even *critical patriotism* – critical that is of the freedom-restricting policies of existing governments – as mentioned at the beginning of this section, a conceptual paradox.

5. Conclusion

Of course, this conclusion is merely a logical one, and presumably does not by any means conform to the intentions of either Pettit or Viroli. Even so it *does* make the instrumental interpretation of patriotic motivation somewhat problematic. And only that of motivation! What I have said in section four does not necessarily concern the republican justification of patriotic action. It may well be contended that a *rational* justification of patriotic action can only be instrumental: thus, that the moral discrimination implied by it can only be defended by reference to the assumption that the upholding of the morally right order is untenable without it. The conclusion is merely that the patriotic motivation ought to be characterized by a more *value pluralistic* tendency. Namely, citizens ought to attribute intrinsic value to the patria, that is independent from its' promotion of freedom as non-domination. I mentioned several times already, that there is a version of republicanism that – unlike those promoted by Philip Pettit, Maurizio Viroli, or Cécile Laborde – proposes something like this: namely the one developed by David Miller (2016). The proposal might be accepted – I believe – even if we reject Miller's problematic nationalism. In fact, it might even have to be accepted. For this way, the above formulated tensions can be neutralized, and the wider theoretical framework made, as a consequence, significantly more coherent. First of all, we gain a solution to the problem posed by the conflictive nature of freedom claims: we can explain how the promotion of sectional interests may convert to genuine patriotism. For if one values a relation intrinsically, that – according to Samuel Scheffler – by definition already provides him or her with independent reasons for the fulfillment of moral obligations involved in it, reasons that possess a fairly equal status with even the motivation for the promotion of individual and sectional interests (Scheffler 2001: 101–104). Furthermore, this same move seems to solve the problem of love and/or loyalty too: non-merely-instrumental valuation, unlike instrumental valuation *is not* at odds with either love of, or loyalty to country. Finally, a complexity is thus added to the setting of motivational standards concerning what minimal conditions may count as morally sufficient for the patria to forfeit love and/or loyalty. The (even temporarily) ceased maintenance of the institutions of freedom may no longer count as such a minimal condition for instance. This is because the patria possesses value in the eyes of citizens that is independent from its instrumental value in providing the good of freedom as non-domination. Critical patriotism ceases to be a conceptual paradox. This is perhaps the key theoretical contribution that is thus gained.

Importantly however, none of this needs to mean the abandonment of the view according to which individual claims must *usually* have primacy over communal ones. It only means that the relation between the two must not be as hierarchical *in the eyes of citizens* as implicated by the theoretical frameworks developed by Pettit or Viroli. Individual, sectional and patria-level claims ought to possess a similar status when weighed against one another, and in given specific cases of tension, judgments concerning primacy ought to be a

matter of practical reason, rather than a strict principle. Only thus can republican patriotism be genuinely considered a version of *patriotism*.

Arguably, the grounding of the proposed move has something to do with the concept of *identification*. Human beings tend to identify with even the most mundane of objects: hammers, knives, mugs, blankets, pens, or even – as in the case of the great Mr. Atkins – guitars. In one of her studies, Margaret Gilbert argues that identification in fact is *the basic* constitutive element of the patriotic disposition (Gilbert 2009: 326). And to be sure, the concept is not something absent from Pettit's theory either. In fact, he even devotes an entire, though rather short, sub-section to it in his seminal work, *Republicanism* (Pettit 1997: 257–260).

But civility is as much a matter of identification as it is of internalization, for when I internalize civil norms I can be described, at one and the same time, as identifying with the group whose norm they are. (Pettit, 1997: 259–260)

What I would like to draw attention to, however, is that the introduction of this concept – therefore the emphasizing of the 'my' part of the famous 'my country for the values it realizes' formula – seems to create a degree of ambiguity within the wider theoretical framework. For in light of the foregoing discussion, it may be clear that identification is at odds with instrumental valuation. It is inseparably linked to non-merely-instrumental valuation. For instruments are always something external, things that can only be used so to speak. Identification is only possible with objects that are internal in a way. Such objects by definition possess non-instrumental value.

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Silard Janoš Tot

Opravdanje republikanskog patriotizma

Apstrakt

Članak se bavi republikanskom verzijom patriotizma i njenim opravdanjem, sa posebnim osvrtom na sistematizovane teorije Filipa Petita i Mauricija Virolija. Srž opravdanja je sledeće: patriotizam je vredan utoliko što je neophodan instrument za podržavanje centralnog ideala republikanizma, naime, slobode kao ne-dominacije. Moja glavna namera je da preispitam normativnu snagu ove argumentacije. U prvom delu članka uvodim minimalne deskriptivne definicije patriotizma i domovine. U drugom delu rekonstruišem republikanski ideal domovine, zatim u trećem rekonstruišem republikansko opravdanje patriotizma. U poslednjem delu preispitujem šta tačno opravdamo prilikom opravdanja republikanskog patriotizma. Dve perspektive su preovlađajuće u tom pogledu. Prema prvoj, republikanska patriotska motivacija mora da bude, kao i njeno opravdanje, instrumentalnog karaktera (Petit, Virolji). Smatram da je ova argumentacija nebranjiva jer je u izvesnoj napetosti sa minimalnom definicijom patriotizma. Prema tome, zaključujem da druga pojmovna strategija, prema kojoj patriotska motivacija mora da bude intrinzična (Miler), ima veću normativnu snagu.

Ključne reči: republikanizam, patriotizam, sloboda kao ne-dominacija, ljubav, lojalnost

II

REVIEWS

PRIKAZI

THOMAS FUCHS, *ECOLOGY OF THE BRAIN: THE PHENOMENOLOGY AND BIOLOGY OF THE EMBODIED MIND*, OXFORD UNIVERSITY PRESS, OXFORD, 2018.

Olga Nikolić

How the brain works, what is consciousness, and why we shouldn't simply equate the two? Why is a living organism more than a mechanism determined by the laws of physics, and how should we study it? What can phenomenology offer neuroscience? To these and many other related questions, the answer lies in this extraordinary interdisciplinary work, bringing together fresh arguments in the field of philosophy of life and phenomenology with the latest research trends in neuroscience and biology.

