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## Liberalism, Justice and Cultural Pluralism

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### *Summary*

*Classical liberalism as opposed to traditional concepts has established a notion of justice which envisages the equality of individual (negative) freedoms and (tutelary) rights. Under the influence of socialist criticism modern-day liberals have been trying to include within the concept of justice the problem of the distribution of positive freedoms and rights. The already classic attempt of solving this problem is the theory of justice by John Rawls. Rawls defines justice as fairness, whose basic principles are: the equality of basic freedoms of individuals compatible with the freedom of other individuals; the distribution of goods which will most benefit the least privileged; the primacy of freedom over social equality and justice over economic efficiency. In a pluralist society these principles should facilitate the establishment of the "overlapping consensus" among divergent social groups on the issues of the basic social structure. In his attempt to solve the problems of social equality which Rawls' theory leaves open-ended, Michael Walzer postulates the principle of complex equality which requires different ways of distribution for different types of goods. These types cannot be specified in advance; however, their distribution is the most remarkable skill of liberal politics. Finally, the author claims that the problem of a just political organization of multicultural societies can be solved by applying Rawls' principle of fairness on the negotiating processes and on achieving consensus among divergent cultural groups on certain issues.*

### *1. Introduction*

One of the strongest human needs is the need for justice. Due to that, God has to be just — could he be the embodiment of all goodness if he was not? Christians tend to interpret adversities they experience as trials when they do not manage to explain them as punishments for the sins they have committed. Old testament Job thought Good was moody i.e. unjust and faced an almost unacceptable choice: to reject him or to submit unquestioningly to his mysterious ideas.

Justice is also expected from secular rulers and social regimes. People are often prepared to accept even despotic rule if it is just and, on the other hand, democratically elected rulers soon lose their legitimacy if they prove to be unjust. Justice is particularly important in modern mundane regimes which can not be legitimized by tradition or God's will. Civil and socialist revolutions were started in the name of freedom and equality, when traditions lost their legitimacy; equality is one of the possible

Early liberalism opposed monarchy, feudal privileges, rigid social division, peasants' dependence on land etc. in the name of freedom. Normative power of the human equality principle in freedom resulted, after civil revolutions, in the gradual elimination of various censuses, which limited civil rights to a selected group of people. In the twentieth century in Western countries of liberal democracy, equality of rights and liberties for all citizens has been attained.

Primacy of freedom defined as the freedom from the corset of estates structures from feudal obligations and absolutist rule, facilitated the understanding of justice as equality. The purpose of so-called negative liberties and the related tutelary rights is to provide each individual with an equal sphere of individual liberty, which cannot be intruded by various power-wielders and fellow citizens. Indeed, bearing in mind the large variety of potentials and the unpredictability of human development, it can be said that equality of liberties is really the justest distribution of that central modern time good.

However, the history of liberal democracies has shown that despite the equality of liberties, there are enormous social inequalities and confronted social groups, called classes by the socialist social theory. Early capitalism enabled the dominating minority class, the so-called bourgeoisie to concentrate in their hands a disproportionately large part of nearly all social goods, from money and political power to education and health and to make the life of the majority, the so-called proletariat, a constant struggle for survival. This inequality caused the claim that all citizens have equal rights and liberty to become meaningless. In spite of the just distribution of rights and liberties, the existentially threatened majority of people saw the liberal system as unjust.

Class movements, which stood up against the early capitalist inequality of classes, regained a part of the traditional meaning to the concept of justice: justice cannot be limited to the equal distribution of negative liberties and tutelary rights and it has to embrace other goods, particularly those the possession of which is a prerequisite for giving substance to the above mentioned liberties and rights, which would make life opportunities approximately equal for all.

Accepting these arguments and requirements, modern liberalism has broadened the concepts of liberties and justice. It has accepted the concept of positive liberty as abilities which a man must have in order to make use of his negative liberties. For example, to a person who cannot write and is afraid of speaking in public, the negative liberty of public speaking does not mean a thing because he lacks a responsive positive liberty, i.e. the ability of public appearance. Furthermore, in order to enable the creation of various positive liberties it is necessary to provide people with certain rights, as for example, the right to education to create the freedom of public declaration. Unlike tutelary rights these rights can be called entitlement rights. Due to this extended meaning of the

concept of rights and liberties, modern liberalism is inseparable from the welfare state i.e. from the state which makes sure that the distribution of goods is such that it will provide each citizen with guaranteed liberties which will, in turn, allow them to make the best use of their lives and to give their lives meaning beyond that of bare survival.<sup>1</sup>

The demand for a just distribution of goods which range widely from health care, education, income based on work and guaranteed minimum wage independent of work, to political power, social status and social recognition, leads to a number of new problems unknown to classical liberalism. The reason for this is — depending on goods which are being distributed and to whom they are being distributed — the inability to level justice and equality.

