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PHILOSOPHY OF JUSTICE IN THE CONTEXT OF UKRAINE

The discourse of justice, in order to respond to the crisis of our current existence, acquires new (in the Context of Ukraine) theoretical and practical meanings. Everyone demands recognition and preservation of his/her rights, as well as material conditions for a normal decent life. However, the question of my ought looks different both in philosophy and in contemporary life when my actions affect others' interests. This inevitably leads to conflicts that should be resolved impartially and justly. Thus, the problem of justice is topical and should be approached using the most efficient philosophical discourses.

Philosophy of Justice leads to general conclusion that to act justly is to act impartially, honestly and morally, and this is our actual ought. Moral attitudes that dominate in our societies are presented by J.Habermas, O.Höffe, A.Honneth, R. Forst as true and vivifying source of institutional justice. He also gives normative and heuristic meaning to basic methodological principles of dealing with the problem of justice: personal right for justification, moral universalization, just distribution. He reconsiders widespread interpretation of moral norms as trustworthy, making them more efficient than repressive and pragmatic regulators of interpersonal relations. In addition, while treating justice as the key moral and social value, Höffe – as well as J.Habermas, E.Tugendhat – stresses the importance of normative meaning of justice for contemporary complicated society, which cannot function as a whole on the sole basis of trust and sympathy to others, but also requires solidarity and justice towards alien people. Adequately considered justice (taken simultaneously in its universal and particular dimensions) also entails responsibility for failing to be just towards those whose identities were formed in another social and cultural world. Forst, Höffe highly appreciates political justice, but also does not diminish the significance of personal justice as an important condition of just statehood and willing acceptance of the requirements of political justice.

In order to understand the "paradigmatic turn" in contemporary philo-

sophy of justice, we should address also the works of John Rawls, who made the concept of justice fundamental (in his polemics against Utilitarianism). One should also admit that further important changes in understanding social justice were caused by the bent of his genuinely philosophical discourse towards mostly distributive understanding of justice.

Höffe was among the first who raised this issue in his (now already classical) researches. In "Political Justice" he shows that Rawls's distributive justice is burdened with limits and contradictions, entails paternalist and bureaucratic consequences. The need to seriously reconsider social justice led to a new vision of justice as exchange. Indeed, exchange (in its wide, negative and transcendental understanding) can thoroughly justify and explain the true meaning of social justice. The idea of exchange could become and actually became truly effective argument in understanding the shortcomings of distributive justice. Only justice as exchange can help us to adequately grasp the inalienable inviolability of every human being. Widely understood exchange, as democratic form of cooperation, is negative (because it presupposes mutual rejection of violence) and transcendental (because it is realized in that sphere of human existence which nobody can escape from). This kind of exchange answers to the most essential criterion of social justice: it is distributively advantageous. Thus, "truly important is exactly this negative, non-economical meaning of the concept: mutual abstinence, reconciliation, recognition – under the pressure of power – of other people's freedom of thought and conscience, as well as their property. Exchange happens because of this mutual abstinence and reconciliation. Exchange is just if everyone, by giving up something, receives in consequence something else of equal worth." [1, 53]

Thus, Höffe's "new paradigm" of justice as transcendental exchange occupies special place in contemporary discussions about the essence of justice. His works fostered the rebirth of normative political philosophy in Europe – since, according to his followers, "Höffe was one of the first who not only interpreted the ideas of Rawls, but also productively developed them in his works" [2, 9–15]. Due to his tireless long-term researches, the problem of justice gains new dimension. Well-known German philosophers, such as S.Gosepath, N.Scarano, J.Habermas, A.Honneth, Ch.Horn, and R. Forst, also emphasize this point. Generally, one could regard these important developments in the sphere of political philosophy as an attempt to answer the following question: what is the ground of normative authority of justice, if this

ground is not natural and not religious? Höffe's solution of this problem transforms the question of relations between justice and freedom into the core issue of contemporary political philosophy. Highly important is also his attempt to theoretically and practically mediate the two basic extremes: on the one hand, the universal meaning of the basic principles of justice, on the other, the idea that justice is contextual and ultimately unreachable. In terms of methodology, Höffe successfully overcomes the limits of both communicative philosophy of justice and Rawls's theory of justice.