This book, an extended and significantly revised version of *Das Gehirn: Ein Beziehungsorgan* (2016), offers the English-speaking audience a comprehensive view of the latest theoretical achievements coming from the embodied, extended, enactive and ecological approaches to the study of mind. What makes this contribution stand out from the increasing number of publications in this tradition is an informed integration of a wealth of scientific data with some of the most significant philosophical arguments in the mind/body debate.

The book opens with an extensive and detailed critique of the computationalist theories of mind, that still

dominate contemporary neuroscience. According to them, the brain is an information-processing machine, and consciousness is a mere epiphenomenon of neural processes. The author convincingly demonstrates the implicit idealism and Cartesianism of these approaches, linking it to their brain-centredness and explaining widespread fallacies in the interpretations of empirical experiments. As the author shows, the conclusion that is often mistakenly drawn from empirical data is that the qualitative experience of the world, as well as our own experienced embodied subjectivity, are illusions created by the brain in its attempt to produce internal models of the objective outside reality. A mechanistic understanding of living beings is also frequently invoked, banishing from the scientific worldview properties that cannot be quantitatively measured and experimentally tested in the lab, elevating the world of physics and neurobiology to the status of the only true reality. Thus, as Husserl was one of the first to notice, the world of subjective conscious experience becomes an inner sphere cut off from the outside world.

Opposing such reductionistic theories, the author carefully develops a

holistic and dynamic view of the mind that gives explanatory priority to the embodied, living subjects. The living organism as a whole can feel, think and act, not the brain on its own. Mental properties should be understood as developing in constant interaction of the organism with its environment, both natural and cultural.

Although the brain should not be understood as the sole center of our mental activity, it does play a crucial role as the organ of “mediation, transformation and resonance”. This means that the brain *mediates* the relation between the organism and the environment by *transforming* processes on the micro-level of sensation and perception into gestalts, thus enabling us to immediately perceive the world of meaningful wholes. The concept of *resonance* should replace the static relation of representation, or mirroring of the environment by the brain, with the idea of a constant attunement of the organism to the changes in the environment.

In addition, the author gives a novel description of consciousness as “an extended integral”, elaborating how our brain is embedded, as a system, within a system (of our entire body) within a system (of our environment), all of which create multiple causal loops between each other. At any given moment we experience a variety of sensorimotor stimuli that come from all our senses and need to be made coherent and coordinated in order for us to successfully react to multiple practical challenges posed by our environment. The main function of consciousness is thus to integrate all these elements, whereby the embodied “feeling of being alive”, mineness and intentionality of the first-person experience, which cannot be described in the language of physics, play a crucial role.

Moreover, the book makes a significant contribution to the discussion

and better understanding of downward causation and emergent phenomena, explaining how consciousness can causally influence the further course of action and perception, i.e. how “living beings become the causes of their own conscious enactments of life”. (p. xix) Circular (non-linear) causality characteristic of living systems, is divided into vertical (parts-whole) and horizontal (organism-environment) causality. Finally, integral causality is described as unifying the two in practically exercised habitualized capacities.

In response to the traditional problems of dualism that still plague cognitive science, the author offers a new version of mediated monism, called “the dual aspects theory”. Lived body (*Leib*, subjective) and living body (*Körper*, objective) are two aspects of “one and the same living being” (p. 80), that are revealed in two different attitudes that us humans can have about ourselves, constantly alternating between the personalistic (first-person) and naturalistic (third-person) perspective.

In conclusion, the readers of this book can expect a better understanding of why 4-e approaches offer a truly new scientific paradigm for the study of mind. Furthermore, they will learn about many interesting arguments and applications to related problems, regarding most notably free will, socialization, neuroplasticity, development of higher cognitive capacities, therapeutic methods in psychiatry, etc.

This book is written for a broad audience, including philosophers (especially those working in the fields of philosophy of mind, life, and cognition), neuroscientists, cognitive scientists, as well as biologists. It gives a great example of how a theory can avoid naturalizing the mind and still use the valuable contributions of natural science, as well as critically examine them.

MIRJAM HORN, *POSTMODERN PLAGIARISMS: CULTURAL AGENDA AND AESTHETIC STRATEGIES OF APPROPRIATION IN US-AMERICAN LITERATURE (1970-2010)*, WALTER DE GRUYTER, BERLIN/BOSTON, 2015.

Marko Bogunović

While we can agree the infamous word “plagiarism” immediately evokes a theft of the intellectual property, a violation of copyright laws, the book that is in front of us goes on to show that plagiarist practice when conveyed in complex literary concept is au contraire a very radical movement. A movement that wants to break up with hard-coded traditional literary logics by breaching its most protected sanctities - individual authorial ingenuity, textual integrity and hegemonic system of patriarchal language.

Naturally, the authoress of *Postmodern Plagiarisms: Cultural Agenda and Aesthetic Strategies of Appropriation in US-American Literature (1970-2010)*, starts off from examining the genealogy of the term plagiarism (deriving from a Latin word *plagiarius*, firstly used by a Latin poet Martial in one of his Epigrams). In modern sense, this term usually represents the unmarked appropriation of another authorial subject’s ideas and language presenting them as one’s own. It is considered to be amongst the most scandalous and punishable misdeeds in the intellectual realm, “most damaging behaviour within the production of art and especially literature”, as

the authoress remarks. Since the production of postmodernist theoretical manifesto by Roland Barthes *The Death of the Author*, Michel Foucault’s demystification of the author in *What Is the Author?* and Derrida’s concept of *différance*, the idea of plagiarism that it is usually being designated as a pure literary theft has shifted to become a spectrum of different literary appropriation strategies “that communicate a high level of language criticism and propose a fundamental, all-pervasive textuality of culture”, as Mirjam Horn thoroughly and convincingly illustrates by applying them to several case studies.