Three methodologically different attempts to solve the above problem of just distribution in accordance with the requirements of liberalism are given in the text that follows: justice as fairness, which refers to all institutions of social order designed by John Rawls, the conception of justice regarding particular goods and respectively defined spheres of Michael Walzer's justice and justice seen as a result of punctual agreements of members of culturally different communities.

## *2. John Rawls' general principles of justice*

One of the ways of approaching the problem of a just distribution of a large number of goods — necessary to prevent citizens of modern liberal societies from seeing their freedoms as a delusion of dominant groups — is the abstraction from particularity. This method is based on the assumption that a small number of abstract goods can embrace all particular goods thus solving two problems at once: the problem of the large number of goods whose just distribution has to be ensured and the

<sup>1</sup> The widely accepted term "welfare state" is definitely inappropriate. It usually means that the citizens are economically safe in case of unemployment, illness or old age. The goal of contemporary liberal theories of justice, however, is not to provide a meaningless existence of the unemployed, the old and those who have been by most part excluded from social life, but self-respect of all citizens as the highest value. This goal is not an economic one, and can be considered a social one only with some reservation. It is a political goal, which assumes that the society's constitution is based on principles of justice which define each citizen, in terms of both his negative and positive liberties, as an equally valuable member of the political community. This is also a cultural goal in the sense that it expects the society to change its attitude to the recipients of "social security benefits", i.e. to stop treating them as some kind of outcasts, and the latter not to see their status as a proof of rejection and a reason for being passive, but as a proof of social recognition and a motive for voluntary, free activities the society considers important. A state which defines its goals in this way may be called "dignity state" or "civil self-respect state".

problem of the variety of human needs. A small number of abstract goods allows the assumptions that all citizens need those goods in approximately equal proportions, i.e. that justice can be understood as equality. It also provides few principles of justice which define their distribution.

This method was selected by John Rawls, the classic of modern liberalism and neo-contractualism. In his work *A Theory of Justice* he develops theoretical constructs of original positions and the veil of ignorance. The participants of a fictitious "original position" select principles of justice on the basis of which they wish to establish a system for their state. This situation is fair thanks to the veil of ignorance which deprives the participants of knowledge that would enable them to select those principles of justice which would bring them personal gains. In other words, the original position is a theoretical materialization of the concept of fairness, which ensures that the selected principles of justice be fair. The result of Rawls' complex argumentation is the conclusion that in the original position intellectuals would, as fairness, select the following two principles of justice as the basis for the constitution of a common state:<sup>2</sup>

<sup>2</sup> The term "justice as fairness" requires following explanations:

Fairness is a word which is difficult to translate appropriately into Croatian. It is even less possible to find a Croatian word which would have the connotations the word 'fairness' acquired by its use in the context of the discussion in Rawls' *A Theory of Justice*. Therefore it is used in its original form.

Fairness denotes the relationship between people in which common "game rules" have been accepted, in which a member of an institution respects its rules as conditions under which all other members act. In other words, fairness rules out exercising rights and avoiding obligations regarding those institutions, namely the status of a free rider, i.e. taking advantage and inflicting damage on other members or the institution by not following its rules. A typical example of unfair action was provided by revolutionary communists in civil states, who used civil liberties and parliamentarianism for achieving their revolutionary goal — the subversion of the political system.

Fairness of the selected principles of justice is not their attribute, but their basis. According to Rawls, their justness is based exclusively on the fairness of the "original position": since it is fair as the place of selection, so must be the selected principles.

This method of selection defines the justness of the principle of justice as pure procedural justice. Unlike procedures which provide justice the criteria for which are given outside these procedures, in a perfect or a less perfect way, pure procedural justice has no such external criteria at disposal, but is based solely on the applied procedures. The justness of Rawls' principles of justice is based only on the procedure of their selection in the "original position". Since this state is fair, the result of the procedure can only be justice as fairness (cf. John Rawls, *A Theory of Justice*, The Belknap Press of Harvard UP, Cambridge, Mass., 1971, p. 80, id. 120, 136).

*First principle*

Each individual should have an equal right to a broadest possible system of equal basic liberties compatible with a similar system of liberties for all other individuals.

*Second principle*

Social and economic inequalities have to be arranged in such a way that they are at the same time:

a) most beneficiary to those least privileged provided that the principle of just economizing is respected, and

b) related to services and positions that are open to everybody provided that they have fair and equal opportunity.<sup>3</sup>

These two principles of justice are incomplete without two priority rules. First of them postulates the priority of the first principle of justice over the second, i.e. it forbids the limitation of liberties in favour of social equality or economic well-being. The second priority rule postulates the priority of justice over the principle of (economic) efficiency and over the principle of maximization of benefit. Furthermore, it puts fair equality of opportunity before the principle according to which the increase of social and economic differences is permissible only then if it is beneficiary to the least privileged social groups.

