

Two Faces of Social Justice in Bosnia and Herzegovina

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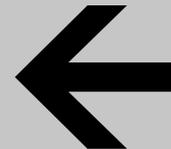
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SVJETLANA NEDIMOVIĆ

LIVING THE STRUGGLE FOR SOCIAL JUSTICE: BOSNIA AND HERZEGOVINA, SPRING 2014

On Thursday 30 January 2014 we, the editors and authors of the texts before you, gathered at a public debate on social justice in Bosnia and Herzegovina. It was also the book launch, meant to crown our nearly year-long reading and writing efforts to return the concept and issue of social justice into our public discussions.

In the sombre light of the local art cinema, which was surprisingly full, our struggle to think and talk social justice continued. The discussion laboured to find its way through the labyrinth of a language no longer alive and a language of the social yet to be born. When we parted that night, the feeling of achievement, already weak, was further weakened as rather than having dealt a blow to the dominant ethno-political discourse of BiH, we had condemned ourselves to a deserted island. Worse still, we did not know what one could do with the thoughts and cognitions which ripened in us over that year of reading, writing and thinking in common.

Little did we know, for only about six days later, we met again on the streets of Sarajevo. We responded to the social uprising in Tuzla, perhaps the last industrial city of BiH, a synonym for the working class even in former Yugoslavia. Now, two months later, we can say that everything changed in that week. Our social reality, above all, changed most dramatically in response to the challenge which had not come through theoretical engagement but with stones and fires and language of swear words combined with slogans. As good a way as any to be reminded of the factor in events so easily overlooked by social sciences and policy-makers – *the moment which is born out of itself.*

The dilemmas which we had grappled with in these texts – those we met again, on the streets and in the plena, the emerging spaces of direct democracy. Is resistance possible? Can we move beyond liberal notions of justice and past-reckoning? How to build solidarity in a fragmented society ridden with distrust? Does the social exist in BiH or it is to be invented? How to talk justice across the barriers of institutional arrangements? How to open new spaces of democracy? And, above all, even if all is said and agreed – whose voices remain on the margins, for some always do?

We have not yet found the answers. Perhaps all we know is that neither answers nor interpretations should be rushed. The meaning of all that has been happening over these weeks remains to be imagined as much as discovered. Its significance however is already felt insofar as the first true challenge to the ethno-political grip over the social reality in BiH has not come from the economic prosperity framework, which for long has been the only contender, much favoured by the international actors. It has come from the social problematic which is now reclaiming its place in both the political and economic sphere.

THINKING AND INVENTING THE IMPOSSIBLE

To talk and write about the social justice in Bosnia and Herzegovina (BiH) in the 21st century's second decade may appear as a superfluous attempt to articulate an irresolvable aporia. Judging by the obvious, the combination of notions of "social" and "justice" is virtually unknown among local intellectuals, activists and the social scene. The idea of social justice is patently marginal even to those who like to think of themselves as leftists, while others tend to see "social justice" mainly as the rubbish from the previous regime – something old-fashioned, outdated, and something that certainly cannot be applied to today's social context. Have we really consented to become victims of the neoliberal capitalist doctrine in which *socially just* is only that which is *commercially* viable and justified, while the society itself is identified with the market? Is it instead possible that we have simply failed to cope with an unnameable system?

The absolute domination of the currently so very popular identity politics (or, in our case, the ethno-national narratives used to conceal the overall restoration of capitalism by maintaining the social tensions) pushes aside everything that has to do with our actual daily existence, including the questions of whether we have jobs and employment contracts, or access to workers' rights, the questions of who employs us and how much we earn, and whether we can afford to pay the bills, etc. On the other hand, the complete absence of *any* kind of curiosity, in this case about our social existence, seems to be a symptomatic feature of BiH society. The few attempts at protesting against social injustice were eventually forced to justify themselves by their ethnic impartiality, and had to keep pointing out their ethnic diversity, or even their non-political character. This was the case with probably the biggest organized protests in post-war BiH, the 2013 protests nicknamed Babylution because it was the FBiH's babies who, deprived of their personal identification numbers (JMBG) could not exercise – to start with – their right to health insurance. The Babylution managed to achieve a Parliamentary decision on temporary regulation on the personal identification number, but the protests ceased before effecting any specific policy change, failing to deliver a new type of political organizing, or new types of organization. The relevant media coverage focused on the Babylution's multi-ethnicity: "The protests united the BiH nations" was one of the most frequent headlines in newspapers, web portals or television reports. The fact that the protests actually united the potentially vulnerable was not much discussed. No one dared to talk about the fact that in this particular case the protesters were mainly members of one ethnic group or at least the residents (either voluntary or involuntary) of one of our many ethno-political spaces. No one dared to translate the newly awakened awareness of social problems into concrete political demands.

It was not much different when it came to the October census. The so called civic forces, those of them who exercise shy leftism as a hobby and those embedded in the ethnic matrix alike, wholeheartedly supported the census questions forced upon us: only the questions on ethnic / national origin, language and religion were considered politically relevant. All the other questions (by the way blissfully inarticulate and shamefully worded too), like those on employment and income, that is to say the questions of social existence, were regarded as second-rate ones, if mentioned at all.

Thus both the JMBG protests and the last census revealed that the BiH society is generally not aware of social justice being a political issue. On the other hand, we actually have no language in which to articulate the obvious problem of social injustice. The existing social reality has doubly suppressed the linguistic idiom which implies the class, class equality and working-class justice. This idiom was first antiquated by being associated with the former system whose legitimacy eroded, or was destroyed, or both. On the other hand, this idiom has been totally depoliticized. The only political questions in BiH are the ones directly related to ethnicity. The questions about whether and how we work, whether and how we join unions, how we manage to survive at all – these questions are considered to be personal, at best – family questions. If it was needed to emphasize that a protest which was primarily social (such

as the Babylonian was) had united national and ethnic groups in BiH (as if unification of nations and ethnicities were more significant and more political than a question of a personal identification number), and if the census question on labor force was treated as a second-rate political issue – then we are actually dealing with a lack of social cohesion and a lack self-awareness of the community. In light of the two events of 2013 mentioned, social justice in BiH appears as yet another curious phrase of the second decade of the 21st century, a linguistic construct with no equivalent in reality; which also happens to answer the question asked at the beginning: Yes, we are both victims *and* supporters of the neo-liberal capitalist ideology in which what is just equals what is cost-effective. At the same time, we are a part of a social non-system and a non-community which might – for all we know – constitute a state, our ethnic group, or something entirely different.

If ever there was a truly impossible task, it is to speak in an “antiquated language” about the social justice which, as it turns out, is of no political concern to us. If ever there was a truly impossible task, it is to discuss the social justice in a society we are not sure exists, and if it does, how we should classify it. In this regard, the papers in this collection are primarily a linguistic venture: they are practically inventing a language needed to invent a new reality. The papers are also political inasmuch as they seek to resolve the aporia of a discourse about an “impossible concept”, to politicize it and to point out the issues that could be a matter of “social justice,” as well as to point out who can, should and must speak about it. The variety of papers and the diversity of authors create a sort of textual patchwork – writing understood as an act of creating a political community where social justice, in order to exist, first must be thought, pronounced, and then, perhaps, even organized.

(Translated by Mirjana Evtov)

About the author

Anela Hakalović holds a master's degree in comparative literature from the University of Sarajevo, where she had studied comparative literature and philosophy. Anela is a doctoral candidate at the same University (“Literature and Culture” studies). She has published several articles in the field of literary criticism and theory. Areas of interest: comparative study of literature, narratology, literary theory, feminist theory. She is currently employed as a program coordinator at the 11/07/95 Gallery.

DIJALA HASANBEGOVIĆ

WE

after we have learnt
all about executions, disappearings,
trepidations, after we've stayed after we've stayed alive
it's become a wonder how we'd thought we'd deserved
and fed and defended our right to excellence.
a host of young thinkers born of pogrom
now rule the fragile scene of thought – excellent and young, today
we sell friendships we sell
healings we trade loyalties for cheerings, and cheerings
we sell to the highest bidder.
For our greatest bit of genius was to stay alive
and the staylife has brought us life and we glow
like foetuses in formalin – kids,
says Professor Farnsworth, you are an unoutlivable species –
I offer this endless field of unscruples
to your corpses so they can go on about truths, nationalism,
the leftists and sadism, about justices about glories,
to raise your voice against the oppressed as you oppress
those unworthy of being so young yet traitors so soon.
But who could resist the temptation to dole out some flattery to wartime kids?
who could resist the temptation to tell the experts on hormonal activism and political analysis that the big ones were good to us
because we're geniuses, simply because
we've stayed alive, digested and grown up
sucking from each other's hearts.

(Translated by Mirzah Purić)

About the author

Dijala Hasanbegović (1981) is a freelance journalist, critic and writer. She lives in Sarajevo.



PLACES OF RESISTANCE

MINERS (2012.)
BRANIMIR PRIJAK

About the author:

Branimir Prijak is a member of the BiH Association of Artists of Applied Arts. He is a photographer, photojournalist, print publication designer, and editor of photography for several portals, daily and weekly newspapers in BiH. In 2001, Branimir co-directed a short film entitled True Love and was its Director of photography. He has held numerous solo exhibitions in the region and beyond, and participated in international group exhibitions. Photos in this volume are part of his photo series
Monuments of the Revolution.



USE
JOHN
EMER

A TRADITION BETRAYED: A BRIEF REVIEW OF THE HISTORY OF TRADE UNIONS IN BIH

The paper is a brief overview of trade unionism in Bosnia and Herzegovina. The BiH trade union went through several phases since its early days, from a stronghold of genuine workers' resistance to a centre of servility towards political elites of today. Although it has often been said that the BiH trade union is dysfunctional because of its fragmentation at all levels, its history suggests its relationship with political structures might be the true problem. At the moment it does not seem likely that the BiH trade union could once again become a labour movement stronghold.

The violations of workers' rights in Bosnia and Herzegovina (BiH) have often been reported through the local media for several years now: the mass layoffs, unpaid wages, unpaid contributions, mobbing in the workplace, disadvantaged workers and their struggle to survive... The cases were numerous enough, and the trade union quite often mentioned as the only cure for the BiH workers' plight, which seems logical given the trade unions' historical role and the 'continuation of the workers' struggle' proclaimed by the Federation of Independent Trade Unions BiH (*Savez samostalnih sindikata BiH – SSSBiH*). Trade unions are generally assumed to be independent organizations dedicated to protection of the workers' interests. However, the developments within the BiH trade unions of today strongly suggest that unions stopped being *strongholds of workers' resistance*, and that there is not much to be expected from the BiH unions organized in this way.

