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Pluralism and Protection of Personal Identity

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Summary

The author analyses the relationship of atomism, pluralism, and democracy from the viewpoint of contemporary theory of justice as presented by Rawls and Kafka. Subjective and objective justice are characterized as forms of substitution of democratic decision-making in multicultural communities.

The starting hypothesis of the new age atomism was that individuals, such as Robinson, are capable of survival in an environment due to their reason and their own strengths, and that such independent individuals organize a state community on the basis of their own insights and pragmatic needs. The atomistic paradigm failed because of a mistaken calculation of its fundamentals. The new-age reason proved to be a bad guarantor of individual safety due to a paradoxical consequence hidden in its essence, according to which co-operation among atomized rational individuals is possible only because they, as rational beings, do not differ from each other at all. Political atomism was based on an absurd cognitive panopticism. It jeopardised individuals since it construed them from reason and forgot about traditions, which take an equal part in constituting a person. In its anti-estate illusion, atomism stood for the proposition of universal equality of all men, forgetting even about the gender differences. Kierkegaard was the first to feel this when he put the fear of losing one's identity in the centre of his philosophy. The fear of losing personal identity has initiated the development of the strategies for its protection.

Way out of the politically absurd atomism was found in *pluralism* which sticks to the idea of equal human rights, but respects the fact that men live in different communities of different historical origin and culture, and that the right to these differences in this sense amounts to an essence of all human rights. Ferdinand Tönnies found the way out from absurd atomism in elementary human communities, such as *kinship*, *neighborhood* and *friendship*, and considered that both the society and the state are built out of these elements.

Contemporary scholars today speak plainly about the *fact of pluralism* which cannot be metaphysically questioned or based, since it is the first and the last from which every political theory starts as a fact.

The atomized individuals cooperated since they were not different from each other. Friendship, neighborhood and kinship were nostalgic refuges for a haunted individual from an inarticulate civil society and a cruel bureaucratic state. Multiculturalism today stands for a diffuse notion which, in absence of the rational integration of individuals, strives to preserve at least tolerance among different forms of life and human cultures. An obstacle to achieving tolerance of different cultural communities in which, as it appears, human beings can only prosper, is the *quantitative democracy of the new age*. Unlike the divine integrative authority, it is built into the atomism of the new age, and has functioned under the assumption that all men are equal, and therefore in variable majorities and minorities can endure provisional minority status since only individuals of equal intellectual qualities correspond to quantitative majorities and minorities as their constituent parts.

The fact of pluralism clashed with the notion of quantitative democracy, and today it can be frequently heard that pluralism and democracy are incommensurable notions, since quality and quantity are incommensurable, and not dialectic relations. Direct democracy of the masses jeopardizes every pluralism due to the dominance of one metaphysical concept, be it religious, national or some ideological construction that can homogenize masses in a short run. Representative democracy attempted to match the totalitarian democracy, but even the former is not able to satisfy the plural complexity of society. Equal representation of all cultures in parliaments would merely reflect their actual presence in a society while larger cultural groups continued to dominate smaller ones, both in the parliament and the society. This problem of the relationship of majoritarian democratic decision-making in pluralistic societies was hitherto solved pragmatically, from one state to another. For example, Switzerland was considered a good, and Yugoslavia a bad example of co-operation of different nations, religions and cultures.

With the onset of the era of globalism, European scholars began to comprehend American theory and practice of solving problems of co-operation of different cultures. Instead of the theories of democratic governance of modern multiculturally structured states, the theories of justice came into play. These aspire to represent interests of individual cultures in large multicultural state communities in more adequate ways than the democratic methods did.

If, thus, cultural communities are indeed elementary forms of protection of individual identity, and in this sense if they stand for the greatest existential values for each individual, it is understandable that in every such community there is a dormant explosive of conflict with another cultural community as a potential existential competitor. Neutralization of this explosive is the central issue of modern theories of pluralism. The answer to this question was sought in the existentialist- and not the rationalist-inspired theories of justice. European political theory has failed in its assessment of the Rawls' theory when it linked it with Kant's and Hegel's atomistic rationalism. If Rawls is related to any European theory at all, it has to be Kierkegaard's and Heidegger's existentialism. Maybe even Rawls himself would not admit this, but it is surprising that

Europeans did not try to prove this. The fear from losing identity in inarticulateness (Man) and its protection, can be easily seen as the central motive of Rawls' theory and of similar theories of justice. This central existential problem of the protection of identity of individuals in modern global and inarticulate society, and within the framework of transparent cultural identity shall be elaborated in two steps: using the substance of Rawls' and Kafka's theories of justice.