This concept of equality is formulated in simpler terms by Rawls in his "general conception": "All social primary goods — freedom and opportunity, income and wealth, and basic self-respect — should be equally distributed unless the uneven distribution of some of all the above kinds of goods are in favor of those least privileged".<sup>4</sup>

According to Rawls the above principles of justice include only four categories of abstract primary goods: liberties, appealing job opportunities and positions, material goods (whose value can be expressed in money only) and basic self-respect. The two principles of justice actually refer only to the first three categories of goods provided that their use enables everybody to gain self-respect by offering them means to select their goals and to realize their life plans. Furthermore, Rawls assumes that these abstract goods are equally appealing to all society members and expects that, due to this fact, the principles of justice as fairness will be accepted by consensus.

However, the societies Rawls refers to are not homogenous in terms of opinions, values and ideology, and their members have different beliefs, they want to accomplish different conceptions of goods and on the basis

<sup>3</sup> Ibid., p. 302.

<sup>4</sup> Ibid., p. 303.

of these beliefs and goals they create divergent communities and join divergent alliances. Two concepts reflect this social plurality. Overlapping consensus is the first of them.<sup>5</sup> It denotes the consensus of members of divergent even incompatible comprehensive religious, philosophical and moral doctrines,<sup>6</sup> which might survive through several generations and attract many followers, to accept justice as fairness as a common political concept of justice<sup>7</sup> and as a basis of the common state. Society which is organized in accordance with the second concept is what Rawls describes as “the social union of social unions”<sup>8</sup>. Moreover, he believes that they are particularly appropriate as the basis of pluralist societies.<sup>9</sup>

However, if Rawls focuses on pluralist societies, the question of the relationship of justice as fairness and norms and values in particular “social unions” is raised.<sup>10</sup> How to establish harmony between justice as fair-

<sup>5</sup> The concept of overlapping consensus is developed by Rawls in the text “The Idea of an Overlapping Consensus”, *Oxford Journal of Legal Studies*, Vol. 7., No. 1, Spring 1987, pp. 1-25; also see John Rawls, *Political Liberalism*, Columbia UP, New York, 1993, especially pp. 15 and 133-172. For this English expression it is almost impossible to find a Croatian equivalent.

<sup>6</sup> Comprehensive doctrines provide answers to questions central to human existence — the questions of its meaning, of the highest values and ideals, of ethics, virtues etc. — thus defining the overall behavior, and ultimately the whole life of their followers. Many religious and philosophical doctrines tend to be comprehensive. In such doctrines Rawls sees the “background culture” of everyday life and bourgeois society. Cf. John Rawls, *Political Liberalism*, op. cit., p. 13 and p. 175.

<sup>7</sup> Political concepts of justice have three characteristics: (1) they refer only to the basic structure of society, (2) they are independent of comprehensive doctrines and (3) they are formulated in basic political terms of the (democratic) political culture of the responsive society. See: John Rawls, *Political Liberalism*, ibid., pp. 11-15, 223.

<sup>8</sup> Cf. John Rawls, *A Theory of Justice*, op. cit., paragraph 79, pp. 520-529.

<sup>9</sup> See: John Rawls, “The Basic Liberties and Their Priority”, in: Sterling M. McMurrin (ed.), *The Tanner Lectures on Human Values*, III, 1982, University of Utah Press, Salt Lake City, Cambridge UP, Cambridge 1982, pp. 3-87. Starting from this text Rawls (in: *Political Liberalism*, op. cit., p. 323) says: “I note in passing that the notion of society as a social union of social unions shows how it is possible for a regime of liberty not only to accommodate a plurality of conceptions of the good but also to coordinate the various activities made possible by human diversity into a more comprehensive good to which everyone can contribute and in which each can participate. Observe that this more comprehensive good cannot be specified by a conception of the good alone but also needs a particular conception of justice, namely, justice as fairness”.

<sup>10</sup> Rawls refers to quite different social unions. On one hand, he expects that overlapping consensus can be achieved between diverse religious, philosophical and moral doctrines. On the other hand, he illustrates the idea of social unions with a group of musicians who, on the basis of their natural talents and mastership of

ness and various religious, philosophical and moral doctrines? How to balance justice requirements on one side and special rules in particular "social unions" on the other? For example, should we require equal opportunity in getting appealing positions within the church hierarchy of particular religious communities?