Lately, the BiH trade unions' inefficiency has often been discussed through the lens of the good old times – though not so very old – the times when the workers were self-managed and both the workers and their work were truly appreciated. The story of a successful struggle for workers' rights is often associated with the former trade unions, which – many would argue – were independent and free of political control. However, given the concept of the former trade unions, it is questionable that they had ever been strongholds of labour movement, regardless of the system they operated in, and it is hard to see how the BiH unions of today could ever be the strongholds of labour movement given they are obviously *not* independent, no matter what they believe themselves to be. The few union presidents who – instead of chanting the usual slogans – do their best to move the unions from such a position, suffer sanctions not only from employers but also from the SSSBiH leaders.¹

Before saying that today's trade unions have betrayed the bright traditions of the former Yugoslav trade union which used to be a true labour movement stronghold, one should remember that Yugoslav trade union had actually emerged from the Communist Party, and as such has always been dictated by the Communist Party. Even before the breakup of Yugoslavia in the late eighties of the last century, i.e. during the time of the frequent strikes, the political power used the social uprising for their own political agenda. Slobodan Milošević was the first to demonstrate the true potential of the manipulation strategy.² The BiH trade union has therefore

1) According to Mersiha Beširović, President of the BiH Commerce and Services Union (Sindikat radnika trgovine i uslužnih djelatnosti BiH), soon after she had confronted Ismet Bajramović, the SSSBiH's President, the SSSBiH leadership has started pressuring her union's donors to untie the aid on which her union depended. (The interview was conducted in November 2013)

2) The best example is the Rakovica workers demonstrations in October 1988: the workers demanded wage increase and dismissals of the industry leaders, but they also demanded Slobodan Milošević to address them – as he was known to support workers' actions. A similar pattern was repeated the next day in front of the Federal Assembly where a different group of workers demanded Milošević to address them. The latter demonstrations have later on been commonly referred to as those to which: "People arrived as workers, and left as Serbs."

followed the practice of its predecessors; the only difference being their different controllers. The role once played by the League of Communists of Yugoslavia (*Savez komunista Jugoslavije* – SKJ) is nowadays assumed by a whole list of ruling political parties.³

The brief overview here presented aims to determine the actual position of trade unions in the region during different historical periods and different social systems. An insight into this history might have a sobering effect on the leftist forces still nursing illusions about trade unions being powerful enough to fight for workers' rights, or trade unions as strongholds of workers' resistance and solidarity.

The history of the trade union movement in BiH: The early years

The trade union movement – or rather activism – in BiH dates back to the time of the last years of the Ottoman rule. It first started with spreading the idea of socialism and with resentment against the Turkish and later Austro-Hungarian rule, and eventually (in 1905) resulted in collective bargaining agreements instead of individual contracts, and formation of General Workers' Federation (*Glavni Radnički Savez* – GRS). Vaso Pelagić was a pioneer of socialist ideas denoted as „national and socialistic propaganda which in Bosnia and Herzegovina was characterized by anti-Turkish and anti-Austrian feelings [...] and which created a feeling of resentment towards the alien rule, influencing the awakening of national consciousness and a sense of social justice and equality.“ (Hadžibegović, 1979: 56) The foreign workers, primarily those from Croatia and Serbia, but also from other countries under the rule of the Austro-Hungarian Empire, significantly contributed to organizing of the working class in BiH. “The first union organizations in Bosnia emerged in the second half of 1905. Meanwhile, the unions in Serbia have gone from strength to strength and paved the way for the class battles, having already realized some of their demands and establishing their own internal rules. It was only natural that they should influence awakening of the class consciousness amongst workers in the neighbouring Bosnia; as well as their first organizational steps.“ (Kesić, 1979: 38)

Before the beginning of World War II, the BiH trade union movement went through ups and downs but it was undeniably the first organized labour movement which fought for a fairer society, demanding the elimination of exploitation in the workplace, work-free Sundays, increased wages and more humane working conditions. This type of labour struggle was the first form of resistance to employers who only cared for profit; as such, this movement was completely independent from political influence and was therefore a genuine struggle for workers' rights. The GRS was the central organizational body in the true sense of the word; its members were all trade unions, irrespective of the religious and ethnic background of their respective memberships. Prior to establishing the GRS, workers' strikes had been the most important form of their struggle, but even after the strikes ceased being “the almost exclusive form of struggle [...] they still presented the most powerful tool for achieving higher wages, shorter working hours and better working conditions.“ (Hadžibegović, 1979: 61)

The strikes in BiH organized before 1914 were quite frequent and actually very successful; almost two-thirds of them ended in either complete victory or some form of agreement with employers. Regardless a large percentage of illiteracy, the unresolved land question, the general political turmoil, the economic crisis in the Balkans and other issues which hampered the labour movement of the time, its importance remains unquestionable as it pointed out to the existing social inequalities, exploitation, and privileges of the certain social classes, and consistently insisted on equal rights, national equality and the improvement of working conditions. The then Social Democratic Party actually grew out of the union movement and considered it its strongest tool.

The trade unions continued to operate immediately after the end of World War II, but following the proclamation of the 6th of January Dictatorship in 1929, they were banned. However, it did not take long for the regime to recognize the political potential of the trade

3) Srecko Mihailovic (2001) speaks of the Serbian trade unions' "ownership" change in 1990, which in fact was what happened to all the trade union organizations of the former Yugoslav republics. Milošević's Socialist Party of Serbia (SPS) took the union ownership in Serbia and, according to Mihailović, held it as long as SPS acted as a power generator.

unions, and the government did the best possible to insinuate itself into the unions requesting them to re-register and obtain a governmental approval in order to continue their functions.

Bringing together workers of all nationalities, the League of United Trade Unions of Yugoslavia (*Ujedinjeni radnički sindikalni savez Jugoslavije – URSSJ*) became the most influential union at the time, closely followed by the Yugoslav labour Federation (*Jugoslovenski radnički savez – JUGORAS*) and Croatian labour Federation (*Hrvatski radnički savez*) which was pretty influential among the Croats in BiH. Trying to ensure the working-class support, the government paid a special attention to JUGORAS. "In order to take over the Chambers of labour and other institutions protecting the interests of workers, the regime resorted to direct administrative measures: the management of these institutions was taken from the union federations and passed to JUGORAS. However, the Government has never reached its main goal of ensuring the working-class support, and the rest of the workers organizations succeeded to survive after all." (Hadžirović, 1979: 278) Although the workers were threatened with dismissals and forced into joining JUGORAS, there was no way that the union enjoying the government's open support could ever appeal to the working class.

The transformation of trade unions began with the Communist Party of Yugoslavia (*Komunistička partija Jugoslavije – KPJ*) which had started emphasizing the importance of trade unions as the sites of resistance and the organizations through which the working class could achieve a more just society. The KPJ strived to get unions back into the hands of the proletariat. The Kingdom of Yugoslavia's Ministry of Internal Affairs strongly opposed the actions of the Communists and closely supervised their activities as Communist influence over the working class and the expansion of the labour movement meant less support for the government. "They saw the bottom-up approach the Communists used to realize their plans with the working class as particularly dangerous". (Hadžirović, 1979: 280) Trying to rebuild the workers' trust in trade unions, the KPJ began to spread the idea of a single trade union that would bring together the whole working class and oppose government-controlled organizations (such as JUGORAS). "However, no one could say that the Party here did not succeed to turn the URSSJ trade union organizations, exceptions apart, into working-class struggle organizations, and this despite all the difficulties, the fierce resistance from the Socialists, and all the weaknesses and vulnerabilities of the Communists." (Hadžirović, 1979: 284)

The trade unions in BiH after the Second World War

The history of the BiH trade unions after the Second World War is in fact the history of the Yugoslav trade union since there was a single approach to the societal role of the unions and there were no major differences between the Yugoslav Republics in this regard. During the Second World War, Yugoslavia was undergoing a political and social revolution to boot. After World War II, the trade unions were renewed under the Tito's motto of *brotherhood and unity*. (Kamperelić, 1979: 425-435) Although the workers were involved in the so called workers' committees of the United National Liberation Front (*Jedinstveni narodnooslobodilački front*), the true continuation of their function in socialist Yugoslavia was rather seen within the trade unions. The recovery of trade unions was being pointed out as the priority, but at the same time the creation of trade unions was being discussed – which might seem confusing. This is explained by the fact that the revolutionary struggle went on through the guild-based unions before World War II, while after the war the unions were organized within different industry branches; thus it was possible to speak of both the renewal and the creation of unions. (See: Kamperelić, 1979: 429-430)

The forming of United Trade Unions of Yugoslavia (*Jedinstveni sindikati Jugoslavije*) was initiated by the KPJ, namely the Central Committee of KPJ which was authorized to "restore the trade union movement in Serbia, and establish links with the workers of other federal units in order to form a united trade union of Yugoslavia ...". (Bogdanov, 1979: 436) The United Trade Unions of Yugoslavia was, therefore, since its very creation, or renewal, a body of the Communist Party, and consequently controlled by the Party's Socialist Alliance of Working People of Yugoslavia (*Socijalistički savez radnog naroda Jugoslavije*), formerly the People's Front (*Narodni front*).

The greatest merit of the initial Yugoslav trade union was that it "raised awareness of the toiling masses, mobilized and organized

the working class to quickly restore the destroyed economy and directed it to the road of socialist construction.” (Bogdanov, 1979: 437) The trade unions have played a significant role in the working-class education and training, as the Communist Party tasked them with becoming schools of political, professional and cultural elevation of the working class. (ibidem) The trade unions were therefore seen as some sort of schools of communism. Clearly, the main role of the trade union was emancipatory at the time, and clearly the trade union was subordinated to the leading political force of the new order i.e. the Communist Party, later on the League of Communists of Yugoslavia (*Savez komunista Jugoslavije – SKJ*; the Party changed its name in 1948). All this suggests that the trade union in Yugoslavia has never been politically independent.

Up to the end of the 1940s, the trade unions were primarily expected to limit the power and minimize the opportunism of Directors who were considered ‘the bearers of bureaucratism’. However, after 27 June 1950, with enactment of the Law on the Management of State Economic Enterprises and Higher Economic Associations by the Work Collectives, which provided for the creation of workers’ councils, in terms of protection the workers’ rights these councils became more important than the trade unions. The Instruction on the Establishment and Operation of Workers’ Councils (signed by Đuro Salaj and Boris Kidrič) was delivered to the trade union main committees and to those enterprises that were to form the first workers’ councils. (See: Bogdanov, 1979: 439-440, as well as Petranović, 1988: 291-292)

According to the Instruction, the workers’ councils were to provide workers not only with an insight into the companies’ operation and issues, but also with a possibility to directly influence the corporate management and production. The Instruction also defined tasks and responsibilities of the workers’ councils.

The Instructions clearly stated that the workers’ councils did not imply “lesser roles of directors or trade union branches, as ‘they remain managers of the socialist competition and the mobilizers of the working class respectively, responsible for the plans’ execution and surpassing their goals’” (Petranović, 1988: 292). A clear distinction was set between the trade unions, as a support to the system and the working class, and the workers’ councils, as a kind of corrective mechanisms within economic enterprises. This mechanism was to function primarily for the benefit of the workers of a given firm, which automatically implied benefits for the system and the class as a whole – although this was not explicitly formulated or immediately practiced as such. But no matter the particular interests the workers’ councils represented, the workers’ councils indeed became the strongholds of the labour movement although this role has often been mistakenly attributed to the trade unions which, in fact, were subordinated to the SKJ.

Immediately following the enactment of the Law of 27 June 1950, five hundred and twenty workers’ councils were formed, with additional 7,136 councils created from August to October of the same year, with membership of 155,166 elected employees. (Petranović, 1988: 292-293) According to Petranović, the first workers’ councils were mainly pushing propaganda and trying to raise the morale of their fellow workers in critical situations. Then gradually they gained importance given that the Law on the Management of State Economic Enterprises actually introduced a model of social property, turning the state property into the property controlled by the direct producers i.e. the workers themselves. The time of the workers’ self-management started.

All this certainly influenced the role of trade unions in so far as they traditionally protect the interests of workers and oppose employers, but at the time of the *workers’ self-management* the workers were their own employers. At the SKJ Sixth Congress held in 1952, the trade unions were tasked to represent “the class as a whole in relation to individual companies, and to take care of the proper function of the remuneration system and the workers’ councils election system, about social security, mass education of the workers, and about the workers’ active role in government.”⁴

4) Resolution of the Sixth Congress of the Yugoslav Communist Party, Article 4, Petranović, 1988: 307.