1. Rawls' veil of ignorance and the principle of Fairness
2. Kafka's reduced pluralism: nobility, people and the small party

Ad 1. A theory has meaning if it provides us with a better insight into a situation we are confronted with. In direct action we are always restricted by a kind of selective blindness, by illusions and fallacies. A theory sees the same situation from another perspective of selective blindness and in this way we can compare two different and incommensurable forms of the same situation. If we apply the theory of selective blindness, which was developed by John Rawls and George Spencer Brown, to the study of modern multicultural Europe, we can see the following image of a tug-of-war: the EU member states do not look at other European states – Croatia, Ukraine or Lithuania as a prey or loot. They have learned from their mutual cooperation that they cannot know how the prey is going to react once it is captured. It is possible to occupy a state, and there are indeed different forms of occupation; however, is it possible to rule the people of this country? The EU member states have concluded that it is better to give Croatia an opportunity to observe the EU and to make its own decision whether to join the community or not, instead of being forced to do it.¹ Mutual theoretical observation generates experience teaching us that every experience suffers from selective blindness, and this insight calls for caution in dealing with others. Others do not have to be forced to do anything but should be given a chance to experience their own selective blindness and to correct it. The discovery of selective blindness and its different depths² has enabled another insight not only into the traditions of pluralist states, but into the international global relations as well. It is known that pluralism is a fact abounding with conflicts. The problem of modern liberal societies is how to preserve and legitimize plurality, and how to treat all citizens equally and fairly, without a totalitarian metaphysical doctrine. When compared to the former tradition, Rawls' theory of justice represents a change in the modern paradigm of legitimization of a community organized on liberal democratic grounds. The new paradigm is always characterized by a paradoxical or incommensurable attitude towards the incumbent tradition. Rawls' paradox is articulated by the following question: *How to strip a national, religious or liberal-democratic majority tradition of its goal and right to organize a state according to its own conviction, and how to encourage members of this majority tradition not to make use of this indigenous or historically acquired advantage which is not contested as their cultural attribute, in the competition for power in a pluralist community?* As is known, Rawls' answer to this

¹ Dariusz Aleksandrovic, *Integration, Nationalism and Religion*, *Politička misao*, Zagreb, No. 4 (1998).

² “While the restrictions of reason are the weakest in the original position and the veil of ignorance the thickest, the restrictions at the level of justice are the strongest, and the veil of ignorance the thinnest.” John Rawls, *Die Idee des politischen Liberalismus*, Suhrkamp 1994, p. 213.

question is: *with the help of the political instead of the metaphysical legal concept!* Metaphysical legal concepts require implementation; political ones require justification assisted by justice as fairness. Rawls' hermeneutics of praxis could be understood in this way. Justice as fairness is not practiced according to the implementation of the existing law, nor according to the public legal procedure, but according to the paradigmatically different culture of mastering the incendiary fact of pluralism.

In order to understand the above described paradox of Rawls' *antimetaphysical imperative*, three of its key notions have to be discussed: the original position, fairness and the veil of ignorance. Only after a political culture described by these notions is understood, it will become more clear why the brave American became so popular in the old and stubborn European political culture. He reminded this ancient political tradition of its selective blindness and initiated a countermove that was hurt in its pride and that tried to prove that it forgot all about Rawls' wisdom a long time ago. It is possible, however, that the tradition of anamnesis, tacitly assumed in Europe since Plato to Marx survived so long since it was "known" what had been forgotten and lost. For this reason, there was the search for the forgotten and the lost. It took the introduction of the notion of *ignorance* to get out of this hermeneutic *circulus vitiosus*, since it reminds us that what we have never known and never lost cannot be remembered, nor can we look for it. How do these three notions – the original position, the veil of ignorance and fairness relate to the fact of ignorance, or to the empty environment? We suggest – with *existential anxiety!*

The original position is a present fact of pluralism of goods and values of freedom into which we are simply born. This pluralism must not be contested by any party. It is not questionable that in liberal society none of the present concepts must prevail, nor that there has to be balance among them. The question is why both possibilities became disputable? The answer is: because they were let down in a myriad of instances. In order to prevent any possibility that Christians and "witches" are tortured and burned in the name of Christ, and to guillotine the bravest freedom fighters in the name of freedom, Rawls looked for the comprehensive civic consensus. In accordance with the assumption that Rawls is a successor of modern existentialism, this comprehensive consensus is based on the *state of uninformedness*³ where a person cannot use his or her natural, historical or social experience as an advantage or a recipe for action. The state of uninformedness is another name for selective blindness and the veil of ignorance which, as Joshua Rabinowitz has noted, can be thicker or thinner. All parties refrain from a ruthless use of their advantages in the existing original position due to the existential uncertainty about the consequences of such employment of their strength. This existential uncertainty⁴ belongs to the universal human culture which renders this comprehensive consensus possible. Rawls calls this culture of caution – fairness. Fairness does not mean tolerance of different and incommensurable existing values, motivated by humane, altruistic, rational reasons, or by the fear of God, but respect of another in his or her difference, on the basis of the experiences of one's own selective blindness

³ J. Rawls, *ibid.*, p. 62.