Horn develops three original post-modern plagiarist strategies affirmed in complex literary and language theories, that she later employs in explicating and analysing five novels published in the US from 1970 to 2010: Critification/Plagiarism, ConText and Neo-Conceptual uncreative writing. Rightfully, she poses a few enormously important questions to legitimize and evaluate the purpose of her study: why postmodern plagiarist texts as mode of appropriation when we already have intertextuality or postcolonial re-writings? First and foremost because the cultural agendas she was

dealing with surpass the textual presence of one literary text in another and dive over into a more “contextual approaches... of the production of contemporary authorship, the notions of originality and creativity as well as the implementation of these aspects in the literary field”. The program of postmodern plagiarism always includes a negotiation of plagiarism as a taboo challenging the etiquette of literary production, a critique of the structures in the literary field of cultural production (Bourdieu) and a renegotiation of conventions that concern authorial agency, authority and intentionality.

Studying literary plagiarism (and not plain textual or literary theft) transcend the usually perceived limits of literary criticism as it includes transdisciplinary frameworks of economics, law and politics but also aesthetics, philosophy and history of ideas. Postmodern plagiarism practices combined and theorized in this study evolve into a whole programmatic field of poetics of literary plagiarism. Novels which served as bold examples of postmodern plagiarism address a complex spectrum of issues surrounding the key concepts of authorship (as ownership), creativity, originality as well as authorial and textual authenticity. Literary work is not just a standalone textual item that came out as a mere product of creativity and ingenuity – it is corresponding with the standards of literary market, with logics and laws of commodification of literature and with the concept of authorship as ownership. A book is a marketable good that has a monetary exchange value and every corruption of its parts involves legal enforcement as well as it causes disruption in desired economic profit margins. This is where the authoress follows Bourdieu’s approach to the “field of cultural production” to explain the literary-economic perspective of literature as commodity which is one of a few crucial aspects of theory of postmodern plagiarisms.

Critifictionist/Playgiarist strategies of postmodern plagiarist derive its theoretical material from post-structuralist and deconstructionist paradigms and transfer them into the fictional texts. The key aspects of these paradigms are repetition, doubling and play. In multivocal novel *Double or Nothing* (1970/1991) by Raymond Federman, Horn attempts to show how Playgiarism in his case, as a proto-postmodern practice, serves to methodically invalidate traditional writing modes in their quest for a wholesome depiction of reality and history. Federman blends the literary theory, language criticism and fiction by appropriating parts of texts from Beckett and Foucault in the multi-layered metafictional novel. Horn concludes that *Double or Nothing* is the least radical of the case studies presented in the book as it puts too much attention to the central figure of individual author, the spiritual father, Beckett, that becomes an overbearing literary ancestor which finally weakens the potential of this plagiarist strategy.

Already in explicating further into the plagiarist strategies with a take on the ConText as the feminist strategy of plagiarist appropriation, Horn leads a reader of this enriched monograph to a next level of radicalisation of literary appropriation and revision of male literary hegemony, inviting us to have a deeper insight into a controversial novel by Kathy Acker – *Empire of the Senseless* (1988). ConText’s agenda, as explained by Horn, “epitomizes a plagiarist program that involves a female-as-feminist literary production within the rigid system of phallogocentric meaning-making and the limiting idiosyncrasies of language”. ConText as a plagiarist strategy designates a necessary shift from the proto-postmodern playful variants of Critifiction and Playgiarism towards the feminist interest in emancipatory subjectivity. *Empire of the Senseless*, primarily as a piece of fiction, substantiates

the radical conceptuality of the plagiarist approach and thereby constitutes a development towards the programmatic application of ConText. Horn sees a Playgiarist novel *Double or Nothing* as inferior to *Empire* as the latter goes one step further to challenge the cultural territories that Playgiarism still acknowledges and affirms. She is full of praise for ConText, and which she has all the right to be, as it is a plagiarist strategy, as she claims, “pertinent in at least four ways: as an illegitimate strategy against the commodification of literature as it is manifested in the male-dominated literary industry, as a legal commitment through Copyright that flouts its initial purpose of encouraging authorial productivity, of securing a producer’s livelihood, and of promoting the Progress of Science and useful Arts, as a critical stance against both a phallogocentric society and literary canon dominated by male creative modes, products, rules, and criticism, and as a complex negotiation between the deconstructionist impossibility of meaning-making and an empowering female, or feminist, imagination issued from a marginal perspective”.

Lastly, Horn dedicates a significant part of the study to what she wittily coins as Neo-Conceptual writing. Put simply (although it is nothing but) Neo-Conceptual plagiarist appropriation strategy promotes uncreative writing as a creative mode of production. It aligns seamlessly with advent of digital technology as it has introduced crucial consequences for the ways in which we produce, perceive and process language and text. What matters more to the Neo-Conceptual programmatic writing

is the idea or concept rather than the eventual product. For Neo-Conceptualism the author is a mechanical instigator, writer as the maintaining programmer and manipulating manager – *poeta faber digitalis*. For Neo-Conceptual writers everything that surrounds us can be subjected to the text, pre-programmed, set up and put in motion. That is the reason why the two novels examined in this chapter of the book deal with the extra-literary or non-literary material – *Day* (2003) by Kenneth Goldsmith depicts one whole day completely appropriating the content of *The New York Times* (on that day), *Tragodia 1: Statement of Facts* (2010) reframes rape trial testimony as poetry. On the other hand, Yedda Morrison’s *Darkness* is a biocentric reading of Joseph Conrad’s *Heart of Darkness*, where all the pre-text’s evidence of the author’s creativity is erased. Horn concludes the investigation by saying that “Neo-Conceptual plagiarism [...] has proven instrumental in underlining the prospective for contemporary radical referencing and its cultural symptoms: a litmus test for conceptions of literary authorship in the twenty-first century”.

By putting these five contemporary American novels under masterfully applied and rich theoretical scrutiny, Mirjam Horn has diagnosed the condition of literary present and envisioned the path it might be taking in future to come. How is literature reacting and adapting to the digitalized age it has inevitably entered, with all its freedom of information and opinion, net neutrality and innovation in the digital environment, will display its most prominent result in the evermore blending of writer and reader.