Höffe insists that contemporary philosophical ethics still considers state and law outside of philosophy and morality. This applies, e.g., to discursive ethics of K.-O.Apel and J.Habermas – which also (as well as Rawls's theory of justice) disregards the problem of legitimacy of the right to compulsion. Otfried Höffe, primarily in his "Democracy in an Age of Globalisation", emphasizes that this problem arises for the first time when society exceeds the limits of voluntary cooperation and turns to compulsory regulations and limitations of freedom and willfulness of its members. Once the compulsory social authority appears, it should be legitimated, and the following general question should be answered: how it is possible to limit human freedom, and could compulsion be legitimate? Höffe believes that law is the very core of regulative compulsory authority (this point is usually disregarded by the newest moral philosophy and philosophy of law). Indeed, law is what coordinates the activities of basic social actors (individuals, groups, institutions) by its partially procedural and partially substantial mechanisms. Law also fosters noncompulsory settlement and prevention of conflicts.

For Höffe it is also important to grasp the nature of democratic compulsion, which is of another origin: it is controlled by citizens themselves, so that it is actually self-compulsion (rather than external compulsion). However, over and above these essential changes, Höffe also attempts to find a universal criterion of legitimacy. This turns out to be general agreement based on common utility. Such approach refutes pragmatic answer to the normative question about legitimacy and its criteria, according to which compulsion is legitimate insofar as it serves common good. Höffe's objection against this ideologically suspicious approach [3, 42] is still topical: it allows elimination of all those who disagree with (so hardly definable) "common good" and "common interests". On the other hand, stupidity and betrayal could be helpful, whereas everything that does not conform to economical effectiveness

and usefulness (based solely on distributive justice) is gradually marginalized. Thus courage and honesty, solidarity and responsibility, trust and dignity might eventually become unwanted virtues.

For deeper understanding of moral perspective of justice, its place in the sphere of social morality, Höffe treats justice quite widely and defines it as our universal duty. Perhaps for the first time in contemporary European political philosophy, Höffe regards justice as the highest principle of human existence and the way of realization of our social essence. Justice is our moral duty, or, at least, it most closely approaches duty – the one which is assumed voluntarily and exceeds simple compulsion, whereas distributive utility becomes its true measure. Comparing the two theories of justice, those of Rawls and Höffe, one could speak of justice as based on either fair agreement or most essential human interests.

Political anthropology, while reconsidering the essence of man, can and should reject its theological and normative understanding, transcend the non-philosophical understanding of human nature via explication of its certain inalienable features. Since the real issue concerns conditions of human existence and capacity, Höffe believes that here we should also speak about transcendental aspects of anthropology and (relatively) transcendental interests. However, a serious turn in understanding human nature is possible if we go deeper. We should free ourselves from one-sided images of human being and rely on both cooperative and conflict models of legitimacy of state and law. Now, if we conclude that man is not only cooperative, but also conflict being, we should also take the next step and consider the question whether compulsory settlement of certain conflicts (or at least one of them) could be distributively advantageous and therefore just.

Höffe rejects N.Luhmann's positivism and his denial of justice. According to Höffe, without political justice any social order will look like "external compulsion" and "pure violence". In other words, without justice any social, political and legal order is nothing more than a gang of brigands.

The issue in question is justice of exchange based primarily on negative understanding of justice. The main argument for justice of exchange is the following: exchange happens when this mutual abstinence and reconciliation takes place. If, as a result of exchange, each participant gets something of equal value, the exchange is just. Also, the idea of exchange helps us to answer the question that is till open in communicative philosophy: intersubjective structure of subjectivity becomes

possible only in the course of mutual abstinence and renunciation.

Höffe, as well as Apel and Habermas, looks for conditions of possibility of social phenomena interpreted in moral perspective. For Rawls such condition of possibility is what he calls "primary position"; Habermas, in his turn, speaks about "practical discourse" based on universal principles of communication, which can guarantee correctness (or justness) of any understanding. Höffe regards transcendental communitarianism, suggested by K.-O.Apel and supported by J.Habermas (that is, postulation of ideal, not particular, community as the key point of transcendental and pragmatic transformation of practical philosophy), as productive idea worth further consideration. Since Apel's and Habermas's ethic of discourse does not address the problem of moral legitimacy of the right to compulsion, Höffe attempts to answer the following question: why man should obey other men, why the right to compulsion exists, and can compulsion be just? In such a way, mostly negative understanding of domination and power as alienation and manipulation is replaced by constructive understanding of them in the light of the paradigm of justice, applied in order to ground both the universal significance of moral norms and the legitimacy of legal norms. This understanding gives us a solution of the problem of legitimacy, so important for political philosophy. Höffe was among the first German philosophers who paid attention to serious structural changes in the subject of justice, and also to the fact that distributive model of justice is essentially pre-modern.