Speaking about the workers' self-management, Pateman (1970) points out a rather vague role of the SKJ in the function of workers' councils, noting that the workers were influenced through several channels. Although the theory states that SKJ had no direct control over them, the SKJ did retain a leading role – through ideological leadership. The important change regarding workers and their councils⁵ occurred in 1964, when the workers' councils became responsible for electing company directors' for a term of four years. Before that, the SKJ could exercise its control over the workers' councils by setting up 'their own' directors.

According to Todor Kuljić, (2003) the workers' councils, though independent, were nevertheless controlled by the Party;⁶ which certainly seems like a contradictory statement. But Kuljić explains that the workers' councils were not responsible for all operational areas, and that the degree of their (in)dependence differed between areas of their responsibility. Kuljić offers examples of three such areas, where "one regarded the questions the experts were expected to answer, the other the income distribution within a factory, and the third the staffing issues;" claiming that in decision-making regarding the staffing, for example, the workers' councils had no autonomy. However, Kuljić stresses out the importance of "the inalienable right to management" that the system implied, as well as the fact that no dismissals were possible without approval of the workers' councils, which was particularly significant in terms of protection of the workers' interests. "It was the workers' councils, whose members were mainly ordinary workers, that decided whether a person is a good worker or not," says Kuljić, adding that regarding certain social issues, the workers' councils were absolutely autonomous.

After getting a better insight into the function and powers of the workers' councils, one has to question the need for the trade unions in the Yugoslav society; why was the institution of trade union needed in the system of self-management where working class *was* the manager and the ownership of the means of production were indeed socialized? What was the real role of the trade unions if it is perfectly clear that the workers' interests were actually protected by the workers' councils?

There is no agreed answer to this question; the website of the Federation of Autonomous Trade Unions of Serbia / *Savez samostalnih sindikata Srbije* (www.sindikatsr.rs) describes several phases that this union went through at the time of Yugoslavia and this could be applied to all other trade unions in Yugoslavia. During the 1940s, until the so-called Law on Self-Government was adopted in 1950, the unions were instrumental in mobilizing the masses to rebuild the war-torn country and in fighting a bureaucracy of managers and directors which at the time was seen as damaging for the working class interests. During the last decade of Yugoslavia, as well as after its dissolution, it became obvious *how damaging* in fact.

The second phase of the Yugoslav trade unions started in 1950, with the workers' self-management system, and ended in 1958, with the Fourth plenary session of the Federation of Trade Unions of Yugoslavia. During this period, the unions were mainly engaged in communal services, the workers' health care and housing. In 1953, the SKJ established the Socialist Alliance of Working People of Yugoslavia (*Savez socijalističkog radnog naroda Jugoslavije – SSRNJ*) which also included the Federation of Trade Unions. Given that SSRNJ was directly controlled by the Party, it actually meant greater Party control over the trade unions. Interestingly, the Constitution of 1963 defined the trade union as an organization with voluntary membership.

The next phase lasted from 1958 to 1974, when the new Constitution was adopted. During this phase the trade unions were committed to improving general working conditions and supporting the 42-hour working week, which was finally introduced in all companies.

5) Carole Pateman (1970: 89-90) points out that workers' councils existed in every enterprise and were elected by all members of an enterprise. In larger enterprises the council members were elected by constituencies. All companies with more than seven employees were required to have a workers' council. If an enterprise had less than 30 employees, all of them were members of the workers' council. In larger enterprises the size of workers' council could range from 15 to 120 members, the average being from 20 to 22. The workers actively participated not only in the workers' councils but in other decision-making processes of their enterprises as well, including referendums.

6) <http://eicpc.net/transversal/0805/kuljic/sr/print>

The trade unions induced by the SKJ showed their true (im)potence after the last Yugoslav constitution was passed in 1974, and throughout the crisis which escalated in 1990.

Trade unions at the time of the Yugoslav economic crisis

According to Novaković, (2007: 122) the period 1960 – 1980 was marked by the unions' indifference to the workers' attempts to strike: the trade unions were trying to dissuade the strikers by emphasizing that the working class was in power. The workers, however, lacked organization and were not able to either articulate their demands or link with other trade unions. Instead of providing support to the strikers, the unions' leadership stood by the Party's leadership and actually helped them in calming the situation down without fulfilling the workers' demands. "They in fact helped the enterprises' management to identify leaders and to silence 'firebrands', 'slackers', 'enemies', and terminate their activities." (Novaković, 2007: 123)

After 1980, when strikers hit the streets in the whole Yugoslavia, it finally became patently clear that the trade unions were protecting the interest of the party officials rather than the interests of the working class. „After 1980, the strikes were not only occasional and unrelated – whole branches of industry were entering into a strike, or various industries located in the same area. [. . .] The strikes evidenced both the increasing stratification of employees and the spreading of the traditional forms of poverty." (Novaković, 2007: 123)

Novaković explains that at the time the trade unions played the role of a fire-fighter. The strikers claimed they were not trade union members "although officially more than 90% of employees were trade union members. But strikers claimed that the unions did not represent their interests, which proved to be true." (Novaković, 2007: 124) Such a high percentage of nominal members of an organization with voluntary membership (as per the Constitution of 1963) raises a series of questions. However, according to Lazić (2011: 219) all employees were unionized during the eighties, but in name only.⁷

Recognizing that under the circumstances the trade union was not able to help or in any way protect them, during that period many workers wished to resign their union membership. They demanded independent trade unions, free of influence of the SKJ. But the answer to that request was always the same: trade unions representing workers' rights and interests already exist.

But what became clear was that there *was* a social gap in Yugoslavia: the working class which was worse off during the economic crisis in Yugoslavia on one side, and political and party leaders – the bureaucracy – on the other. The Trade Union and its leaders were on the latter side.

According to Novaković, (2007: 149-150) the Yugoslav workers have never had neither an independent union nor a political party through which to politically articulate the class consciousness. „The existing union was a political organization, just a medium of the SKJ. Any attempt to form an independent trade union, or to demand a greater autonomy for the existing one, was considered an extra-systemic and hostile activity." (Novaković, 2007: 149-150)

As Novaković brilliantly notes, (2007: 150) the best illustration of the trade union of the last decade of Yugoslavia is its divided membership: the elite on one side and the masses of people with no chance to influence the elite. The masses of people were the working class, the class stripped of its rights, and no longer showing the working-class solidarity. The fragmentation made the working class ideal for instrumentalisation by the bureaucracy.

Milošević was very well aware how significant it was to take over the Federation of Trade Unions of Serbia (*Savez sindikata Srbije* –

7) Lazić states that a survey conducted in Serbia and Croatia in 1980 showed that just over 40% of workers confirmed that they were union members.

SSS) on his way to power; he skilfully took control of the headless and unsolidary working class. „The Federation of Independent Trade Unions, the largest trade union in Serbia, has succeeded the former state union in every way (except in name) and was a loyal ally of the ruling regime during the nineties.” (Lazić, 2011: 220)

After the SSS openly joined the Milošević’s regime and gained certain privileges, some newly formed unions tried to establish themselves as the protectors of workers’ interests and their rights. However, the trade unions have never managed to get rid of their inherited political dependence.

The BiH trade union has followed this very path: it has also conformed to the new political order, accepted the new political masters and replaced the working class affiliation with the ethnic group affiliation.

What about the BiH trade unions today?

The number of trade union members has been steadily declining; the trend is not evident in BiH only, but in the whole region as well.⁸ Employees see the trade unions less and less involved in fight for more humane working conditions and advancement of their rights.

In order to understand where the BiH trade union stands today, it is important to bear in mind not only a highly fanciful administrative system, but also the specific features of the public and private sectors. The public sector is the direct successor to the public sector that had existed in Yugoslavia; the basic change is that what used to be the social property, like factories and enterprises which once belonged to the workers, now belongs to the state. In the public sector the trade union’s function is slightly more noticeable; the workers’ position is considerably more difficult in the private sector where people rightfully fear losing jobs and do not even consider fighting for their rights. In a country where officially 44.5% of the population (even 57.9% of the young population) is unemployed⁹, the workers live in fear of layoffs and pay cuts, and often agree to inhumane working conditions, including a minimum pay rate, unpaid overtime, illegal work, or to being registered as part-time employees although they work full-time hours.

Given the strong competition, the workers do not dare to confront employers who profit illegally, no matter how hard the working conditions. Deeply aware that they could lose even the little they have, the workers do not dare to organize themselves, and suffer various forms of violation of labour laws.

As has already been said, the situation is somewhat better in the public sector¹⁰ although here the workers often face various forms of violations and mobbing in the workplace due to the arbitrariness of directors who are more frequently ‘placed’ as members or supporters of political parties than hired because of their professionalism and technical competence. Interestingly enough, the public sector union branches often face obstruction of employers who perceive them as “hostile” organizations trying to instrumentalise the employees to act against companies or institutions that employ them.

It is pretty obvious that the trade union is not welcomed by employers in either of the sectors.

Attempts to “silence” the union leaders were many and different, and the union membership was often warned about the possible consequences of their union commitment. This in itself sufficed to diminish the union membership given that those who do not yield to threats are generally a minority; consequently the union has been further weakened.

8) Thus, for example, in Serbia, the number of union members dropped from two thirds to one-third from 1998 to 2010. (Stoiljković, Z., 2010: 151)

9) According to the Regular Economic Report for South East Europe, this is the largest unemployment rate in the region.

10) Neither the BiH Agency for Statistics nor the Institute of Statistics of FBiH could offer a breakdown of employment in the public sector in BiH as they keep statistics by industry only; it is therefore impossible to determine the ratio of private-sector and public-sector employees. According to the Republika Srpska Institute of Statistics, there were 200,862 employees there in March 2013, out of which 74,591 in public service, with additional 43,469 in the so-called mixed ownership sector, where the state is a co-owner.

A large number of the BiH trade union branches operate within two umbrella organizations: SSSBiH and SSRS (*Savez sindikata Republike Srpske / Federation of Unions of Republika Srpska*). The SSSBiH has 24 branches registered in the Federation of BiH, mostly in Sarajevo, while SSRS has 19 branches registered in Republika Srpska (RS). There is also the Trade Union of Brčko District (*Sindikat Brčko Distrikta*) – these three form the Confederation of Trade Unions of BiH (*Konfederacija sindikata BiH*). Obviously, the BiH ethno-national division has not bypassed the trade union despite the fact that all workers, regardless of nationality, face exactly the same problems. Given that the BiH trade union reflects the administrative division at all levels of government, there are also ten cantonal unions in FBiH. Unfortunately, further divisions are often notable between members of the same union branch.

Although the fragmentation has often been cited as the main reason for the BiH contemporary trade union's dysfunctional practices, its history suggests the fragmentation may rather be a consequence than a cause. The problem may be deeper, ideological and conceptual, resulting in the fact that the BiH trade unions depend on ethno-political elites and agree to act within the given framework of a hideous political system. The BiH trade unions have been perfectly integrated into the existing political system and not once attempted to question it, let alone change their own position regarding the system itself or the position of its own members in it.