RICHARD MILLS, *THE POLITICS OF FOOTBALL IN YUGOSLAVIA: SPORT, NATIONALISM AND THE STATE*, I. B. TAURIS, LONDON, 2018.

Balša Delibašić

In the region of former Yugoslavia, football has recently attracted widespread attention to itself again. The reasons are not exclusively sporty, such as Croatia winning the silver medal at the World Cup in Russia, but also political. We have witnessed many political tensions during the last World Cup. There were tensions between Croatia and Serbia, but also between Serbia and the Swiss National Team because of goal celebrations of Swiss players of Albanian origin.

Considering these recent events, Mills' book appeared with perfect timing. This book reviews the history of football in Yugoslavia from the very beginning in 1918 till the bloody break up in the 1990s. Naturally, football is just a means that Mills uses to explain key concepts such as nationalism, ideology and nation-building. The book is divided into three chronological parts. The first one includes the interwar and the World War II period. Three chapters of the second part cover the period from the foundation of the Second Yugoslavia in 1945, to Tito's death in 1980, while the last four chapters cover the last decade of the state and the war period in the former Yugoslav countries.

Intrinsic problems of the interwar monarchy could also be recognized in football, where tensions between the two administrative centers, Belgrade and Zagreb, culminated in 1929, parallel to widespread political tensions in the state. In the next decade, football portrayed political and national separatism, with the final formation of the Croatian Football Federation (HNS) on August 6th, 1939, even before the formation of the Banovina of Croatia.

Mills does not leave workers' sports clubs on the margins of this monograph but deeply analyzes their development in the context of the resistance they provide in the war period. And while some of the leading clubs took part in newly formed leagues in quisling states, (semi) illegal experiences of workers' clubs, proved to be a solid basis for the struggle against domestic and foreign enemies. The closer the final victory in the war was, using football in state-building rose. Hajduk Split changed from being a 'bourgeois' club to being the bastion of the revolution, contributing to international recognition of the new state (p. 71). But, the end of the War did not bring complete discontinuity with the prewar situation. Although there was a radical cut in institutional and

organizational terms, many problems that burdened the post-war football had roots in the practice of pre-war football life. But, even though the football was widely used as a means in the process of state-building after liberation, its role was twofold. However, the effects of politics were not only positive in this early period, because even though it was ideologically cleaned, the football field remained a space for showing political and nationalistic aspirations.

In the two decades after the Tito-Stalin split, football continued to reflect the achievements of the revolution, and at the same time it was being liberalised and decentralised as the rest of the society. Yet, throughout this ideological struggle, the Party was aware of football's potential to destroy the revolutionary attainments, but their efforts to control the game were ineffective, leaving the market and national interests to triumph (p. 134).

Mills points that football, in the last decade of Tito's life, was "entwined with political commemorations, socialist innovations and celebrations of the multi-ethnic state" (p. 165). While the evolution of the self-governing socialism continued along with liberalization and decentralization, the situation in the whole society, as well as in football, was much more difficult to control, so the Party was forced to intervene several times. Mills points to a symbolic moment from the Hajduk and Red Star's match in May 1980, but not because of

the tears after the news of Tito's death, but because of the lesser-known clash of domestic fans and soldiers who came to support the Belgrade club.

Just as the country experienced its own crises after Tito's death, football also experienced its own, which resulted in a loss of confidence in institutions and clubs in the 1980s. But far more important than that was the appearance of a fan culture that appeared in parallel with nationalism that threatened to ruin the multiethnic foundation of the state, so attention was shifted from events on the ground to the ones in the stands. Maksimir event was one of those, and Mills dedicates a whole chapter to what he calls "The Maksimir Myth". While many commentators represented this event as the beginning of the end of Yugoslavia, Mills sees it as an excessive myth, primarily because of other big incidents that occurred without ethnic tensions, but also the fact that the League, Cup and National team lasted for another whole year after this event.

There are objections to Mill's book, such as the missing theoretical framework or the fact that the book did not shine in the methodological sense. But in spite of all this, it is an excellently written monograph that will not be read exclusively in academic circles. *The Politics of Football in Yugoslavia* will be compulsory literature not only for those who are interested in Yugoslav studies but also for those who are interested in the wider history of sports.

DRAGAN BULATOVIĆ, UMETNOST I MUZEALNOST:
ISTORIJSKO-UMETNIČKI GOVOR I NJEGOVI MUZEOLOŠKI ISHODI,
GALERIJA MATICE SRPSKE, NOVI SAD, 2016.

Miloš Ćipranić

Polaskom od činjenice postojanja dubinske povezanosti i nadopunjavanja istorije umetnosti kao discipline i muzeja kao društvene ustanove, *Umetnost i muzealnost* propituje osnove na kojima se one fundiraju i način na koji se u oba registra tretiraju umetničko zbivanje i nasleđe koje iz njega proističe. Svojom knjigom Dragan Bulatović razvija snažno teorijski intoniran diskurs o prostornim umetnostima, koji doprinosi izgradnji ontologije muzejske institucije i uopšte svakom rigoroznijem pokušaju artikulacije sveta umetničkih slika.

U jednom novinskom članku pod naslovom „U susret teoriji umetnosti“, štampanom u *Politici* početkom avgusta 1964. godine, Lazar Trifunović je dao mučnu dijagnozu tadašnje situacije u Srbiji u vezi sa mestom teorijskih istraživanja pri disciplini istorije umetnosti. U odbranu teorije umetnosti naglašeno je da se ona „rađa iz same suštine umetničkog tkiva, da bi, kad izroni iz njega, prenela vizuelnu dramu u drugu materiju, u reč, i time uspostavila red i zakonitost između elemenata i pojava u najčarobnijoj metamorfozi čovekovog duha, kada se 'nevidljivo pretvara u vidljivo'“. Međutim, u istom tekstu je konstatovano da tadašnje pisanje o likovnim

umetnostima u Srbiji uopšte obiluje provoljnostima, brkanjem pojmova i improvizacijama i kao zaključak je rečeno da na ovom prostoru ozbiljna teorija umetnosti u tom trenutku „ne postoji“.