For Höffe, universal and philosophical, non-distributive understanding of justice is a new paradigm that exceeds the limited area of morality and enters the domain of law. In its turn, law, basing on both "cooperative" and "conflict" dimensions of human existence, supports all arguments for understanding justice as exchange. Criteria of distributive justice are always arguable, whereas everyone agrees about the basic requirement of justice as exchange (i.e., communitative justice): namely, that what is given and what is received should be of equal value. If there is an argument about price, exchange should be, at least, mutually profitable.

However, for Höffe, the argument of legitimacy is more important than the strategic argument. State, as the institution primarily responsible for social justice, should provide only secondary, subsidiary social aid. Höffe does not unconditionally support the idea of consensus free of any compulsion (instead of just compulsion). He believes that people who strive to genuine communication in the narrow circle of like-minded friends

eventually come to new, "soft" paternalist despotism. The danger of this gradual, initially imperceptible departure from political life is that we could lose not only our political destiny, but also our human dignity as the core of our both individual and social existence. Speaking about human dignity, Höffe claims that we should exceed the limits of philosophical intuition and transform this intuition into persuasive philosophical argument. The Other's dignity truly appears only if we are ready to receive it. This point was supported, e.g., by E. Levinas; however, Levinas missed another point, namely, that human dignity presupposes moral action. Levinas does not answer the question, why the Other can pretend to moral action that belongs to the domain of legal claims [3, 69].

Höffe does not accept special importance of "community" as understood by contemporary communitarianism. Instead, he argues that universality should be applicable to human rights and liberties, rather than to communication. Common benefits and institutions should exist and be just, and therefore be legitimate for all, not only for the select. Höffe certainly agrees with Habermas that principle of just "involvement of the Other" is relevant not only for conversation, but generally for our existence in the complicated and diversified world. Every community has to be open even for those who wish to remain alien in it, whereas implacable egalitarianism of justice requires sensitivity to individual peculiarities, not just solidarity in communication. At the same time, in methodology Höffe goes farther than communicative philosophy of Apel and Habermas, because he sees the fact which they disregarded in their reasoning. Hypothetical character of Habermas's reasoning is inevitable, given the fact that methods and procedures of communicative philosophy are effective only if people are willing to participate in discourse, discuss problematic situations and suggestions striving to reach an agreement. How to resolve such situations justly? This is the question, topical for Ukraine even today, many years after the horrible war that many people (not only German philosophers) believed to be the last one. Höffe claims that one of his famous books [4] is not just a contribution to understanding the essence of reason, law and justice, but also a search of the ways to realize them. He believes that one of such ways is provided by theory of decision making, which might specify rather abstract theses of discursive ethics, and also might help to avoid simple moralization in conflict resolution.

Next Philosophy of Justice's step towards the new vision of justice was his appeal to expanded version of political anthropology. The problem

here is whether there are natural interests that would justify compulsory political authority. Political anthropology is exactly that part of anthropology proper that concerns the problem of legitimacy in its philosophical dimension. Thus, political anthropology ought to help us cope with anthropological problems related to legitimacy and to the old quarrel between "freedom from domination" and "just domination". One should also note that utopian "freedom from domination" conceptions are based on optimistic anthropological views, whereas adherents of "political domination" theory may incline to excessive anthropological pessimism.

Political anthropology interprets conflict character of human nature basing on the fact that one's freedom of actions is limited by another's freedom of actions – so that our very coexistence in common social space constantly creates possibility of conflicts. Striving to one's aim, one cannot simultaneously be free and limit one's freedom. Eventually political anthropology concludes that conflicts, which accompany people's coexistence, are compulsory. They limit one's freedom by others' freedom. One doesn't need special historical knowledge to understand that if we address only man's social impulses, however strong, we are doomed to failure. One can turn against others for a host of different reasons: poverty, ambition and envy, thirst for property and power, aspiration to impose on others one's religious or political convictions.

To conclude: only the justice of exchange permits us to solve the immediate, practical dilemma: should one hand over a part of one's freedom to social, state, authoritative structures, or be independent of them and be unable to resort to their assistance in case of emergency? People, perforce, mutually abandon part of their freedom as legal agents in order to enjoy their right for freedom. If this abandonment is universal, such exchange may be considered just.

By insisting that everything individual is also social because it requires and is embedded into social context, R.Forst [5] presents intersubjectivity as a fundamental dimension of human existence that shows itself in our ability to self-determination, i.e. freedom, but within the limits of human community. Also his point is that our obligations are no less rooted in our existence than our rights, and law has no priority over good and depends on moral good as a defining factor of justice.

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Ситніченко Л.А. Філософія справедливості в українському контексті.