That is why it sounds comical when the SSSBiH claims itself to be 'the continuity of the BiH trade union movement which started in 1905', and the legal successor of SSBiH which changed the name at its Eighth Congress held in 1990. (www.sssbih.com.ba) Given that in January 2011 the SSSBiH signed a Protocol on Cooperation with political parties SDP, SDA, HSP and NSRZB, its functions as daily reported by the media (like the announcements of strikes and work stoppages or requirements allegedly referred to political officials at all governmental levels) cannot be but the illusion of a trade union's functions. The Protocol committed the signatories to the *partnership and dialogue* while Ismet Bajramović, President of the SSSBiH, said that "[t]he time has come when one's livelihood is not determined by high politics but by concrete and correct policies." Mersiha Beširović, President of the BiH Union of Commerce and Services (*Sindikat radnika trgovine i uslužnih djelatnosti*), sees the Protocol as problematic because the union membership had not been consulted and there had not been any public debates about it. Realizing the Protocol as potentially harmful, the union branches have repeatedly asked for its termination, so far in vain. It seems, therefore, quite meaningful to ask: whose interests do the BiH union's representatives actually protect?¹¹

In a recent interview given to *Novi plamen*, the SSSBiH's President himself provided the grounds for asking this question. (*Novi plamen* No. 18, <http://noviplamen.herokuapp.com>) From what he said it was clear only that the Protocol was meant to inform the unionized workers on the "competence, consistency, honesty, quality and other characteristics of political parties which participated in the 2010 general elections." The authors of the Protocol could not tell in which way, if any, the BiH trade union would benefit from that kind of information. Obviously, they can neither tell the potential of various instruments of trade union struggle given that they complain of the politicians who have gotten used to strikes, which should probably mean that there is no use of strikes any more.

The strikes are therefore passé, and there is no trade union struggle – because the BiH trade union, according to the SSSBiH's President, is hampered by its own statute which obliges it to political independence and which, by a causal automatism which

11) The SSSBiH's President is Ismet Bajramović (elected in 2010, reelected in 2014); the presidents of several SSSBiH branches claim that the (non)function of president Bajramović and the SSSBiH administration have been causing dissatisfaction in their membership for years. The union branches have thus requested dismissal of Ismet Bajramović and the SSSBiH management, and announced the process of disassociation from the SSSBiH (report by TV1 on 9 Feb 2013, available at www.tv1.ba/televizija/8694-granski-sindikat-protiv-Bajramovića.html) In the report, Beširović gives details on relationships within the SSSBiH. Namely, the SSSBiH's financial sources are the union branches' accounts – amounting to millions of KM. „We're talking of several union branches (BH Telecom, the government agencies, the public utility services) so liberal with their finances that, for example, more than 200,000 KM simply disappears from BH Telecom account (in two occasions). The dismissed president of that union branch is presently the SSSBiH's conceptual leader. Avad Bahto, dismissed by his own trade union for embezzling funds, nevertheless holds the position of Vice President of the SSSBiH! The union branches which, like the one I represent, struggle through projects to provide the required level of service and activities to a membership that cannot afford more than 3 KM per month in membership fees, those union branches which have often been on strike, have no representation in the SSSBiH governing bodies: out of 23 branches, 12 have lost the right to vote because of the alleged failure to fulfill their statutory obligations! Throughout the year 2012, the branch union I represent, and me personally, were harassed because we 'publicly disagreed with the SSSBiH's policies'; the legal assistance to our membership was cancelled, the SSSBiH staff was forbidden to communicate with me or my colleagues.”

would require rewriting all the theories of political action but also rewriting the history of the said union, enables the politicians and political parties to “free themselves of responsibility and become independent of our actions.” Hence the SSSBiH’s vision does not go any further than the quest for ‘natural allies’ among the political parties. As if it never occurred to anyone that a trade union itself is – a political force! According to Bajramović, only a strong leftist movement could save the disoriented union and a strong leftist movement can only be found among political parties. Bajramović further explains that the problem is, however, that there is no such party in this part of the world, and *that* is because around here anyone can form political coalitions with anyone else. Might it be the reason it gets so easy to forget who came from which side, left or right?! The SSSBiH’s President proclaims the Social Democratic Party as the only one nearing the criteria, as the strongest and the biggest but, he adds that „we are waiting for an answer of the leader of the Left”, whatever that may mean. The conclusion is expectedly absurd: the political power of the trade union – as understood around here – lies in its political master. Some would think that the trade union is offering a hand in marriage!

The situation is not significantly different in RS either. Since the end of the newest war to date, no attempts were noted of the trade unions seriously threatening the authorities, or their policies, or in any way exposing itself to anything similar to what the trade unions used to do to protect the workers before the First World War and during the interwar years.

It is therefore no surprise that the trade union’s leadership and its membership absented themselves from the rare BiH mass demonstrations. As an organization, the union is totally powerless. The few of the union’s representatives who refuse to obey either the SSSBiH or the public sector employers (unfortunately, it is almost impossible to talk about the private sector) are an absolute minority and, as such, totally powerless.

And that is precisely the reason why the SSSBiH – or, for that matter, any other umbrella organization in BiH – *cannot* be considered the successor of the Union of 1905 (as stated not the SSSBiH’s website), primarily because the then-union was fiercely opposing the then-government. The SSSBiH can only be the successor to the *Yugoslav trade union* – the only difference between the two is the political master. In its present state, the BiH trade union cannot achieve anything significant for the workers and their rights.

(Translated by Mirjana Evtov)

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FAIRER OUTCOMES IN AN UNFAIR SYSTEM: THE RIGHT TO DIGNIFIED EMPLOYMENT

This paper discusses workers' rights in Bosnia and Herzegovina (BiH), an issue almost completely ignored although, under international law, the country is obliged to respect the human rights and protect the dignity of its citizens. The problems are numerous: the laws themselves, their implementation and monitoring, and the lack of effective mechanisms for the workers' and the trade union's complaints. The paper suggests that decent work conditions could facilitate the development of a more just society, and points to the instruments of struggle for workers' rights already existing in the normative system of BiH law.

„Social justice is more than an ethical imperative; it is a foundation for national stability and global prosperity. Equal opportunity, solidarity and respect for human rights — these are essential to unlocking the full productive potential of nations and peoples.“

Ban Ki-moon, UN Secretary General's message for the World Day of Social Justice, 20 February 2011.

With protests taking place in developed and developing countries alike, the problem of social justice has become ever more evident around the world. The problem of social justice is obviously a matter of norms and ideals, but it is equally a question of realities. No matter how tight the connection between the two, the social justice issues should not be reduced to causation – the unresolved issue of a (universally acceptable or historically and socially specific?) ideal should not be an obstacle to the transformation of reality. There is a question, however, of criteria and instruments that should be used to start this transformation. In BiH, this globally relevant question is especially important considering that we are nowhere near to solving the problems of civil identity and legal-political order. This makes it almost impossible to even discuss legal standards, let alone to reach common conclusions. (N. Kulenović, this volume)

Creative copying

To solve their own practical issues, countries might consider copying successful solutions already applied elsewhere. In the globalized world, the 'copying' implies choosing solutions proven to be the most effective in the majority of countries. But how is effectiveness determined without any criteria? Although there are no absolute and universal criteria, today's world can still offer a starting point for a model for creating a more just social order. With all its faults and problems, the United Nations, being the world's umbrella organization, is in a position to lay the foundations of social justice and – even more importantly – to define the injustice and its possible cures. Naturally, their solutions must have the legitimacy which is partly provided by consent of the majority of the member states, and partly by the already existing universal access to human rights, almost generally accepted as an instrument for fighting against social injustice. "For the United Nations, the pursuit of social justice for all is at the core of our global mission to promote development and human dignity. The adoption by the International Labour Organization of the Declaration on Social Justice for a Fair Globalization is just one recent example of the UN system's commitment to social justice." The Declaration focuses on guaranteeing fair outcomes for all through employment, social protection, social dialogue, and fundamental principles and rights at work.

The General Assembly proclaimed 20 February as World Day of Social Justice in 2007. "Observance of World Day of Social Justice should support efforts of the international community in poverty eradication, the promotion of full employment and decent work,

gender equity and access to social well-being and justice for all.” (www.un.org)

The International Labour Organization (ILO) adopted the Declaration in 2008; it “expresses the universality of the Decent Work Agenda: all Members of the Organization must pursue policies based on the strategic objectives – employment, social protection, social dialogue, and rights at work. At the same time, it stresses a holistic and integrated approach by recognizing that these objectives are “inseparable, interrelated and mutually supportive”, ensuring the role of international labour standards as a useful means of achieving all of them.” (www.ilo.org)

International standards arise from the reality of the domination of capitalism as an economic regime, but they also point to more equitable solutions in the given framework. The decent work agenda is a very powerful tool in this respect, because it requires the implementation of measures that significantly alter the overall social environment.

In its General comment No. 18 on Article 6 of the International Covenant on Economic, Social and Cultural Rights, the UN Committee on Economic, Social and Cultural Rights defines the right to work as an inherent part of human dignity. “Every person has a right to the safeguard of its dignity.” Citizens who live a dignified life are active participants in their communities, and decent work is one of the most important requirements of such a life. As to the question of what decent work is, the shortest answer might be that „decent work [is] a decent life.” (ITUC, 2007.) The emphasis here is on the fundamental individual and workers’ rights respected in terms of occupational safety and remuneration. The formulation of decent work provides the basis for requests of improvement of the position of workers and the commitment the Covenant’s signatories have to fulfil respecting its basic principles. The states should ensure observance of these principles through enactment of appropriate legislation that protects the workers’ rights.

In a holistic human rights approach to achieving the goal of decent work, policies must be formulated with a view to their impact on the human rights of individuals, families, and communities. (MacNaughton and Frey, 2011: 461) The holistic approach also implies the individual and group protection of workers in terms of respecting the right to free choice of employment, the right to freedom of association and the right to form and join trade unions. When it comes to conditions of work safety, the holistic approach links these to the right to health, particularly in the context of the right to prevention and treatment and control of occupational diseases. On the other hand, the right to work provides access to technical and vocational guidance and training, health care, and free access to health facilities. The conditions for decent work are created at three levels: the individual level implies respecting individual rights of workers, the group level implies encouraging affiliations and a dialogue which helps formulating the issues, and the state level implies creating better work conditions which significantly increase the productive workforce and by improving the health of workers improve the health of the whole society – thus significantly reducing the number of those who require direct government assistance through social protection systems.

Bosnia and Herzegovina: The curse of particularities past and present

In a developing country like BiH, work and the possibility of working are essential for the welfare of the whole society. But, in a society where not even those with regular jobs enjoy basic rights and security, it is extremely difficult to guarantee any rights to those who have no possibility of working, or are not able to work. The human rights situation in BiH is generally critical and this certainly includes workers’ rights, (Obradović, 2010:5) while the political environment is not inclined towards any changes. The changes that might have occurred in the field of BiH workers’ rights could be considered anything but positive; on the contrary. (Krželj and Baljak, 2010)

The transition in BiH, as well as throughout the Western Balkans, has been going on for too long. It implied not only the usual processes of transition from one regime to another but also the transition from an armed conflict that caused massive population migrations and generated the so-called hybrid system in which democratic institutions combine with autocratic ideology. (Ekman,

2009.) As Judy Batt explains in *The Western Balkans, Developments in Central and East European Politics*, the process of transition has been particularly painful in the countries emerging from the breakup of Yugoslavia due to, among other things, the particularities of the Yugoslav system which was, unlike the Soviet model, significantly adjusted to its citizens. (2007: 85) It could be argued then, precisely because Yugoslavia was a socially and politically favourable environment, that its population – if compared to that of other transitional countries – got considerably less (and lost much more).