Trifunovićev članak iz *Politike* izvesno jeste jedan realan prikaz nezavidne specifične okolnosti unutar koje se nalazila teorija umetnosti u Beogradu početkom šezdesetih godina, ali naslov tog članka, u suprotnosti sa telom teksta, ipak nosi jedan optimističan ton. Danas može da se kaže – sa razlogom. Generacija istoričara i teoretičara umetnosti, kojoj pripada i Dragan Bulatović, stasala pod mentorstvom Lazara Trifunovića na Odeljenju za istoriju umetnosti Filozofskog fakulteta u Beogradu, ispunila je zalog pomenutog očekivanja. U tom pravcu, kao za sada krajnji odjek jedne nade, treba posmatrati i knjigu *Umetnost i muzealnost*, koja je i posvećena uspomeni na Lazara Trifunovića, a o značaju njegove figure posebno se govori u prvom delu predgovora, koji nosi naziv „Obećanje“.

Nedugo posle izlaska iz štampe pomenutog članka, zapravo pet godina kasnije, Sreten Marić, čiji se legat čuva u Biblioteci Matice srpske, istakao je, između ostalog, u tekstu „Sosiroma

lingvistika i misao o čoveku“ problem prevazilaženja statusa istorije umetnosti kao *causerie*. Dragan Bulatović na prvim stranicama svoje knjige ukazuje na recentno posvedočene tendencije u istoriji umetnosti i muzejskoj praksi koje podsećaju na povratak kozerijskog pristupa – na koji je Sreten Marić iznova skrenuo pažnju još te 1969. godine – i, zauzvrat, afirmiše sistematsko ophođenje prema slikama kao izrazito složenim, višedimenzijskim fenomenima.

Knjiga *Umetnost i muzealnost* je zamišljena je kao projekat povezivanja, ali i odmeravanja, dometâ semiologije i hermeneutike u istraživanju slikovnosti. Drugim rečima, diskurs o umetničkim slikama, da bi bio integralan, totalan, mora da objedini i uključi u sebe obe navedene pozicije. Sveobuhvatan pogled na suštinu slikovnih umetnosti može se dati ako se poveže ono što autor knjige naziva „nealuzivnost“ govora slike i „aluzivnost“ njegove interpretacije. Kako tekst odmiče, postupno se formira i širi galerija relevantnih sagovornika, u koju ulaze Platon, Emil Benvenist, Moris Merlo-Ponti, Žan-Luj Šefer, Žan-Klod Lebenštajn i mnogi drugi.

U knjizi je ukazano na dve osnovne potencijalne stranputice, ili barem radikalna ograničenja, u promišljanju o umetnosti. To su konformizam i redukcionizam. Prvi je stanje u kome je eliminisana svaka ozbiljnija upitanost istraživača pred predmetom, odnosno pad u nerefektovane konvencije, dok se drugi sastoji iz selektivnog pristupa, tipičnog za monodisciplinarno proučavanje slikovnih entiteta ili događaja, čime bivaju osiromašeni i snaga tumačenja i fenomen na koji je ono usmereno.

Dragan Bulatović podseća da je mišaoni stav čuđenja, zapitanosti, izvor koji podstiče teorijsku refleksiju (što je motiv koji se da pratiti još od Platonovog dijaloga *Teetet*). Apologija pitanja predstavlja model antikonformističkog intelektualnog stava. Sa druge strane, autorov antiredukcionizam u pristupu

slikovnim znacima ogleda se u ideji o tzv. „objedinjenom diskursu o umetnosti“, to jest u projektu njene totalne interpretacije. Pošto je umetničko delo, ili umetničko zbivanje, višeslojno stratifikovan fenomen – geološka figura sloja jedna je od operativnih – njemu bi se moralo pristupiti sa više tačaka gledišta i protivno logici nužno reducirajućih disciplinarnih monizama.

Teorija slikovnih umetnosti i njihova muzeološka interpretacija moraju da računaju na bavljenje entitetima neverbalne i nepojmovne prirode. Kada se u knjizi govori o „posebnosti“ slikovnih umetnosti, a reč „posebnost“ je u njoj stavljena u kurziv, Dragan Bulatović izvodi ovo određenje iz ontološke esencije umetničke slike – njene slikovnosti. Nemost slika, ili – kako bi autor monografije takođe rekao – njihova „nemuštost“, jeste, pored slikovne pojavnosti, njihovo drugo temeljno svojstvo. Merlo-Ponti već u *Kozerijama* ističe ovu odliku umetničkih slika i potom u *Prozi sveta* označava slikarstvo kao *l'art muet*. Zbog toga vredi ponoviti sledeći izuzetno bitan iskaz: „Usud slikarstva je da bude komentarisano jer je delo nemog sistema.“ (str. 128) Tome što je slika nema ne bi smela da odgovara simetrična i trajna „zabezecnutost“ posmatrača, naročito ne teoretičara, iako u svojoj slikovnosti nije u potpunosti svođiva na ono što bi kazao o njoj.