Rawls answers these questions as follows: the subject of justice as fairness does not cover all areas of social life, but only the area of overlapping consensus, the so-called basic structure of society.<sup>11</sup> "This structure comprises main social institutions — the constitution, the economic system, the legal system and its definition of ownership and the like, and how those institutions are combined in one system. The characteristic of the basic structure is to provide a framework for a self-sustaining pattern of cooperation for all the various associations and groups within that framework which serve all the essential purposes of human life".<sup>12</sup> The procedure for the implementation of the principle of justice in the basic structure of society is termed by Rawls as the "four-stage sequence".<sup>13</sup>

The first stage of this sequence is already known — this is the selection of the principle of justice in its "original position". During the remaining stages the "veil of ignorance" is being gradually removed, which enables individuals who had only basic general knowledge in the "original position" to obtain more and more information on the society they belong to, which, in turn, makes it possible for them to develop a new order more suited to its characteristics.

The second stage of the sequence is the formulation of the constitution. For this purpose "the veil of ignorance" leaks knowledge about the political culture of the people, about their liberty traditions and other traditions etc. On this level participants of the original position turn into — also fictitious — participants of the constituent assembly. In accordance with the principle of justice and the above mentioned knowledge, its task is to select basic institutions and society procedures, in the framework of which it will be possible to express beliefs, to argue, to advocate interests, to mediate, to compromise and on the basis of this decide upon laws, political goals, programs, procedures etc.

various instruments and by coordinating their complementary skills manage to play together music written for orchestras, thus realizing some of the abilities they could not realize individually (ibid., p. 321).

<sup>11</sup> Ibid., pp. 38, 65, 149.

<sup>12</sup> Ibid., p 301; comp. pp. 257-288. Originally, Rawls develops the conception of basic structure in the text "The Basic Structure as Subject", in: Alvin J. Goldman, Jaegwon Kim (ed.): *Values and Morals*, D. Reidel, Dordrecht 1978, pp. 47-71.

<sup>13</sup> Ibid., pp. 223-227.

The third stage of the sequence is legislature. On this level, “the veil of ignorance” leaks information on geography, natural resources, demography, technical and economic culture etc. of the responsive country. Laws need to be in accordance with the principle of justice, the constitution and with the above information. Constitutional rights and liberties are outlined by laws, however, they are primarily related to the second principle of justice, i.e. their aim is to provide a just distribution of material goods and equal opportunity.

Finally, the fourth stage of the sequence is the implementation of laws. “The veil of ignorance” is here completely removed, since it is necessary to know all the details of the responsive cases for the laws to be implemented. Their implementation ensures the rule of law and thereby the permeation of all legally regulated activities by the principle of justice.

Justice as fairness as a political concept can become the content of the overlapping consensus because it is acceptable by many comprehensive doctrines. As such it is the materialization, i.e. the content of the public, collective reason of all citizens. Thus it does not protect all but only reasonable pluralism.<sup>14</sup> Therefore, on the basis of justice as fairness, the basic structure of society is built as an expression of the collective reason of all its members.<sup>15</sup> Communities whose doctrines or lifestyles are not in accordance with the overlapping consensus threaten the rights and liberties of all society members, and because of that they are not permeated by norms of tolerance and the freedom of conscience — even the conclusion about this incompatibility has to be drawn by consensus within the framework of public reason.<sup>16</sup>

Although Rawls, especially in the eighties, put a lot of effort to distance his theory of justice from its original intention to be a universal ethical theory and to shape it as a political theory adjusted to pluralist societies such as the American, he only partly managed to do so. Two complex questions are particularly important here;

1. Does Rawls’ procedure for establishing basic society structures guarantee a just distribution of all major goods? What if justice as fairness and, in particular areas, the established norms contradict? And what if material inequalities cause unacceptably large differences in positive liberties or are used for establishing unequal opportunity outside the basic society structure or even within it?

<sup>14</sup> Ibid., pp. 13, 144 and 253.

<sup>15</sup> John Rawls, *A Theory of Justice*, op. cit., p. 213; idem, *Political Liberalism*, op. cit., pp. 144 and 253.

<sup>16</sup> J. Rawls, *A Theory of Justice*, ibid., pp. 211-221; John Rawls, *Political Liberalism*, ibid., pp. 210 and 253.



2. Will the overlapping consensus on basic society structure in multi-cultural societies be established as easily as is suggested by Rawls? Does the basic society structure guarantee a just distribution of important goods in communities organized around different comprehensive doctrines? Won't multi-culturality narrow the area of the overlapping consensus and require the implementation of multi-cultural politics and the policy of cultural divergence?

Several political theoreticians attempted to answer these questions. In the following section Michael Walzer's theory of justice is discussed. His theory is primarily relevant for the first set of questions.

### 3. Michael Walzer's *Spheres of Justice*

The assumptions of Rawls' theory of justice are individualism — the principles of justice are selected and society is established by autonomous individuals, egalitarianism — the ideal of justice is equality which can be abandoned only to maximize freedoms and to improve the position of the least privileged social strata<sup>17</sup> — and constructivism — the principles of the political conception of justice as fairness are the result of the procedure of theoretical construction.<sup>18</sup> Accordingly, in the context of the current debate between liberals and communitarians, Rawls is largely seen as a liberal.