This whole process mostly affected the working class, which used to be the pillar of Yugoslav society, and, thanks to the self-governing model, the key factor in the country's economy. The transition has brought a high unemployment rate instead, and provided fertile ground for the violation of workers' rights and the development of the informal economy. By creating conditions that absolutely ignore the principles of decent work, the transition processes have downgraded the status of workers in BiH during the last twenty years. The working class is now completely disenfranchised due to, among other reasons, the "powerful individuals closely associated with the ruling elites and the growing security apparatus" who took advantage of the privatization process. (Batt, 2007: 86) The communist legacy quickly fell into oblivion and the ideological matrix, of course, completely changed: the idea of the working class as the bearer of social processes has been destroyed systematically. Without an effective institutional stronghold, the workers were left to the underdeveloped and poorly regulated market where the workforce has been completely devalued due to a huge supply and a weak demand, (B. Buljubašić and L. Čuljak, this volume) and caught in the vortex of the economic crisis that constantly deepens, affecting all levels of the society.

In addition, BiH has been coping with the severe consequences of war. Statistics show that 41.5% of the population is poor (SOLIDAR, 2012: 9), meaning that almost half of the population faces some sort of social exclusion and marginalization. With \$ 7,713 per capita, the BiH is the last on the list of Central and Eastern European countries by GDP. (UNDP, 2013: 17)

If we can speak at all of a working class in a country with 40% unemployment rate, where most of the employees are either only nominally employed or work in the administration of the various governmental levels, the working class faces a series of problems that seem unsolvable at the moment. As an illustration, here are the most common forms of violations of workers' rights as listed in the 2010 Preliminary Report on the State of Workers' Rights in Cantons 8 and 10 (West Herzegovina Canton and Livno Canton):

1. Work without a contract, i.e. in the gray economy

2. Violations including:

- unpaid contributions for pension and health insurance for employees
- employers' abuse of probationary period, service contracts and temporary work
- violation of provisions on working hours and on annual vacation with pay
- denying employees the right to use sick leave
- denying the right to maternity leave
- violation of the right to fair remuneration
- unpaid work related allowances proscribed by the labour law (e.g. meal or transportation allowance)
- lack of safety measures.

3. Violations of workers' rights to join and form unions

4. Very few laid-off workers returning to their pre-war workplaces as defined in Article 143 of the BiH Labour Law; which „does not provide a realistic possibility of redressing injustices of the past [...] but mainly a possibility of financial compensation which is difficult to obtain even when there is a court decision.“ (Krželj and Baljak, 2010: 26; see also A. Trkulja, this volume)

5. Discrimination against women in access to employment, hiring and in the workplace

6. Violation of employment rights, e.g. employment discrimination based on sex, national origin, or age, as well as other forms of manipulation of the workforce, such as bribery, nepotism and favouritism including favouritism to members of certain political parties. (Krželj and Baljak, 2010: 26)

Union Organizing: A Prerequisite for Decent Work in BiH, a briefing produced within Decent Work Balkan Network (www.solidar.org), also provides examples of violations of the Labour Law: for instance, a recent analysis of working conditions in the commerce sector in BiH has shown that 41% of the surveyed workers worked more hours than the law allows. Thus 29% of the workers interviewed claimed they worked 10 hours a day, and 12% that they worked 12 hours, or more. The report also showed that employers avoid signing collective agreements in accordance with the law. Only one in five factories has a collective bargaining agreement, which suggests a low level of collective action. Overly long working hours and uncontrolled working conditions indicate that health and safety are put at risk. Such harsh working conditions have consequences for the health of workers and influence the length of their productive life, creating a new class of people in need of social care. If these workers lose the ability to work sooner than expected, more pressure would be created on social systems and healthcare.

Given the state of current BiH legislation, BiH employers are not the only ones to blame for such a situation. According to the Initial Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights of January 2004, BiH legislation is more lenient towards employers than legislation in most countries of the European Union. The report states that the BiH employers face fewer procedural difficulties and bear lower costs of layoffs in terms of the length of notice period and the amount of severance pay than is the case in other European countries. In her report *Protection of Rights in Bosnia and Herzegovina*, Obradović claims that „[a]ll this has been done in order to create a more favourable environment for the private sector development which was at the expense of workers’ rights. On the other hand, high taxes and contributions increasing the labour costs and pushing many entrepreneurs into grey economy remained intact.” (2010:16) Such regulations significantly weakened Legal protection of workers’ rights, while no new jobs were created: the unemployment rate in BiH increased from 24.1% in 2009 to 28% in 2013. Social differences have been deepening and the number of unregistered workers steadily grows – according to the research the Centre for Investigative Reporting (CIN) performed over three months in 2009, more than 240,000 BiH citizens work on the grey labour market. The unreported employment implies the state’s inability to protect the rights of disenfranchised workers condemned to survival on low and irregular wages.

But, as noted above, given the current legislation the situation is not much better for the legally employed either. The current Labour Law is problematic on many levels; the issues relate to contracts in general, especially the fixed-term employment contracts, discrimination, compensation for overtime work, safety in the workplace, and legal protection of workers who lost their jobs during the war. (Being in litigation with its pre-war employees since the end of the war, on various grounds, Aluminium Mostar is possibly the most famous among the many examples).

Obradović explains that the present problems of non-compliance with the provisions of the law applicable to employers’ contractual obligations started with amendments to the Labour Law of 2000. The amendments deleted provisions regarding the employers’ obligation of issuing a written contract of employment to each employee, which had hitherto existed in the general regulation of employment: „[t]he obligation of a written contract still exists only in cases of temporary and provisional jobs (Article 137, Paragraph 1 of the FBiH Labour Law).” (2010:16) According to the previously existing provisions, the fixed-term contract of employment could be concluded only under legally defined conditions, but the amendments allowed the abuse of the fixed-term employment contract. The author further explains that this provision is the most frequently violated, especially in the private sector. The violation mainly refers to Article 19 of the Labour Law, which in its Section 4 specifies that a fixed-term contract repeatedly concluded with the same employer for a period exceeding two years is considered a full-time employment contract. (2010: 20)

The fact that workers do not have job security has major implications for society as a whole, especially for young people. The uncertainty of the employment leads to uncertainty in the planning of life, so that fewer and fewer young people decide to found a family in BiH today. The decrease in the number of marriages, as well as in the number of live births, is evident even when comparing data over a very short period of time. There were 14,249 live births registered in BiH during the first six months of 2013, i.e. 6.12% less than in the same period in 2012, and 3.96% less marriages in the same period (Agency for Statistics of BiH, 2013: 2). It is

indicative that the number of stillbirths increased by 1.51% as compared to 2012. (ibidem) Such devastating statistics are easily connected with the existing lack of social and health care, poor working conditions, failure to comply with the right to maternity leave and a sense of insecurity in the permanency of the job.

A country's planning and development depend, among other things, on its birth rate. BiH is increasingly becoming a country of old people in which the existing workforce has more and more difficulties to provide revenue necessary for dignified aging. The costs of the state budget increase, leaving very little room for development and improvement. The BiH economy today boils down to the expenditure and repayment of debts, while its legislators and government seem to be unaware of the consequences of such a situation and are obviously not sure how to proceed.

Unlike the legislators, BiH union members seem to begin to understand the importance of the principles of decent work, at least judging by the fact they had a negative view of the final proposal of the Labour Law. Believing that the Law rather reduced the workers' rights than strengthening them; the BiH unions organized the protests on the International Day for Decent Work in October 2013, where it was stated: „Far from protecting the rights that we currently have, [the proposed Law] rather endangers them. That is why all of us must be willing and determined to defend the Labour Law, i.e. the workers' Constitution, in every possible way.“ (Glas Brotnja, October 2013)

Interestingly enough, the situation is not much different in either Croatia or Serbia, where unions do negotiate with governments on new labour laws. In Croatia, the leaders of five labour unions called the government for incompetence, arrogance and social insensitivity. (Kuzmanović, 2013) These developments clearly indicate devastating trends in this area, but also the birth of the trade union resistance. Which direction the resistance is to take, and which demands are the workers to refer to their governments? Maybe the answer is the simple request seen in recent union protests in Sarajevo: *Restore the dignity of workers!* The answer to the question of *how* to do that could actually be simpler than one thinks.

Restoring dignity

Providing workers with a somewhat better status and dignity does not necessarily mean identifying new solutions. On the contrary, there is a number of international instruments which support the workers' status and to which our country had already committed. First of all, the basic human rights under the UN Declaration of Human Rights set a minimum standard of legislation all around the world. When it comes to the workers' rights in particular, BiH has ratified more than 50 ILO conventions. BiH's obligations under these conventions are clear: „By ratifying the International Covenant on Economic, Social and Cultural Rights, the revised European Social Charter and certain ILO conventions, the state of Bosnia and Herzegovina and all levels of its government committed to ensure the realization and legal protection of labour and economic rights.“ (Obrovčić, 2010: 5) By ratifying the ILO Conventions, BiH undertook to respect the principles of decent work in its legislation, given that the ILO has been following its guiding spirit of decent work as the foundation of a dignified life ever since 1999.¹²

Unfortunately, the social justice and workers' rights are constantly ignored in our country as politically irrelevant issues. The level of respect for workers' rights is far from satisfactory despite all the international regulations and instruments governing the area of economic, labour and social rights, despite the international labour conventions BiH has ratified, despite domestic laws and by-laws, the Constitution, collective agreements, internal rules and a multitude of legal institutions such as labour inspection, the courts and the Human Rights Ombudsmen. The problem is, of course, the implementation of existing legal instruments, as well as the very poor

12) The BiH Labour Law: Article 5 – the provision on employment non-discrimination, Article 6 – the provision on health care and social security, Article 7 – social protection in case of maternity, Article 8 – Health care and social security in the event of termination of employment by redundancy, Articles 9, 10 and 11 – the right to associate and form trade unions.

monitoring mechanisms network. This obviously has to do with the endless nightmare of our vast and complicated state apparatus. The existing labour relations system implies the judiciary as the first instance to protect workers' rights but the process has proven to be very complicated, expensive and long lasting. The SOLIDAR's 2012 poll showed 22,887 cases in the field of labour relations being processed in the 54 BiH law courts surveyed out of a total of 70 (Demir, 2011: 2). This is due to corrupted public officials and insufficient capacity of the labour inspection offices.

Some of the EU and ILO recommendations concern the need of addressing these issues at the state level, i.e. a simpler and more efficient system for monitoring the implementation of workers' rights and an Economic and Social Council at the state level, as well as the need to harmonize the entity laws with the decent work principles.

Given that BiH is, after all, still a potential candidate for accession to the European Union, the pressure coming from the international community has proven insufficient. The pressure should come from within, from the workers themselves; and it seems to have slowly started.¹³ In order to determine forms of this fight, we are going to deal with four basic principles of the decent work (and benefits they imply) as elaborated in the 1999 Report of the Director-General to the ILO meeting in its 87th Session. The four components of the decent work are: employment, social protection, workers' rights and social dialogue. The ILO Decent Work Agenda is therefore based on the four key principles: creating jobs, delivering workers' rights, promoting social protection and engaging in social dialogue. (HelpAge International, 2009:6)

Employment

Employment implies developing an economy that encourages investment, entrepreneurship, skills development, job creation and sustainable livelihood. According to Dharam Ghai (2003), employment covers different types of jobs, and includes quantitative and qualitative dimensions. To achieve improvements in living standard, and economic growth, it is necessary to develop remunerative employment i.e. to create better jobs. In the context of the right to decent work, employment means income that allows dignified living, equal treatment and equal opportunities for all, good working conditions, health and safety in the workplace, the possibility of meaningful and productive work, and the possibility of personal development.