Knjiga otvara problem pouzdanog utemeljenja samog diskursa o slikarstvu, odnosno „načelna pitanja moći i legitimnosti govora o slikama“ (str. 131). Kako je moguće sačuvati primordijalnu diferencijaciju reči i slike, a istovremeno polagati pravo na pouzdanost njenog verbalnog tumačenja? Aporetičnost ovakve postavke dodatno usložnjava dovođenje u pitanje univerzalnosti lingvističkog modela znaka, odnosno iskazivanje sumnje u aplikabilnost principa ovog komunikativnog sistema na onaj koji je ipak sačinjen od drugačije vrste znakova:

„Semiotička nesreća slikarstva i leži u tome da je njegova glavna odlika ne-lingvističnost, tj. ne mogu se na slikarstvo jednostavno preneti lingvistički obrasci.“ (str. 173)

Mesto gde se slika najviše približava prostoru jezika nesumnjivo jeste njen naslov. U knjizi o kojoj je reč iscrpnije se govori i o kategoriji „imenovanja“. Aktom naslovljavanja nastoji se doći do spoznaje onoga što se njime označava, jer je ono „i prethodni i završni postupak *izvođenja* mogućih semantika umetničke proizvodnje“ (str. 190). Istina je da je razvoj umetnosti koje svoja ostvarenja traže u prostoru sve više zahtevao njihovo postojanje. Sa druge strane, uloga muzeja u nastanku naslova i naknadnom imenovanju umetničkih dela – koja ga tokom istorije generalno nisu imala – ne bi smela da se previdi, jer je popisani i izloženi artefakt, kao singularan, neponovljiv, morao da dobije svoje ime, *a posteriori*, i da dodavanjem tog elementa postane komunikativniji i razumljiviji posetiocu.

Dragan Bulatović se zalaže za institucionalnu transformaciju muzeja i njegovu idejnu redefiniciju kao bitnog

društvenog aktera. U knjizi muzej je predstavljen kao *persona ficta*, kao instanca koja je u stanju da dela, te se kritikuje njegova koncepcija kao pukog „prenosioca“ ili „zastupnika identiteta“, i umesto da bude pasivni i uslužni posrednik informacija, on mora da preuzme stvaralačku ulogu u društvu. U tom pravcu, muzealiji (pod koje spadaju i umetničke slike), kao dokumentu i nosiocu svedočanstvenosti, treba zaista omogućiti da „govori“. Metaforički rečeno i na tragu prethodnih teza, da postavi pitanje, dovede u upitnost, kao elementat unutar precizno postavljenog sklopa:

„Odnosi govora objekta, *govorljivosti* muzealije i *diskursa* o njima, formiraju se kao složen sistem.“ (str. 165)

Knjigu *Umetnost i muzealnost* krase lep i negovan jezik. Čini se da Dragan Bulatović iz tezaura našeg jezika izvlači i upotrebljava i neretko zaboravljane reči i na taj način ih efektno čuva i oživljava. Autorov čin pisanja, uz svu izazovnu složenost i preokupiranost vitalnim teorijskim problemima, istovremeno predstavlja i čin trezoriranja našeg bogatog jezičkog nasleđa.

MARK LOŠONC, PREDRAG KRSTIĆ (UR.), *HOLOKAUST I FILOZOFIJA*,
INSTITUT ZA FILOZOFIJU I DRUŠTVENU TEORIJU, BEOGRAD, 2018.

Vera Mevorah

Jedno od glavnih pitanja koje je u samoj osnovi nastanka ovog zbornika jeste koliko se filozofija kao disciplina bavi Holokaustom i da li je neophodno da se više uključi u ovo polje? Ili, kako su to urednici Mark Lošnoc i Predrag Krstić predstavili, da li je pak značaj filozofije za studije Holokausta nedovoljno prepoznat? Ova knjiga svakako jeste, kako Lošonc i Krstić tvrde, pionirski korak. Sad samo ostaje nada da neće biti i jedini korak u značajnijem doprinosu filozofske misli u Srbiji ovoj temi.

Treba imati u vidu da je Holokaust i dalje nešto što teško i nevoljno promišljamo. U tom smislu je možda i najznačajni doprinos ovog zbornika upravo ulazak domaće filozofske teorijske scene u ovo polje i samim tim ohrabrivanje drugih da se ovom temom bave. Filozofija nam pomaže da mislimo Holokaust i u tom smislu se ova knjiga ne razlikuje od drugih doprinosa ove discipline. Ali takođe značajno je napomenuti da za nas, danas i ovde, nije krucijalno šta je univerzalni doprinos filozofije razumevanju Holokausta ili doprinos filozofije univerzalnom razumevanju Holokausta, koliko je značajno da mi ovde, na našim jezicima i u našim diskursima gradimo ovu vrstu misli. Sa druge strane, ne smemo praviti grešku verujući

da akumulirana znanja o ovom događaju nemaju veze sa nama, kako u istorijskom, tako i u savremenom kontekstu. Dragan Prole u tekstu ove knjige u kojem razmatra fenomenologiju gađenja kao jednog od mogućih objašnjenja odnosa prema Jevrejima tokom Drugog svetskog rata napisao je kratak odeljak koji upravo po pitanju tog savremenog kontekstu posebno zapada za oči: „Antropologija totalitarnog poretka razvija se u dva smera: *obožavanje* vode opstaje i pada zajedno sa kapacitetima zajednice da ispolji svoje *gađenje* spram svih onih koji na bilo koji način predstavljaju naličje idealizovanog konstrukta vode“ (str. 24).

Filozofija mora biti stožer diskurzivnog stvaranja o Holokaustu. Ona mora da bude hrabra i pokuša da da odgovore na pitanja koje je Holokaust otvorio. Autori u ovoj knjizi su svakako nastojali da odgovore na ovaj izazov. Ono što je posebno značajno napomenuti jeste da nisu samo discipline i njihove metodologije te koje doprinose razvoju studija Holokausta već i pojedinačni istraživački pristupi, kao što su u slučaju ovog zbornika, hermeneutika, filozofija emocija, kritička i književna teorija.

Da li možemo nakon Holokausta gledati na istoriju kao na progres? Da

li je Holokaust nepojmljiv i neponovljiv i u tom smislu da li ga možemo koristiti kao platformu za razumevanje drugih istorijskih događaja? Šta nam je Holokaust otkrio o ljudskom ponašanju i prirodi, kako počinalaca, tako i žrtava? Ili kako jedan od autora, Igor Cvejić u svom radu piše: „Da li smo danas ravnodušni prema ovom događaju i da li smo uopšte sposobni da ga emotivno doživimo?“ (str. 57). Ova knjiga pored toga što problematizuje pojedine aspekte Holokausta, osvetljava ključna mesta, ne samo Holokausta kao predmeta mišljenja, već i njegovog konteksta na ovim prostorima. Tako Stejn Vervat u svom tekstu *Sećanje na Holokaust u jugoslovenskoj i postjugoslovenskoj književnosti*, prateći Timotija Snajdera ističe nespremnost komunističkih vlada da stave akcenat na jevrejske žrtve, što se može reći i da je slučaj i za Srbiju danas. Ali se u ovoj knjizi takođe predstavljaju i druge kompleksne konstelacije odnosa lokalnog sećanja i „globalnog“ Holokausta. Ova knjiga koliko god stidljivo i kritički, takođe pokušava da promišlja odnos između sećanja na Holokaust i sećanja na ratove 90-ih godina. To je posebno vidljivo u tekstu Aleksandra Pavlovića o opusu pisca Davida Albaharija.