Unlike Rawls, Michael Walzer — whose liberalism cannot be denied — emphasizes the importance of the attachment of individuals to communities and the importance of traditions on which those communities have been established, and due to that he is often seen as a communitarian and some kind of theoretical counterpart of Rawls. He believes that equality in freedom is possible only as a complex equality. On top of that, he does not see principles of justice within such communities as the

<sup>17</sup> Cf. the cited formulation of the principle of fairness as justice in: John Rawls, *A Theory of Justice*, pp. 504-512.

<sup>18</sup> This is confirmed by one of Rawls' first works: "Outline of a Decision Procedure for Ethics", *The Philosophical Review*, Vol. 50, April 1951, No. 2, pp. 177-197, as well as by the following in: John Rawls, *Political Liberalism*, p. 89: "Political constructivism is a view about the structure and content of a political conception. It says that once, if ever, reflective equilibrium is attained, the principles of political justice (content) may be represented as the outcome of a certain procedure of construction (structure). In this procedure, as modeled by the original position..., rational agents, as representatives of citizens and subject to reasonable conditions, select the public principles of justice to regulate the basic structure of society".

result of a theoretical construction but as the result of the interpretation of the concept of a particular good.<sup>19</sup>

Walzer starts his theory with the criticism of egalitarianism, which is best characterized by the East European word “uravnilovka” — one-dimensional, monistic egalitarianism relying on the existence and equal distribution of one good only, which dominates over others. Defending complex equality he points to numerous reasons for diversity among people. There are (1) different talents and needs, which are (2) unevenly (i.e. Gaus-like) distributed. There are also (3) various goods which cannot be reduced to money as a “general equivalent”, (4) and those whose distribution is provided by various institutions.<sup>20</sup> Finally, there are also (5) various — religious, ethnic, cultural etc. — human communities constituted around different comprehensive doctrines and value systems.<sup>21</sup> One should note that there are goods which cannot be divided and therefore cannot be distributed as well as those which are inseparable from their owner as is, for example, glory.<sup>22</sup>

Walzer sees one-dimensional egalitarianism, which suppresses these differences in an attempt to establish a unique system of distribution, as tyranny and the responsive state as Procrustes' bed. Such egalitarianism is possible only when there is one dominant good, which is a convertible measure of all other goods and whose distribution, therefore, decides on their distribution. It is obvious that the social group which owns this good, i.e. the group which has power to decide on its distribution rules the society, i.e. tyrannizes it — be it the state or private owners.<sup>23</sup>

Furthermore, Walzer is trying to prove that such a good as the general equivalent does not exist, that it has never managed to establish a unique rule, i.e. the rule of one group deciding on everything and there has never been only one unique criteria system for the just distribution of

<sup>19</sup> Michael Walzer, “Drei Wege in der Moralphilosophie” and “Der Prophet als ‘Gesellschaftskritiker’” in: *Kritik und Gemeinsinn. Drei Wege der Gesellschaftskritik*, Rotbuch Verlag, Berlin, pp. 11-42 and 83-108 (original title: *Interpretation and Social Criticism*, Harvard UP, Cambridge, 1987); Michael Walzer, *Spheres of Justice, A Defense of Pluralism and Equality*, Basic Books, New York, 1983, p. 8.

<sup>20</sup> Michael Walzer, “In Defense of Equality”, in: *Radical Principles*, Basic Books, New York, 1980, pp. 237-256; idem, *Spheres of Justice*, op. cit., pp. XII-XIV; idem, “Zwei Arten des Universalismus”, *Babylon, Beiträge zur jüdischen Gegenwart*, No. 7, 1990, pp. 7-25.

<sup>21</sup> Walzer studied this form of inequality in more detail only after publishing *Spheres of Justice*, i.e. in the late eighties and the nineties.

<sup>22</sup> Michael Walzer, “In Defense of Equality”, in: *Radical Principles*, op. cit., pp. 237-256; Michael Walzer, *Spheres of Justice*, idem, op. cit., pp. 3-30.

<sup>23</sup> Michael Walzer, *ibid.*, pp. XI, 17-20, 312-318.

all goods. Since it is impossible to establish a unique system of just distribution due to the lack of one universally convertible good, the rule which attempts to do it tyrannizes the society, not only where it accomplishes to control the distribution of limited dominant property at its disposal, but also where it does not accomplish it, which inevitably leads to chaos and self-will in the distribution of non-convertible property of the responsive social power.