In a country which still deals with the consequences of the recession, the transition and the war, in a country where 44.8% of working age population (552,707) have no permanent job while every third citizen works as an unregistered worker (Agencija za rad i zapošljavanje / Agency for Labour and Employment, October 2013) the job creation should be seen as a key development strategy.

It should be noted that although the right to decent work in itself does not guarantee a higher rate of employment (crucial for the development of the modern society) it specifies the conditions under which employment meets the needs of a broad group of people, particularly the people (potentially) discriminated against in hiring and / or work. In most countries, this group actually makes up a majority of the labour market, as it includes women, men, youth and migrants who work, or look for work. The right to decent work does not apply only to workers employed in the formal sector but also in the informal economy, part-time and self-employed persons and domestic employees (Ghai, 2003: 130). Overall, therefore, the right to decent work opens up the possibility of equal treatment and dignity of all citizens, and promises the possibility of productivity even to those who do not work in the formal labour market, thus reducing pressure on social protection systems.

13) Given that workers in commerce are deemed the most vulnerable category among BiH workers, Sindikat radnika trgovine i uslužnih djelatnosti STBiH / Commerce Workers' Union decided to dedicate itself to promoting the right to decent work (SuGLAS, 2011), considering it crucial for improving the status of workers in BiH.

Workers' rights

Positive working conditions should be created in view of workers' rights, including the freedom of association and freedom of expression and genuine participation in decisions affecting the workers themselves. The latter is crucially important given that the workers, especially the poor and disadvantaged ones, have no other chance of influencing laws aimed at protection of their interests. Workers' rights also include collective bargaining, freedom from discrimination, freedom from forced labour, freedom from child labour, legal recognition and access to the legal system, the existence of labour legislation and the general rule of law.

The BiH model of securing workers' rights 'internally', which "[...] includes a procedure in the workplace initiated by employers in the form of issuing individual legal acts governing the rights and obligations concerning labour relations and procedures to protect workers within the working environment [...]" (SOLIDAR, 2012: 18), is still underdeveloped but as such presents an opportunity.

Protecting workers' rights implies legal protection from discrimination; the right to decent work implies the state obligations to respect, protect and fulfil human rights. The emphasis here is on "[e]nsuring equality of opportunity and treatment, aimed at eliminating all forms of negative discrimination based on, but not limited to, race, color, gender, age, religion, political affiliation, nationality, social origin, social condition and health." (Ethos Institute, 2011: 46) Consequently, the right to decent work could be not only a point of reference for the formulation of the workers' demands, but also a formal legal tool for ensuring the conditions that guarantee equal opportunities and equal treatment for all.

In this respect, the right to decent work demonstrates its true potential in the context of marginalized groups and discrimination in the workplace, and work in difficult conditions. It allows severe violations of human rights and human dignity and the problems of forced labour to be addressed; as Klara Skrivankova explained: "People affected by forced labour should be seen as workers, active players in the labour market, rather than passive victims. Workers that are vulnerable to forced labour should be empowered to act and supported by institutions through which they can claim their rights by lodging complaints." (2010:30) Exercising the freedom of association, workers could use trade unions to realize the right to safe working conditions and the right to choose their profession.

Social protection

Social protection is one of the most important means of workers' protection, promoting productivity and inclusion. It also implies guaranteed leisure time and relaxation, taking care of family life and social values, an adequate compensation in case of a reduction of income, and access to adequate health care. It emphasizes the importance of links between productive employment and social security of those who are not employed no matter the reason, and providing protection to vulnerable people in case of illness, old age, disability, pregnancy or unemployment, and ultimately leads to a more just and more inclusive society. Through social protection, the right to decent work reaches the most vulnerable¹⁴ beneficiaries and provides them with dignified treatment even when they are unable to work, which requires the state to determine a compensation and social protection for them according to its possibilities.

In formulating strategies for better implementation of the right to decent work, it should not be forgotten that social protection, if well planned, greatly reduces pressure on the state budget. In 2011, there were 639,364 beneficiaries of social services in BiH (Statistics Agency, 2012: 17) which indicates (quite justified) high government expenditure for this purpose. However, some of the social protection beneficiaries, such as persons with disabilities, could work within their own capabilities. The right to decent work implies employing persons with disabilities and ensuring them a dignified life; which ultimately means a new workforce that uses a variety of individual skills as new active agents of society and, through developing self-confidence and a sense of belonging and

14) 'Vulnerable' implies persons unable to work due to illness, age, disability, pregnancy or unemployment (87th ILO Session, 1999)

contributing to the community, ultimately contribute to the greater good of society. This is an example of how decent work not only provides dignity to individuals, but also savings to the state budget.

Social dialogue

Regarding issues of unequal treatment in hiring and / or work, it was already mentioned that the right to decent work includes components based on civil and political rights such as freedom of association, non-discrimination in the workplace, the absence of forced labour and child labour and the „social dialogue, in which workers exercise their right to present their views, defend their interests and engage in discussions to negotiate work-related matters with employers and authorities.“ (Ghai, 2003: 113)

The idea of social dialogue implies the right of workers and employers to form and join associations which represent their interest and through which they negotiate; it also implies official structures and processes for their discussion and resolving economic issues, as social dialogue remains the best means to increase social stability, and ensure a steady economic growth. (ITUC, 2007)

ILO believes that enabling and promoting the social dialogue at workplace is one of the most important factors for the development of society. Strong and independent organizations of employees and employers are key factor in increasing productivity, preventing disputes and building a cohesive society. Although the right to union organizing and the right to collective bargaining are frequently violated in BiH, records of violations of the right to union organizing are not kept. Tripartite consultations at the national level, and the harmonization of socio-economic policies between the entities are lacking; and while there are frequent layoffs of union stewards, the existing ethno-nationalist divisions within the unions also undermine their position. (Demir, 2011: 8-11) For the trade unions to regain a role in policy making, the involvement of all stakeholders would be required. The international community should put pressure on the state authorities to adopt the Rulebook on the Register of trade unions. The BiH authorities should recognize trade unions as partners in designing, implementing and monitoring the implementation of labour laws, and develop programs of promotion of trade union organizations. Finally, the trade unions should be united in their demands and fight for the implementation of their right to decent work which should be a valid reason for them to cooperate at all levels.

Decent work “is based on the conviction that these four components are positively correlated, and that they together create the best prospects for social progress and development.” (ITUC, 2008.) Therefore all four conditions need to be fulfilled in order to achieve a minimum of social justice.

Naturally, not all societies have equal economic power guaranteeing the level of social justice would be the same in every country. As Dharam Ghai concluded, additional segments of the right to decent work, the social protection and income protection are defined according to the capacity and the level of development of any given society. Adapting the principles of decent work to social and economic context of the country would enable the fulfilment of minimum standards for dignified life of its citizens.

In demanding the implementation of the right to decent work it should not be forgotten that the current BiH problems cannot be solved all at once but a gradual improvement should be expected. Better conditions at work act as incentive for greater productivity which provides the foundation for new jobs and a more prosperous society. In order to start this process, the workers, unions, government, even the international community, should all work together towards achieving social justice in our society.

While waiting for the better days

It is pretty obvious that the capitalist system faces a number of serious issues nowadays. No one can say whether radical reforms would be needed at some point, or perhaps a complete transformation of the existing regime, but people trying to live with dignity

today cannot freeze their lives and wait for better days to come. It is therefore necessary to seek equitable solutions within the existing, undoubtedly unjust system. The right to decent work is one of the most realistic paths towards a fairer social deal. Resolving issues such as job creation, equitable distribution of wages, organization of workers, the general position of women and youth, etc. starts setting the foundation of an egalitarian society which fulfils the basic principles of social justice and has a material basis to provide the social protection to categories of society who are not able to work and earn for themselves.

The right to decent work presents an ideal framework for formulating the requirements for the exercise of workers' rights and social justice in BiH, given that the proper implementation of the principle of the right to decent work offers answers to all of the most pressing BiH problems – discrimination, lack of social protection and safety in the workplace, and social protection of persons who have no permanent and / or formal employment. The right to decent work – a mechanism to which our country has already committed by ratifying the ILO conventions, and which is therefore already a part of our normative framework – offers nothing radical, it does not set unrealistic demands or ask for something drastically new and unknown. By placing individual liberal values in the context of group norms, and at the same time adjusting the workers' (possibly) communist heritage to a new ideological and economic framework, the right to decent work shows that the transition process does not have to take a radical form and that historical continuities, as discussed by Boris Buden for example, do not necessarily have only negative consequences. The international legal instruments, such as the right to decent work, suggest that changes may occur by accepting positive solutions of both economic systems, while developing a society inclined towards all citizens equally, a society whose participants are equally active in political and economic processes, a society that creates opportunities for marginalized groups to be included into the labour system.

Achieving decent work conditions, in the function of development and inclusion, contributes to the creation of a more just, or at least less unjust society.

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POVERTY – THE DEATH OF RESISTANCE

When talking about Bosnia and Herzegovina, do we dare use the phrase “workers’ resistance”, and if so, what does it mean? In other words, is there any transformative charge in all those groups of workers we meet in the streets every day, if they are workers at all? Or are they all just a scream of profound despair and yet another BiH paradox: a country of cheated and humiliated workers is at the same time one without the working class as a subject of social change.

Freedom is the recognition of necessity.
Engels

In the late 1980s, Yugoslavia was rather different from the Yugoslavia which had set out to industrialize rapidly after World War II. It could be said that it was a mere shadow of the Yugoslavia as it was originally conceived, seeing that in its last decade the gap between the most developed republic – Slovenia – and the least developed autonomous province – Kosovo – was greater than in 1945. The changes initiated in 1989 were preceded by a long economic and structural crisis. Being involved in the global economic and financial system to a much greater extent than one would assume a socialist country to be, Yugoslavia did not avoid the recession of the 1970s. The deepening of the crisis affected the employment, so a rise of about 13% in the unemployment rate was recorded at the time, higher than in any Eastern European country. One of the consequences was the export of labour force: almost a million Yugoslavs fit for work migrated to Western European countries.

In the eighties, when the crisis was at its deepest, “the public sector stopped facilitating social mobility; family background and place of origin became increasingly important as a way of distributing social services and finding employment.” (Musić, 2011: 97) Although the 1974 constitution greatly contributed to the instrumentalisation of the working class, the working class refused to passively accept such a situation. In 1980, a total of 13,504 workers participated in 253 strikes, while three years later 21,776 workers took part in 336 strikes. In 1988 the number of strikers rose to 386,123 nationwide; a total of 1,851 strikes was recorded. (Fočo, 1989: 6) Right before its breakup, Yugoslavia topped Europe in terms of work stoppages.

These data refute the theses of certain researchers who argue that even the Yugoslav model of socialism, more liberal and lax, did not allow for autonomous political initiative and non-partisan political action by citizens. Thus Stephen Crowley and David Ost argue, taking the resource-mobilization theory as their starting point, that workers under communism lagged behind the workers in Western Europe because there were no channels of communication between factory cadre and party officials, but also due to the domination of the party over the union which they depict as a body without considerable influence on workers and without any mobilization potential. While this may be true of the unions (B. Buljubašić, this volume), the researchers too easily dismiss the activities of workers’ councils and the uniqueness of the Yugoslav brand of self-managing socialism.