Zanimljivo je kako Vladimir Gvozden u svom radu koji obrađuje odnos književnosti i Holokausta uz argumentaciju zašto književnost može i treba da promišlja Holokaust, to mišljenje i izvodi kroz jezik naših stvaraoca kao što su Danilo Kiš, Ivo Andrić i Andrej Tišma. On na taj način demonstrira kako srpsko društvo kroz sopstvene diskurse može razumeti ne samo lokalnu problematičnu istoriju, već i Holokaust kao univerzalno pitanje ljudskog stradanja - suprotstavljajući tu misao diskursima autora van zemlje koji su o Holokaustu pisali, u ovom slučaju nemačkog pisca V. G. Zebalda i njegovog romana *Austerlic*. Celokupan rad Gvozdena može se posmatrati kao postupak kojim sâm objašnjava Zebaldov:

[...] koji svojim pisanjem nastoji da razobličiti stanje u kojem cela jedna zemlja (Nemačka ali i svet uopšte) funkcioniše prema nekom prećutnom i opšteprihvaćenom dogovoru, gde se istinsko stanje materijalnog i moralnog uništenja ne sme dubinski tematizovati; roman, odnosno pisanje je posledica postojanja ispitivačkog pogleda koji pokušava da proдре kroz neprozirnost sveta, kroz okean znakova koji iza svoje pojavnosti krije dubine istorijskog iskustva nedostupnog ljudima lišenim takvog pogleda, ali ipak ništa manje izloženim nasilju istorije; konačno, taj prozorljivi pogled ispituje prirodu pojavnosti, najčešće kroz posmatranje ljudskih zdanja i ustanova koji su deo najneposrednije svakodnevnice” (str. 98).

Gvozden ne samo što izvodi ovo komparativno mišljenje (domaće književnosti i književnosti Holokausta), već i na svojevrstan način komunicira sa njim. Govoreći o Austerličevoj poseti Terezinu, Gvozden piše da je i Gavriilo Princip bio zatočen u istom tom Terezinu nakon ubistva Franca Ferdinanda. Njegov postupak otvara filozofiji i književnosti vrata afirmativnog pristupa artikulaciji Holokausta. Ovaj afirmativni pristup vidljiv je i u ostatku radova u ovom zborniku. Takođe, dijalektika istorije i sećanja, književnosti i filozofije, ali i jevrejskog i nejevrejskog poimanja Holokausta se u ovoj knjizi izvodi na pravi i odgovoran način. Njeni autori istovremeno podučavaju i pozivaju na dalje promišljanje, na debatu, kako nas koji se ovom temom bavimo, tako i nespecijalizovanog čitaoca. Koliko god oba pojma u naslovu ovog zbornika delovala zastrašujuće, ova knjiga je dokaz da su Holokaust i filozofija jedno drugom partneri u mišljenju, kao i da nama kao čitaocima jedno drugom olakšavaju razumevanje.

U radu Lazara Atanaskovića *Misao posle užasa: problemi znanja i pamćenja* otvara se posebno značajno pitanje vezano za promišljanje Holokausta danas,

odlično opisano u podnaslovu njegovog rada koji glasi "Pijetet i instrumentalizacija". Naime, Atansaković sam ovo pitanje dobro formuliše: „Kako održati ravnotežu i ne upasti u ambis zloupotrebe, ili pak sa druge strane, tabuiziranja i prostog svodenja na kuriozitet?“ (str. 184). Holokaust je tačka u kojoj se prelomila cela Zapadna civilizacija. Ne u smislu podrške tezi o jedinstvenosti događaja već po pitanju mogućnosti i prava svake sfere ljudskog delovanja na dalju autorefleksiju. Verujem da pitanje koje Atanasković postavlja, a koje ovaj knjiga na razne načine problematizuje, jeste i more biti zadatak vlada, memorijalnih i obrazovnih institucija, ali nikako univerzalni model mišljenja o Holokaustu.

Ova knjiga, iako u najvećoj meri ukazuje na raznolika i značajna pitanja vezana za Holokaust, nudi i jednu platformu, posebno evidentnu u radovima urednika Marka Lošonca i Predraga Krstića, a to je da Holokaust nije, kao što mu se pripisuje i kako to slikovito Krstić formuliše „krematorijum filozofskog mišljenja“, tj. odbija kao pogrešne teze o njegovoj neizrecivosti, nezamislivosti i singularnosti. Krstić navodi da proliferacija znanja i reprezentacija Holokausta dovodi do minimizacije istog i posledično do njegovog kraja, „druge smrti“. Ovo jeste jedno od stozerskih uvida koje filozofija može i mora da pruži. Ali značajno je na to dodati i nekoliko novih pitanja, tj. pitanja našeg lokalnog konteksta: Da li je svako dublje i šire promatranje Holokausta na ovim prostorima kontraproduktivno imajući na umu da još uvek nemamo kompletne istorijske činjenice, a ni dovoljno istoričara Holokausta koji bi ih istraživali i da li je to posao koji mora biti prvo urađen? Da li veću štetu pravi kada se bavimo ovom temom kao naučnici usputno?