Here it becomes clear that the only possible form of equality — and justice as well — which rules out tyranny and self-will is complex equality. It is incompatible with the existence of dominant good and it requires the separation of the spheres of social activities and functions related to particular social goods.<sup>24</sup> The theory of complex equality, i.e. plural justice should primarily formulate a theory of goods, which define the spheres of justice. Walzer does it in six steps: 1) the theory of justice deals with social goods, where it is unclear if there are different non-social goods. 2) The identity of people is related to the conception, creation, ownership and use of social goods. Due to that, their discourse about just distribution of these goods is always at the same time a discourse about their identity. 3) There is no set of primary goods which would be recognized in all cultures. 4) Distribution criteria are a portion of the content of particular social goods' concept. 5) The content of these concepts, and therefore the distribution criteria contained therein, are subject to changes. This means that in the course of history not only real distributions are changed but also the ideas about which distribution is just and which is not. 6) Each social good constitutes a special distributive sphere, i.e. a sphere of justice. Relative autonomy of these spheres requires that responsive principles of justice are applied in each of them.

If distribution and exchange have to be in accordance with special meanings of particular goods in order to establish and maintain complex equality, then they need to be open-ended because these meanings are not defined from outside and can be changed in the course of time. Walzer formulates the following open-ended principle of distribution: "No social good X should be distributed to men and women who own any other good Y only because they own Y and regardless of the meaning of X".<sup>25</sup>

Thus, one should find principles, criteria, mechanisms and agents that ensure just distribution in accordance with the meanings of particular goods, i.e. which are open-ended. Walzer states three such principles: 1)

<sup>24</sup> Ibid., p. 20: "The regime of complex equality is the opposite of tyranny... In formal terms, complex equality means that no citizen's standing in one sphere or with regard to one social good can be undercut by his standing in some other sphere, with regard to some other good".

<sup>25</sup> Ibid., p. 20.

free market enables each owner of a good to decide if they want to exchange it for some other good and under what conditions. Such decisions depend, of course, on the meanings of responsive goods. 2) The principle of merit enables that in each sphere of justice the responsive good is distributed in accordance with corresponding merits of agents. Walzer, however, warns that merits are not the same as rights, for example, to claim that somebody deserves sympathy does not imply anybody's obligation to sympathize with such a deserving individual. 3) The criterion of need also takes into account special meanings of particular goods because they can satisfy special needs due to these meanings. Some goods, however, rule out distribution in accordance with any of these criteria because they are related to individuals — for example, the popularity of people in show business or the reputation of scientists, and some because of their extreme scarcity or even their uniqueness — for example, the individual need for the book of Jewish prayers and poems Sarajevo's Hagada can be met only by the facsimiles of this book.

Just distribution in particular spheres and the free exchange of goods between them is a necessary but not sufficient condition for complex equality: "...complexity is difficult: how many goods have to be autonomously structured in order to make the relations they mediate relations of equal men and women? There is no definite answer to this question, there is no ideal system. However, the moment we start to differentiate meanings and to mark distributive spheres we have embarked on a egalitarian enterprise".<sup>26</sup> According to this, Walzer considers liberalism as an art of interseparation of different spheres of activities in which it is desirable and possible to establish special game rules, the principle of justice and types of freedom.<sup>27</sup>

Education can be given as an example of good which requires the constitution of a special sphere of justice. The goal of education is not only the reproduction of the existing social system, because in that case education would not be an independent good. Which it is, because it allows people to develop their abilities and a critical attitude to the existing situation in society. Accordingly, it requires autonomous educational institution.

The principle of equality requires equal educational opportunity for all, therefore, social differences should not influence educational opportunity. The criterion of need — both that of individuals and that of the community — requires compulsory education for all. Additional schooling can be conditioned by the so far academic achievement, i.e. specific merit in

<sup>26</sup> Ibid., p. 28. Previous discussion is by most part based on the first chapter of the book, pp. 3-30.

<sup>27</sup> Michael Walzer, "Liberalism and the Art of Separation", *Political Theory*, Vol. 12, August 1984, No. 3, pp. 315-330.

the sphere of education, where further educational opportunities need to stay permanently open to all. The principle of equal opportunity does not allow education to be dependent on personal wealth: one who has it can sell it, but one who does not have it must not be forced to buy it. In the name of educational freedom Walzer accepts private schools; at the same time he proposes a system of vouchers by means of which parents would choose a school for their children according to their needs and beliefs and would thereby stimulate the establishment of a wide range of different schools, i.e. the establishment of an educational market.<sup>28</sup>

The advantages of complex equality can be easily seen. The society of pluralized justice offers a large number of independent spheres in which people can act, compete and strive for perfection, thus it offers more chances for success than is the case in one-dimensional systems of distribution where success is measured only by ownership of dominant goods. Complex equality reduces the presumption of successful people because it confronts each of them with those successful in many other spheres of justice. The inconvertibility of goods makes the comparison of their success with the success of others in other spheres difficult and completely prevents them from converting their success in one sphere into success in another. Dissatisfaction and envy caused by the fact that there are those who have everything and those who have nothing, that those who have money can buy other goods as well, while others are deprived of all goods, i.e. the division of society into antagonistic classes, is not possible any more. Dissatisfaction due to failure in one sphere of justice can not be avoided, however, such social conflicts have a local character. In addition, failures in one sphere can search for success in another. Furthermore, because there is no dominant good whose monopolization would justify and enable the monopolization of power over the distribution of all other goods and thus over the society, pluralized justice requires democracy in the political sphere. Finally, striving for success in a particular sphere is in favor of specialization and professionalization, in other words, of the increase of standards and the efficiency in particular spheres of activities.