However, Yugoslavia was at the time already on the verge of a radical social transformation. In 1989, the Federal Executive Council presided by Ante Marković passed a new act on companies which, for the first time after WWII, put public, state and private ownership on equal legal footing. This started fundamental social changes and significantly changed the role and status of the working class. However, the state fell apart; Bosnia and Herzegovina was pushed into a war which has had a profound influence on the course of transition in Yugoslavia.

Post-war transition and the disappearance of workers' resistance

In Bosnia and Herzegovina in the 1990s, the working class as a social force and a political subject retreated before national collectives. Class consciousness retreated before national identity that proved to have high mobilization potential, but this was not the cause of the transformation of the working class. The cause was material, not symbolic. When soldiers returned from the frontlines to their everyday lives, perhaps also to reassume their role in the production process, it became apparent that a significant part of the population did not participate in any kind of production, i.e. they had lost their jobs. A significant part of the population turned into a mass of people which merely existed on the historical scene, with no access to political or economic power. The class solidarity disappeared as a dynamic relation which implied identity distance and situational closeness, i.e. responsibility rather than sentiment; it was supplanted by a sense of belonging based on homogeneity. Unlike national identity, one's class is determined only by one's position in the production system; it therefore fulfils a rather different social role. To put it succinctly, the nation derives from 'to be', the class from 'to do'.

During the tumultuous period in which the state of three ethno-nations was constructed, the overnight privatization at the expense of workers was not annulled. No one acknowledged that mistakes had been made and that damage had been inflicted on entire generations, and there was no attempt to rectify the mistakes systemically. Those who had pointed them out the most – the workers in the privatized companies – were either cheated or even prosecuted for obstruction of privatization or bankruptcy composition, or for defending their acquired benefits. The unions in the service of the political elites were fragmented and pacified, workers' councils are not even being mentioned, and the legislation persistently makes labour terms more flexible. (E. Bavčić, this volume) BiH society thus became dependent on the financial capital of, and money transfers from, migrant workers (in 2008 money transfers made up 14.8% of the GDP). In the meantime, negotiating positions were completely lost, and people are now forced to work for much lower wages, with either bad social services or none at all. The workers lost their jobs en masse, becoming redundant and being forced to accept jobs without appropriate remuneration and union protection, along with all kinds of illegal and legal labour terms expressly aimed against workers.

In such a situation, work stoppages on the empty floors of factories which do not work because they were not bought to produce, but for the assets to be sold off, seem an absurdity. Out of the masses of the aggrieved, only small isolated groups take to the streets in protest. Badiou describes those episodes of resistance – which is not really resistance – thus: “[n]o new thinking of politics has emerged on a mass scale from these attempts, no new vocabulary has emerged from the rhetoric of protest and the union bosses have finally managed to convince everyone that we must wait . . . for elections.” (Just as our politicians here advised us during the so-called Babylution: Wait for the elections.)

Masses in lieu of a subject

From a Marxist standpoint, the concept of class struggle primarily implies caring for those who do not have what the employed have, and then addressing the workplace problems faced by those who do have jobs. But who would bother with that, if the unemployment rate is over 40%? Such levels of unemployment directly endanger the employed few – the existence of something Marx had called a reserve army of labour is destructive of any negotiating position. Poverty destroys the very fabric of society, breaking it down into politically insignificant groups. The employed cannot identify with the unemployed because they see them as a threat or a budgetary burden at best. The unemployed cannot feel solidarity with the employed because they do not see any similarity between their own socio-economic position and that of the employed; in addition, the practice of employing on the strength of clan and party membership creates a gap between those within the system, and those outside of it. On top of it all, not even those with jobs are unified because many of them are employed on paper only, while in reality they have not been paid for years and they languish on the margins of the budget.

Thus, the working class has gone from a politically active subject to an amorphous mass of small interest groups, antagonistic or indifferent to one another, and as such it is unable to articulate resistance or issues of social justice which affect society as a whole. As a rule, nobody calls for tackling general social issues in the country, and on those rare occasions when such a demand is made, the state level has no institutional capacities for anything other than keeping the administration alive. Neither the employed nor the unemployed are a social class; they are simply – the poor. Marx did point out that poverty in itself is a political issue, but the French Revolution showed that while the poor can be the engine of change they are not a socially constituting force. As Hannah Arendt says in her book *On Revolution*, “[p]overty is abject because it puts men under the absolute dictate of their bodies, that is, under the absolute dictatorship of necessity as all men know it from their most intimate experience and outside all speculations. It was under the rule of this necessity that the multitude rushed to the assistance of the French Revolution, inspired it, drove it onward, and eventually sent it to its doom, for this was the multitude of the poor.”

Led by particular interests, by ideology of a free society but also by sheer fear, the inhabitants of Bosnia and Herzegovina fail to articulate political issues and develop solidarity. Solidarity, however, is the basic principle of political socialization and the key precondition of political struggle.

(Translated by Mirzah Purić)

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THE FORGOTTEN

BILEĆA (2012.)
BRANIMIR PRIJAK



ON THE FRINGES OF THE SYSTEM: INVISIBLE MEMBERS OF SOCIETY

The paper problematizes the practice and the underlying principles of the distributive model of social justice, on the basis of the distinction between economic, political and social membership, in the context of global migrations. The question is, to what extent is the distributive justice applicable to new membership systems and new forms of economic and labour mobilisation, and whether the position of illegal immigrants is crucial for economic sustainability of the global market.

The failure of the sovereign state to maintain firm borders between citizens and non-citizens, members and non-members of the community, is reflected by the fact that illegal/undocumented immigrants function as one of the levers of growth of society as a whole. The position of migrant workers as an economic force bursting out from the fringes of the recipient society, originating from other states and communities, brings into question the premise of social justice as distribution of goods within a state. Namely, the application of the distributive model of social justice in a sovereign state implies the inclusion of members and the exclusion of informal or unrecognised members of society.

The question of immigrants is often framed as controversial, which is fundamentally wrong. Theorising on non-members of a community from a political standpoint only is typical of a project which in today's world is being put to the test more and more often, namely the sovereign state, which has the right to recruit new members or bar access to the community, and uses this prerogative to keep an eye on, protect and defend full members of the community.

The Westphalian concept of the state rests on fundamental inequality of citizens and non-citizens. The power of the sovereign state derives from the protection it affords its citizens, which is channelled, among other things, through national identity. Identity and identity groups are defined in an opposition to otherness, often the otherness of immigrants. Although immigrants establish *some kind of a relation* with the state, this relation is in most cases tentative, and the rights of the immigrants are limited – in the case of the so-called illegal immigrants, they are non-existent. They are completely excluded from the institutional and normative framework, except in an administrative sense, and when they are administrated it is for the purpose of removing them from the national corpus.

This hierarchy of membership¹⁵ establishes social injustice as a common practice of the state directed against migrants. Paradoxically, justice' and 'equity' are institutionalised through a channel which stimulates injustice, through stripped down, reduced political membership where politics is identified with administration.

To what extent does political membership stemming from the very idea of the sovereign state perpetuate injustice? The way we understand it today, can it remain crucial for the concept and principles of social justice in a time of ubiquitous international migrations? In the age of the greatest scale of international labour migrations (Castells, Miller, 2003:6) and the greatest influence of global economic relations on the economies of states, one cannot neglect the growing importance of economic membership as a significant element of the local, but also global/international community. In an age of perpetual instability, insecurity and

15) Jordan and Düvell (2003) use the term 'membership' to refer to the inclusion in any community able to ensure social goods, services and rights for its members.

unsafe political borders, the membership system is to a great extent defined by global economic relations. The domination of market relations over all other types of relations makes political borders much more flexible and attunes them to the *raison économique*, as opposed to the *raison d'état* of sovereign states that willingly subject themselves to the market paradigm, buying and selling the 'cheap' labour force required by capitalism. Economic membership has a decisive influence on the makeup of social justice or injustice. The distributive concept of social justice rests, in substantial if not normative terms, on economic membership which implies first and foremost participation in the generation of community goods but also in their distribution, as well as in the expenses of maintaining the community (Jordan, Düvel, 2003:52). Although social justice based on the distribution and allocation of social resources, manner of distribution and the role of the state (Miller, 2003:11) greatly depends on economic membership, the group which has the right to social justice is often defined in terms of political, not economic membership. Therefore the fact that illegal immigrants are not political members although they are economic members necessarily implies their exclusion from enjoying the fruits of social justice, from which it follows that social justice based on political membership alone cannot be an adequate model, because those who participate in the production of goods do not participate in their distribution.

Economic membership, however, is not enough to dispute the fairness and equity of the social order, as it is considered that the participants in economic transactions – political members and non-members alike – profit in accordance with the laws of the free market and capitalist economy, and are therefore not deprived of the fruits of their labour. The autonomy of the normative systems of legitimisation of the economic and political sphere precludes using the events from one sphere to dispute the other.

But the structure of membership in a community is (fortunately) not binary, and a third category may prove to be the alternative to the order which is unjust in its very idea. Apart from the domination of political membership in the political sphere of the sovereign state, as well as economic membership which is gaining in importance under the aegis of globalisation and free market, society and community develop their own, local dynamic, engendering *social* membership in everyday relations within the community, where formal, administrative membership matters least. Social membership does not necessarily mean belonging and identifying with a certain group, nor does it imply in-group recognition. On the contrary, social membership implies community dynamics, positioning in relation to other community members, but at the same also economic, cultural and political exchange, against the proclaimed autonomy of those spheres, which in the long run creates the mechanisms for new forms of social solidarity, thus changing the very principles on which the boundaries of social justice rest.

Distribution paradigm and political membership

Distribution is still the dominant paradigm in matters of social justice. Distributive justice is a very broad concept, an idea which permeates a whole world of ideational goods: "The idea of distributive justice has as much to do with being and doing as with having, as much to do with production as with consumption" (Walzer, 1983: 3). In that sense, it has as much to do with being and doing as with having, as much to do with production as with consumption, as much to do with identity and status as with land, capital, or personal possessions. (ibidem: 6) Membership itself is thus the primary good that we distribute to one another within the community. (ibidem: 31) Therefore, membership as such is *received* as a social good, and it connotes certain social meanings within the community.

In the framework settings of a sovereign nation state, political membership is not possible without citizenship and formal belonging. Political membership would imply participation, collective action, civic qualities and virtues. (Jordan, Düvell, 2003: 52) The principle is simple and rigid – being a citizen in the political imagination of the modern state means to be able to enjoy the privilege of participating in redistribution: "Anyone who is a full member of such a society is understood to be the bearer of a set of rights and obligations that together define the status of citizen." (Miller, 2003: 237)

Starting from Rawls's theory and his assumption that society is a just system of social relations between equal and free citizens who

enjoy equal liberties and equal opportunities, we focus on the manner of distribution of social goods. Justice is fairness and equality, and any potential inequality must be of greatest benefit for the most vulnerable members of society. (Rawls, 2000: 5) Theory of justice, just as the many theories which take rise from the dialogue with it, mostly leaves out the segment of applicability to those who are not the members of the community. In the distributive concept of social justice, its partial implementation and, ultimately, its reproduction of inequality and injustice, the selection of members is based on political, administrative and formal membership – i.e. citizenship.

In his definitions of human relations and their reflections on social justice, Miller lists *citizenship*, among other things, as the determinant of membership in the political developments of modern liberal democratic societies. However, Miller argues, citizens are connected not only through their community (solidaristic community) and instrumental interests (material goods), but also through their fellow citizens. As Walzer puts it, our place in the economy, our standing in the political order, our reputations and material holdings, come to us from other men and women. (Walzer, 1983:3) But if only one form of membership is crucial for the formation of a group, i.e. if only one aspect of membership determines everything else, what we are dealing with is a functional inapplicability of equality.