⁴ Heidegger spoke about the fear of death which does not come at the end of life but can occur at any time. Compare: *Sein und Zeit*.

that can lead us to a mistake if we do not respect other people by feeling superior to them. It is important to know that fairness and comprehensive consensus do not refer to the existing obvious fact of pluralism; the entire theory is marked with the question: how citizens, under the condition of pluralism of education and values can enter into fair relationships with each other when we have historically experienced that tolerance, love of one's neighbor and God, humanism, altruism and similar values fail in decisive existential moments, due to a simple reason: existence is more important than justice. Rawls answers to this question simply by saying that "public concept of justice must not be metaphysical, but political." This statement must not be understood exclusively in hermeneutic terms as the separation of theoretical and practical philosophy. Namely, in this case we arrive only at the position of incommensurability of the two known positions. Rawls requires another understanding of politics which, being a form of action, counts on multi-layered ignorance and does not approach hastily to any metaphysically balanced ideal of justice, but attempts to prepare citizens for unforeseen cases, and to test their capacity for co-operation on them. Rawls' position can be called post-modern and certainly revolutionary (Kuhn), even in this sense which is incommensurable with Kant's.

2. Kafka's reduced pluralism: nobility, people and the small party

We are now going to shed some more light on Rawls' post-modern understanding of politics from another angle, and try to draw certain political parallels.

Ad 1. Rawls' theory of justice, unlike that of Kant, can be called post-modern. This statement can be illustrated by one of Kafka's analysis of law. As an educated lawyer, Kafka was frequently involved in analyses of bureaucratic legal system as a labyrinth in which a modern man, in an attempt to subject power to law, got lost and consequently surrendered his freedom into the hands of an anonymous, indifferent system of laws. Kafka tried to find a way out of this depressive condition and found it solely in the existential either-or i.e. in the life that became aware that logic, especially legal logic, leads to error.

His short essay *On the question of laws*⁵ begins with the question what laws are: "Our laws are not generally known... we are convinced that these laws are obeyed to the letter, but it is extremely painful to be subject to laws we are not familiar with."⁶ People cannot overcome the ignorance of laws by interpreting them, since the interpretative freedom is very limited. In interpretation, one always resort to laws as the single reality of interpretation. However, in addition to the reality of laws there is another reality which Kafka calls *nobility*, in an understandable comparison. Nobility, according to popular conviction, knows about the secrets of laws by which it rules a people. Now, Kafka's metaphorical people tries to discover the secret of laws by which nobility rules them. "Our people, from ancient times, has been carefully monitoring the activities of nobility and is in the possession of their grandfather's notes... which make the far-reaching conclusions about different historical definitions possible. However, when we, the moderns, after having most carefully screened and sorted these conclusions, try to

⁵ Franz Kafka, *Erzaehlungen*, Reklam, Stuttgart 1955, p. 246-248.

⁶ Kafka, *ibid.*, p. 246.

accommodate to modernity and to the future, we see that all this is uncertain, and maybe only a ploy on the part of reason, since the laws that we try to discover by these interpretations perhaps do not exist at all.”⁷ Therefore, the people is in doubt whether the laws on the basis of which they are ruled exist at all. Now Kafka introduces, in addition to *nobility* and *people*, a *small party* which “...tries to prove that if certain law exists at all, it can read only as follows: The law is what nobility does.”⁸ This party rejects the entire legal tradition of the people. Namely, it brings no good to the people, but only trouble, since it brings to the people uncertain safety regarding the coming events, which leads to lightmindedness (telling the people that certainty can be achieved by respecting laws). Unlike this entirely frivolous opinion of the small party, the majority of people consider “... that time will come when the research of tradition is in a certain sense going to subside and come to an end, and that laws shall belong to the people alone, while the nobility is going to disappear.”⁹ Opposite to this panoptic popular hope “... remains the very attractive *small party* that does not believe in any law this small, since it entirely recognizes the right of nobility to survive.”¹⁰

Yet, according to Kafka, we live on the edge of the following paradox: “A party that would, along with the rejection of faith reject nobility, would immediately enjoy the unanimous support of the people (a people can do anything it pleases), but such a party cannot emerge, since no one dares to overthrow nobility”¹¹ (new factions always emerge and rule the people). On the grounds of all this, Kafka concludes, with characteristic self-effacement, his cautionary tale about laws by words of an unknown poet: “The only visible and indisputable law we have at hand is nobility (which does what it pleases) and we are supposed to voluntarily submit to this law?”¹²