In his book *Spheres of Justice* Walzer in several places discusses the differences between cultures and emphasizes that their ranking is impossible. He also discusses the attachment of people to their cultural communities and shared ways of life,<sup>29</sup> but he is not concerned with the issue of common life of members of different cultures within the same state. In other words, he does not deal with another set of issues raised at the end of the presentation of Rawls' theory of justice. He does not deal either with the possibility that the same goods within different cultural communities have different meanings, or in other words, that the same

<sup>28</sup> Michael Walzer, *Spheres of Justice*, op. cit., pp. 197-226.

<sup>29</sup> Ibid., pp. 5, 313, 318.

objects, relations, processes etc. can be considered as different goods, which leads to new problems of just distribution.<sup>30</sup> Therefore, the answer regarding these issues of justice should be searched in other authors.

#### 4. *Distribution problems in multi-cultural societies*

In multi-cultural societies the biggest problem is that of distribution — acceptable distribution of goods among members of different cultural communities. According to ethnologist Clifford Geertz, cultures are complex tissues of common public meanings which enable people to find direction in life and in particular activities, and thereby in community life. Therefore, culture is where there is common public meaning ascribed to a phenomenon either implicitly or explicitly. Cultures produce special culturally specific goods out of certain resources, objects, processes and relations by their involvement in its tissue of meaning, i.e. they ascribe to them qualitatively and quantitatively special meanings. For example, communists have completely changed the meaning of the election procedure by its incorporation in their political system: taking part in an election ceased to be an act of sovereign citizens by which they decide on who will have power in their political community, but it became an act of subjects, which enables the party in power to measure their readiness for submission and to boast with their broad support.

Semiotic structures cannot be approached positively, i.e. by unquestioned application of the existing concepts of known meanings. Studying and understanding cultures requires a hermeneutic approach, i.e. the interpretation of meanings of particular phenomena of an unknown culture in their context, starting from the known meanings of their own culture. As the relationships of cultural elements are intricate and complex, Geertz requires that the interpretations of these elements rely on their “dense descriptions”. The task of ethnographers is to make and interpret “dense descriptions” of elements of the observed cultures.<sup>31</sup>

<sup>30</sup> Walzer deals with issues of common life of different ethnic groups living in one state in some of his later works. There, however, the emphasis is on the definition of such groups, ruling them, their mutual help and representation in common institutions, and their separatism. Cf. Michael Walzer, “States and Minorities”, in: Charles Fried (ed.), *Minorities: Community and Identity*, Springer Verlag, Berlin etc., 1983, pp. 219-227; idem, “Pluralism: A Political Perspective”, in: Stephan Thernstrom (ed.), *Harvard Encyclopedia of American Ethnic Groups*, Harvard UP, Cambridge, 1990; idem, “Notes on the New Tribalism”, *Dissent*, Spring 1992 (in German: “Das neue Stammeswesen, Erörterungen über das Zusammenleben der Völker”, *Lette International*, Spring 1992, No. 16, pp. 8-11).

<sup>31</sup> Clifford Geertz, *Dichte Beschreibung*, Suhrkamp, Frankfurt am Main, 1987, pp. 7-43, passim.

Being complex and unique semantic structures, cultures are also complex structures of evaluating various goods. Therefore, the concept of a good also contains a culturally-specific notion of their value and — in terms of Walzer's theory of justice — of their just distribution.

This, however, means that the problem of distribution of particular resources cannot be solved in the way proposed by Walzer because the same resource as a good can have different meanings in different cultures, which protects its distribution within one unique sphere of justice. The solution to this problem should be searched between the two extremes which are not reasonable choices. One of them is the homogenization of the meaning of goods, which implies cultural assimilation and almost inevitably leads to the dissatisfaction of some cultural communities due to their marginalization, discrimination and subordination. The other extreme is accepting that the problems of distribution should be solved exclusively within particular cultural communities, which results in the disintegration of society and political communities, separatism, civil wars etc. For example, in a society in which there are two cultural communities having different notions of education there are two concepts of education as goods. In such a situation it is not reasonable to require the same educational system for all or to leave over education to these cultural communities, thus accepting a long-term disintegration of society. If the state finances education, agreement of these two cultural communities on the just distribution of educational resources should be reached. But how to define which distribution is just in a situation where there is no common meaning of the concept of education?<sup>32</sup>

Not even the return to Rawls and his "veil of ignorance", which eliminates all particular knowledge, solves the problems of multi-culturalism. The principle of justice as fairness and the four-stage sequence do not solve the issue of semantic incompatibility of various cultural communities, and consequently the problems of their communication as, for example, in the third stage of the sequence of the implementation of these principles on the legislation level.