Da li treba da povezujemo Holokaust sa skorijim ratovima na ovim prostorima, a da još uvek nemamo ni Šou, ni Porajmos, pa čak ni stradanje Srba tokom Drugog svetskog rata u nacionalnoj svesti? Da li treba na Starom sajmištu da gradimo panmemorijalni centar kakav je planiran u zakonskom okviru Republike Srbije? Holokaust nije zaustavio teoriju i kritičku misao, ali joj zadaje retko viđeni izazov. Pitanje neizrecivosti Holokausta, koje je otvorio Teodor Adorno, mogli bismo reći, preteći Gvozdenovo navođenje Danila Kiša, ima manje veze sa moralom i etikom, koliko sa preispitivanjem jezika i značenja i pažljivom pristupanju predstavljanju koje se ne može izbeći.

Zanimljivo je da je filozofski aktivizam koji odlikuje instituciju čiji su saradnici proizveli ovu knjigu, vidljiva i prisutna u njoj samoj. Taj aktivizam nije samo usmeren prema suočavanju kako sa starom tako i sa novijom istorijom na ovim prostorima, vojevanju prostora književnom jeziku da se ovom temom bavi, već i u odnosu na samo mišljenje i/ili filozofsko mišljenje i njegovu autonomiju. Ova knjiga je posebno zanimljiva jer je i upoznavanje. Upoznavanje Holokausta i filozofije u našim krugovima, onaj prvi stisak ruke, nakon kojeg treba da dođe do daljeg dijaloga ili saradnje. Susret koji neretko, za zrele ljude, donosi nepoverljivost, studljivost, ali u momentima i agresivnost, kao da uvek očekujemo da naidemo na nerazumevanje te druge strane, a ipak nadajući se rađanju novog. Stoga ćemo zaključiti sa jednom potencijalno kritičkom notom, tj. pitanjem, koje se nadamo da će dodatno da zaintrigira čitaoce da ovu knjigu pročitaju, a to je da li je njen pravi naslov Holokaust i filozofija ili filozofija i Holokaust?

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33–44, 1978–1988; ne: 33-44, 1978-1988.

8. KNJIGE

U spisku literature: prezime, ime, u zagradi godina izdanja, naslov knjige, mesto izdanja, izdavač. U tekstu: u zagradi prezime autora, godina izdanja, dvotačka, stranica. U napomeni: prezime autora, godina izdanja, dvotačka, stranica. U napomenama, knjiga se citira isključivo na skraćeni način.

Primer:

U literaturi: Haug, Wolfgang Fric (1981), *Kritika robne estetike*, Beograd: IIC SSO Srbije.

U tekstu: (Haug 1981: 33).

U napomeni: Haug 1981: 33.

9. ČLANCI

U spisku literature: prezime, ime, u zagradi godina izdanja, naslov teksta pod navodnicima, naslov časopisa u italiku, godište časopisa, u zagradi broj sveske u godištu ukoliko paginacija nije jedinstvena za ceo tom, dvotačka i broj stranice. U tekstu: u zagradi prezime autora, godina izdanja, dvotačka, stranica. U napomeni: prezime autora, godina izdanja, dvotačka, stranica. Ne stavljaju se skraćenice „str.“, „vol.“, „tom“, „br.“ i slične. U napomenama, članci se citiraju isključivo na skraćeni način.

Primeri:

U literaturi: Miller, Johns Roger (1926), „The Ideas as Thoughts of God“, *Classical Philology* 21: 317–326.

Hartman, Nikolaj (1980) „O metodi istorije filozofije“, *Gledišta* 21 (6): 101–120.

U tekstu: (Hartman 1980: 108).

U napomeni: Hartman 1980: 108

10. ZBORNICI

U spisku literature: prezime i ime priređivača, u zagradi skraćenica „prir.“, u zagradi godina izdanja, naslov zbornika u italiku, mesto izdanja, izdavač i strana po potrebi. U tekstu: u zagradi prezime autora, godina izdanja, dvotačka, stranica. U napomeni: prezime autora, godina izdanja, dvotačka, stranica. U napomenama, zbornici se citiraju isključivo na skraćeni način.

Primer:

U literaturi: Espozito, Džon (prir.) (2002), *Oksfordska istorija islama*, Beograd: Clio.

U tekstu: (Espozito 2002).

U napomeni: Espozito 2002.

11. TEKSTOVI IZ ZBORNIKA

U spisku literature: prezime, ime autora, u zagradi godina, naslov teksta pod navodnicima, slovo „u“ (u zborniku), ime i prezime priređivača zbornika, u zagradi „prir.“, naslov zbornika u italiku, mesto izdanja, izdavač, dvotačka i broj stranice (ako je potrebno). U tekstu: u zagradi prezime autora, godina izdanja, dvotačka, stranica. U napomeni: prezime autora, godina izdanja, dvotačka, stranica. Skraćenica „str.“ dopuštena je samo u spisku literature.

Primer:

U literaturi: Nizbet, Robert (1999), „Jedinične ideje sociologije“, u A. Mimica (prir.), *Tekst i kontekst*, Beograd: Zavod za udžbenike i nastavna sredstva, str. 31–48.

U tekstu: (Nizbet 1999: 33).

U napomeni: Nizbet 1999: 33.

12. ČLANAK IZ NOVINA

U spisku literature: prezime, ime, u zagradi godina, naslov članka pod navodnicima, naslov novina u italiku, datum, stranica.

Primer:

U literaturi: Logar, Gordana (2009), „Zemlja bez fajronta“, *Danas*, 2. avgust, str. 12.

U tekstu: (Logar 2009: 12).

U napomeni: Logar 2009: 12.

13. INTERNET

Prilikom citiranja tekstova s interneta, osim internet-adrese sajta na kojem se tekst nalazi i naslova samog teksta, navesti i datum posete toj stranici, kao i dodatna određenja ukoliko su dostupna (godina, poglavlje i sl.).

Primer:

U literaturi: Ross, Kelley R., „Ontological Undecidability“, (internet) dostupno na: <http://www.friesian.com/undecd-1.htm> (pristupljeno 2. aprila 2009).

U tekstu: (Ross, internet).

U napomeni: Ross, internet.

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1987– (Beograd : Donat Graf). – 24 cm

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