We mortals live on the edge, between the completely transparent laws and the completely untransparent tyranny, and nonetheless our crazy ideal is unrestrained nobility, the acts of which constitute law. Rawls has revised this existentialist either-or position on the grounds of Aristotle’s central tenet. This means that the existing laws can never be entirely transparent, since every decision based on law occurs, as was correctly noted by Carl Schmitt, *ex nihilo*. On the other hand, an action that does not respect any laws is in danger of overall untransparency of its consequences. If thus, in a reduced pluralist society which comprises nobility, the people and the small party, we want to avoid these extremes and live a good and just life, we have to strive to organize our life in accordance with the described situation, in a way which will not destroy this plurality. This can be done, according to Rawls’ revision of unilateral existentialist either-or position, if the multi-layered untransparency of the dangerous absolute ignorance is *minimized* in advance with a fair contract. The only guarantee that citizens will

⁷ Kafka, *ibid.*, p. 247.

⁸ Kafka, *ibid.*, p. 247.

⁹ Kafka, *ibid.*, p. 248.

¹⁰ Kafka, *ibid.*, p. 248.

¹¹ Kafka, *ibid.*, p. 248.

¹² Kafka, *ibid.*, p. 248.

comply with such a hypothetical contract regulating a non-existent situation is the experience of the factual pluralism that tells us that the nobility, the people, and that small party, if they enter into a contract of co-operation, can better cope with the dangers of ignorance than either of them on their own. A majority sees better through the fog of ignorance, since some have penetrated deeper into the ignorance so that the blind can lead those who can see, and in their journey through the land of ignorance they can peacefully, rationally, and even democratically alternate their leadership. Certainly, we are not talking about blind mythological sorcerers and poets who have a more profound metaphorical insight into their thoughts, nor even about Hegel's concept of reason as a "more perfect telescope" that has "lost sight and hearing in the dialectics of sensorial certainty and observation"¹³ but about those post-modernists who have, having clear sight and sane mind, learned that both mediums leave them selectively blind. Unlike them, metaphysical panopticians senselessly preach total blindness as the best sight. Thus, in our heterogeneous societies, in order to preserve our identity from democratic majorities, we have to defend pluralism by all means. The fact of pluralism is incommensurable with total, metaphysically or quantitatively based democratic homogeneity, and represents the normal condition of men and their different cultural groups and traditions that are hereditary and historically blind, as it was understood by George Spencer Brown and John Rawls.

Ad 2. How is it possible to make the described insights politically relevant in the contemporary Europe which is divided along more lines than one? The pluralistically structured Europe cannot, having in mind what has been said, be homogenized in terms of the understanding of the world nor, for the sake of pluralism, can it be left in disarray in which it found itself during the two world wars. A comparative analysis of different cultures, economies, legal systems, on the one hand indicates their incommensurability, and on the other the different strategies of long-term peaceful coming together and harmonization of European states. The fear of an immense bureaucratic state lacking democratic legitimacy and the hope that only such an immense state can make Europe competitive in the era of globalization, are not alternatives. If we start from the fact of pluralism, we should look for new ways how to deal with it, so that it does not become necessary to seek rescue in the chaos of atomism, or in the terror of totalitarianism, be it a democratic one. In a multicultural Europe we needn't insist so much on the principle *pacta sunt servanda*, but more on finding our way in a vague situation which forces us to try to solve certain problems by resorting to the principle of justice as a variable emergency exit that does not lead to chaos or terror. In this search we can ask ourselves why and how modern Europe emerged in the dark age of the war between the French and the Germans. This would in any case be better than trying to friendly persuade East Europeans to conform to today's Europe and its laws without stating the reasons why, if at all, we want to live together. Mutual harmonization of different cultures is a political answer to an existential question. The question, however, is not always the same. The question keeps changing since it looks for an answer that is not already contained in the question. Therefore, the answer is uncertain and usually surprises those looking for it. East Europeans should not be pedantically burdened with the questions the answers to which have been well known to West Europeans for a long time. On the contrary, one

¹³ Hegel, *Phaenomenologie des Geistes*, Felix Meiner Hamburg 1952, p. 102.

has to, unlike the captain of the Titanic, cautiously try to foresee what is disputable, so that we can all be prepared to hear the questions and give the answers to the questions that have not been asked. One eye has always to be turned in the direction of unpredictable barbarity wilderness of our humanity since it is the better part of our being. If, however, we forget that we are, equally in the East and the West, selectively blind, and that total transparency of any life situation is not possible, then our realizations, applications, implementations and legal regulations of everything we already know, but that has not for long been part of our living sensibility, nor corresponds to it, shall inevitably perish. To conclude: in order to preserve our own personal identity we have to advocate pluralism, and in order to preserve pluralism we have to learn how to free it, politically and pragmatically, from its explosive metaphysical and existential charge. For this purpose Rawls proposed his theory of untransparent or open-ended justice.

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