It seems, however, that the only way out is the return to the concept of fairness, which is some kind of homage to Rawls. Fairness forbids free riding, i.e. the use of some institutions at the expense of the other members. When common institutions do not exist it calls for new laws and rules of distribution and the establishment of institutions in which nobody would feel deprived. However, in multi-cultural societies this is only possible if members of different cultural communities reach a consensus

<sup>32</sup> The issue of the division of goods among members of different cultural communities includes the complex problem of incomensurability. It has not been explained here.

on these laws and institutions. Such a consensus assumes negotiations and agreement among cultural communities.<sup>33</sup>

A comprehensive agreement on distribution between such communities is not possible to achieve due to two reasons. First, there are different resources which can have different meanings in different cultures as goods and can imply various notions about their just distribution. The dialogue between cultural communities should result in special consensuses regarding each of these resources, i.e. for each of these goods. Second, cultures as semiotic systems and their concepts of goods are frequently quite distant, which makes the process of their getting to know each other painstaking and communication difficulties enormous. The process of their getting to know each other by means of, as Clifford Geertz would say, mutual "dense descriptions" and ethnographic interpretation can be complex and long-lasting. Due to this, it is more realistic to expect only the achievement of punctual consensuses by which, as Walzer would say, common meanings are established, which enables an acceptable distribution of particular goods between cultural communities.

The concept of justice more often than not represents distribution of commensurable values. By giving different meanings to resources and thus by making them partially incommensurable goods, different cultures make the concept of justice in its traditional sense of distribution of commensurable values questionable. Due to this, the above argumentation of distribution originates from the concept of fairness. The concept of justice can, however, be separated from the requirement for commensurability and can be related to the concept of fairness which is independent of the commensurability assumption. In this case, results of fair negotiation on distribution can be considered just, and the responsive justice can be characterized by the concept of "justice as fairness". Moreover, this too, is a matter of pure procedural justice because there is no, and for cultural differences there could not be, external, previous criterion of justice. In other words, here as well as in Rawls' theory, the result of negotiation is fair because the conditions and procedures were fair. However, unlike his theory of justice, the concept of fairness here is not related to the assumption of commensurability. Furthermore, unlike Rawls, fairness is here not an attribute of a fictitious "original position", but of real negotiations between cultural communities. Finally, justice as fairness is not related to the basic structures of society as a whole, but to the distribution of particular resources-goods, i.e. to a particular sphere of justice. It is not hard to guess that in the negotiations between cultural communities on the distribution of particular goods and resources some part will be played by

<sup>33</sup> Fair negotiation focussing on reaching consensus is the central theme of the works of Jürgen Habermas, particularly those from the eighties. See: J. Habermas, *Theorie des kommunikativen Handelns*, 2 volumes, Suhrkamp, Frankfurt am Main, 1981.



arguments which are not closely related to the meaning of particular concepts and the evaluation of particular goods. For example, in multi-cultural societies evaluations of particular cultures, i.e. their responsive cultural communities are almost inevitable. More often than not, such evaluations are reduced to the repetition of ungrounded and belittling stereotypes. In some cases they should not, even in good will, be ignored, as for example, when it comes to the compatibility of particular cultures with a liberal-democratic system. The second type of such arguments is related to the dangers of abrupt disintegration of some cultural communities and to the threatening anomy of its members. In this case the reason for helping some cultural community need not be a mutually successful ethnographic interpretation and the resulting consensus on just distribution, but it can be an attempt to prevent anomy as a possible threat to the liberal system. The third type of arguments includes those which ascribe value to multi-culturalism itself from the point of view of a liberal-democratic system.<sup>34</sup> The inevitability of such arguments definitely does not facilitate negotiation between cultural communities and neither does distrust and resentment, which are not at all rare.

Since liberal systems are based on the consensus of their citizens, since the most important element of this consensus is common belief about the justness of the system, i.e. of some of its segments, and since in multi-cultural societies such consensus can be achieved only by learning about other cultural communities, such learning, which can also require the application of ethnographic methods, is a prerequisite for the stability of liberal systems. There is no need to emphasize to what extent, both the story of liberal systems and that of the meaning of mutual acquaintance of members and representatives of different cultural community, are vital for Croatia.

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<sup>34</sup> Joseph Raz, *The Morality of Freedom*, Clarendon Press, Oxford, 1988, passim.