В статті досліджено одну з головних проблем сучасної філософії – проблему справедливості в принципово важливому методологічному її вимірі та в українському контесті. Доведено, що справедливості належить чільне місце серед інших моральних та соціальних цінностей: саме її люди заборгували один одному, бо вона є тим масштабом, яким вимірюються свобода, рівність, права людини. Для цього аналізується зв'язок та відмінність методологічних зрушень в осягненні поняття справедливості в працях К.-О.Апеля, Ю.Габермаса, О.Гьофе, Р.Форста.

З'ясовано, що Габермас по-новому витлумачує сутність принципів солідарності і справедливості, як нормативних принципів демократичної правової держави, де вимога поваги до гідності кожного ґрунтується на визнанні недоторканості його тіла, життя, власності. Доведено, що О.Гьофе звертає увагу на необхідність принципової зміни розуміння соціальної справедливості, наголошуючи на домодерному, патерналістському сенсі її розподільної моделі. В працях Р.Форста справедливість набуває політичного виміру, адже справедливі політичні чи соціальні відносини можуть існувати лише за умови їх всебічного виправдання, поваги до людської гідності. В новітніх теоріях справедливості йдеться про те, що жертвою несправедливості є насамперед та людина, на яку не зважають у процесі як виробництва, так і розподілу основних благ.

Ключові слова: справедливість, визнання, солідарність, моральні засади, свобода, трансцендентальний обмін, політична антропологія.

Ситниченко Л.А. Философия справедливости в украинском контексте

В статье исследовано одну из главных проблем современной философии – проблему справедливості в принципиально важном методологічному ее измерении и в украинском контесте. Доказано, что справедливости приналежит особое место среди других моральных и социальных ценностей:

именно ее люди задолжали друг другу, ибо она является тем масштабом, каким измеряются свобода, равенство, права человека. Для этого анализируется связь и отличие методологических подходов в осмыслении понятия справедливости в работах К.-О.Апеля, Ю.Хабермаса, О.Хеффе, Р.Форста.

Показано, что Хабермас по-новому интерпретирует сущность принципов справедливости, как нормативних принципов демократического правового государства, где требование уважения к достоинству каждого человека основывается на признании неприкосновенности его тела, жизни, собственности. Доказано, що О.Хеффе обращает внимание на необходимость принципиального изменения понимания социальной справедливости, подчеркивая домодерный, патерналистский смысл ее распределительной модели. В трудах Р.Форста справедливость приобретает политическое измерение, ведь справедливые политические или социальные отношения могут существовать только при условии их всестороннего обоснования, уважения к человеческому достоинству. В современных теориях справедливости речь идет о том, что несправедливо обращаются прежде всего с тем человеком, на которого не обращают внимания в процессе как производства, так и розпределения основных благ.

Ключевые слова: справедливость, признание, солидарность, моральные основания, свобода, трансцендентальный обмен, политическая антропология.

Sytnichenko L. Philosophy of Justice in the Context of Ukraine

This article investigates one of the major problems of modern political philosophy – the problem of justice in its fundamentally important methodological measurement in the Context of Ukraine. It's consistently shown that justice belongs to a prominent place among the moral and social values: particularly its people owe to each other, because it is the scale, which measured freedom, equality and human rights.For this purpose it is analyzed the relationship and difference of methodological changes in grasping the concept of justice in the works of K-O-Apel, J.Habermas, O.Höffe, R.Forst.

It was found that Habermas interprets a new essence of solidarity and justice as normative principles of a democratic state where the requirement of respect for the dignity of each based on the acceptance of the inviolability of his body, life and property. It is proved that O.Höffe draws attention to the need of fundamental changes in the understanding of social justice, emphasizing the pre-modern, paternalistic sense of distributive models. In the writings of R.Frost social justice gain a political dimension, just as political or social relationship can exist only in case of their full justification, respect for human dignity. In the latest theories of justice is said that the victim of injustice is firstly the one who is ignored both in the process of manufacturing and distribution of public goods.

To conclude: only the justice of exchange permits us to solve the immediate, practical dilemma: should one hand over a part of one's freedom to social, state, authoritative structures, or be independent of them and be unable to resort

to their assistance in case of emergency. People, perforce, mutually abandon part of their freedom as legal agents in order to enjoy their right for freedom. If this abandonment is universal, such exchange may be considered just.

By insisting that everything individual is also social because it requires and is embedded into social context, R.Forst presents intersubjectivity as a fundamental dimension of human existence that shows itself in our ability to self-determination, i.e. freedom, but within the limits of human community. Also his point is that our obligations are no less rooted in our existence than our rights, and law has no priority over good and depends on moral good as a defining factor of justice.

Key words: justice, recognition, solidarity, moral principles, freedom, transcendental exchange, political anthropology.