As Nancy Fraser argues, in arguing for different forms or priorities of social justice, one often has to answer the question “what?” – i.e. what counts as just establishment of social relationships, and the question “over whom?” is often omitted. In the context of a sovereign state, the answer is unambiguously applicable to – the citizens. Not even Fraser delves deeper into the problem of membership in the distributive segment of justice, although she does point to that problem in the very framework of social justice. On the contrary, she, too, focuses on *representation*, thinking that membership in a political community is above all a matter of exclusion from the representative sample of the community. Although Fraser finds a leg to stand on in the reciprocal relation between representativeness and distribution, she fails to move the concept of membership out of the political realm. (Fraser, 1997)

Not even the ubiquitous transnational, global, cosmopolitan theory could destroy the domination and historical rootedness of citizenship as a category of political membership and the supreme criterion which defines all rights and obligations, first and foremost because it uses concepts which include citizenship – *transnational, global citizenship, cosmopolitan citizen* etc. However, initiatives such as international legal systems, international market and mass labour migrations must have shaken the concept of citizenship at least to an extent, thus raising the issue of applicability of the distributive concept of social justice on political membership only. Therefore, on the one hand we may understand citizenship as a legal status of an individual in relation to the state (Bauböck 2010:2), in which case social justice, understood as equal distribution of goods, would reach all legal statuses. This principle implies a convenient, “simple equality”, whose embodiment entails a series of restrictive measures, the most important among them being the establishment of firm, clearly defined boundaries, i.e. criteria for the conferment of status.

On the other hand, the tidal wave of persons without status brings new questions, and every attempt to arrive at an answer inevitably leads to the opening sentence of Jordan and Duvell’s book on migrations: “The new world order is completely wrong.” The Lampedusa tragedy – the recent death of hundreds of African immigrants off the south coast of Italy – is actually a mundane event. Yet illegal immigration via the European coast is not an item on the agenda of those who hold offices and set the mechanisms of distribution of rights in motion. On the contrary, the news of the tragedy brought nothing more than a momentary shock to the “order of legal statuses.”

However, behind something that is presented as a security and administrative issue, that is, a matter of conferment or denial of political membership through conferment or denial of legal status, there is an economic mechanism which should be easy enough for anyone to see. For a long time, illegal, semi-legal, quasi-legal and legal (with an expiry date!) immigrants employed as unskilled labour force have contributed to the European economy to a great extent. Assimilated into informal membership, making up a significant part of the economic sector of the grey-white market, they maintain the gated community of political membership. In

his attempt to *understand the present*, Peter Wagner describes the problem of illegal migrations as an always present method of providing added bonuses for the community, because despite the fact that “Legal immigration into Europe has been made extremely difficult – not to say impossible – for most people in the world”, they still come to Europe illegally, even under life-threatening circumstances, because the only hope for a safer future life [they see is] within European borders.” (2012: 104)

Wagner presents some of the most conspicuous symptoms of social injustice rooted in political injustice taken as the only rational basis of the political order. These are the existing concept of closed, narrowly defined political membership on the one hand, and the simultaneous introduction of flexible, open economic borders on the other. Not only is this practice unjust, it also undercuts the very basis of self perception of modern society. To wit, illegal immigrants are economic Europeans with no citizenship and no guarantees that they would ever acquire it, while modernity differs most strongly from non-modern settings in that it rejects slavery, that is, “handling of economic matters through non-citizens.” (2012: 105) In order to demonstrate the gap between modern practices and the ways in which modern societies see themselves, Wagner provides a brief historical overview of social injustice in meeting the material needs of modern society. One sees that over the last two centuries, most of the work for satisfying the material needs of society was done by non-citizens. In the nineteenth century, Europe satisfied its material needs through non-enfranchised workers, whilst the United States and Brazil relied on slaves. By the mid-nineteenth century, many countries in the so-called modern world were living off colonial exploitation which they later replaced with the imposition of terms of trade on the new states. Today, all of that is sublimated in large-scale immigration of people who are not and will not easily become citizens of the host states (2012:105), which means that they are prevented from participating in political processes, or to put it more bluntly, they are deprived of political power.

As for democracy, political power would be a dominant good which members convert to other goods as they see fit. Political power has use-value and monopolising it endangers the participation of some members of a given community in the distribution of other social goods. The most efficient way to subject individuals and groups is to deny them political power, seen as participation in the making of political decisions; this right is denied to those to whom political membership is denied as well. Ergo, this means not only that non-members have no influence on the making of decisions important for the community as a whole (and the non-members themselves) but also that they cannot change their status of persons deprived of membership through political channels. At the same time, non-members play a key role in the economic survival of the states which reject them. (Walzer, 1983: 56-59)

Economic members deprived of political participation

For money seeps across all boundaries – this is the primary form of illegal immigration; and just where one ought to try to stop it is a question of expediency as well as of principle. Failure to stop it at some reasonable point has consequences throughout the range of distribution.

(Walzer, 1983: 22)

The present *globalisation of migrations* and their increasing politicisation through domestic policies, bilateral and regional relations and national security policies often leave out underground, irregular migrations¹⁶ as an important contributor to the economy, especially the European economy. (Wagner, 2012: 104) In that sense, the challenge to state sovereignty does not come from the intensified migrations as a separate and unambiguous phenomenon, but rather from the political economy which practically demands an increase in the number of immigrants. For migrations are never an isolated phenomenon, movements of commodities and capital give rise to movements of people (Castles, Miller, 2003: 5); migrations are not about isolated decisions; they demand

16) In accordance with the Recommendation of the General Assembly of the United Nations, the term "Illegal migration" is to be replaced with the term "undocumented or irregular migration." (Frigo, 2011:31) Undocumented immigrant: an immigrant who enters a country without necessary documents, in an irregular way; an immigrant who enters a country in a regular way and overstays.

collective action and a social engagement of sorts. There are quiet migrations, large-scale but unnoticed, outside of the existing policies and bilateral co-operation schemes. They manifest themselves in the appearance of “undocumented migrants” in the communities. As Castles and Miller argue, irregular (undocumented) migrations on such a massive scale have probably never existed before. Paradoxically, ours is the era of increased prevention measures. (2003:2).

These migrations, being a significant economic factor, open up the question of another form of membership – economic. The state of statelessness does not necessarily mean exclusion from all distributive relations. By way of example, the market is equally open to all the newcomers. However, non-members have to face insecurity in it. Although they do participate in the exchange of goods, they have no share in their distribution. Deprived of institutional rights, security and care of the community, non-members are not guaranteed any forms of social protection, and are constantly under threat of exclusion. In the case of illegal immigrants, where two memberships – political and economic – never overlap, intensive participation in the economic sphere is politically and legally meaningless, while social membership entails exposure to all kinds of exploitation.

What is more, the enormous extent of economic participation of undocumented immigrants is systematically covered up with anti-immigration policies, criminalisation of immigrants and black market and underground economy rhetoric. If we analyse newspaper headlines during the search for the bodies after the tragic death of African immigrants at Lampedusa, immediately after the trivialisation of the event in the public, we will notice that the stories containing the keywords “immigrants” and “Lampedusa” mostly have to do with the criminalisation of the middlemen in the trafficking case.¹⁷ The problem of middlemen warrants special treatment at any rate, but in this case it merely draws the public eye from the status of illegal immigrants in the community, and the role and responsibility of the state in this underground milieu. Middlemen, as part of that milieu, often come from the same ethnic groups as the immigrants and are – relative to the population of the host country – outsiders themselves in a way.

Migrations, global market and the selective accepting of a labour force without the guarantee of political membership have some bearing on the concept of social justice in any case, especially in the narrow sense of distribution. As Wagner argues, legal and illegal immigrants are often the greatest contributors to the European economic development, “but many of these economic Europeans do not have European citizenship and little prospect of acquiring it for themselves.” (2012: 104) Thus the closed concept of political membership and flexible economic borders survive side by side. The consequences of this asymmetry are reflected in the economic exploitation of economically legal yet politically illegal immigrants, which directly undercuts the principles and the very idea of social justice.

On the other hand, the strengthening of sovereignty or at least of the manifestations of the instruments of sovereignty of the state is still a method of promoting safety, membership and social justice, all of which require strict border control to keep domestic and international order. From the standpoint of this approach, immigrants often present a threat because they are a *foreign body* in the supposedly homogeneous nation.

However, immigrants are only a part of that story. The global economy, with its different kinds of mobility, breaks down the boundaries of membership. An obvious example are transnational corporations which produce, sell, and recruit workers without regard for borders. Integration into the open market promotes the transformation of the membership system, and the old models of strengthening state sovereignty no longer work. Thus it is the market – not the pressure from immigrants – that dictates the new forms of cosmopolitan citizenship, or, more precisely, cosmopolitan nomadism.

17) See the example of this Somali middleman: <http://balkans.aljazeera.net/tag/lampedusa>. The role of ethnic middlemen in the treatment of illegal immigrants is a topic which certainly warrants special attention, but from a different standpoint.

When it comes to market domination and the compatibility of democracy with the “dissolution” of political boundaries (Bauman, 2011), both the quality of such democracy and the very meaning of political membership are questionable. In an era of perpetual instability, uncertainty and unsafe political boundaries, community membership systems are dominated by global economic relations. Controlled by transnational subjects, means of domination are being relocated from the community. And they are not available to some subjects within communities because they are not members. As the membership system based on economic relations becomes more and more transnationally channelled, political membership becomes increasingly problematic, with all the attached rights and duties (Jordan, Düvell, 2003:61). The perspective of the state must be adjusted or transformed, or solutions must be found for the new circumstances and the context of international organisations and leading forces of the global market. For substantive rights within the competences of the state are becoming less and less reliable if one looks at the “supply and demand” side. In the competition which often requires “employability, entrepreneurship, mobility”, immigrants are often endangered. Often among the first to be made redundant, immigrants are forced to rely on improvisation and survival strategies. They are isolated from social systems and excluded from the distribution of social goods, but at the same time they participate intensively in the underground economy, which forms part of the system in its own peculiar way, and satisfies numerous material needs of the rest of the community. This begs the question whether we are dealing with political impotence in the face of economic domination, or with a fruitful political co-operation with the market. Namely, the underground (grey) economy in this case does not imply something which is outside the public sphere, public economy and vibrant community dynamics. As Naylor argues, the phrase ‘underground economy’ has been used in a polysemic manner: it is doubly loaded and doubly wrong. On the one hand it means something that is “underground, someone buried it for a reason” (2004: 131), and on the other hand something that is apparently an “international network of black markets that can only be controlled by privatisation, taxes, radical moves.” (2004: 132) The politicisation of this concept is enormous, as are the presented (essentially inaccessible) figures, and the concept is in essence overblown.

In his essay *The rise and fall of the underground economy*, Naylor points out some misconceptions about illicit financial flows, as there actually exists only a loose network of uncoordinated activities of varying degrees of legality and illegality. This network is created mostly through legal and illegal transactions undertaken by the same person but at different times and in different ratios. Thusly, the activities and actors are connected with the legal, formal economy more than they are connected with one another. What is usually presented in black-and-white terms as illegal and occupying the fringe of society, actually implies continuity and dynamics of relations within society itself (2004:142), and the line between the legal and the illegal is much more flexible and porous than one could infer from the official verbiage and rhetoric.

This realistic view of the grey economy is easily backed with the same examples used to illustrate the criminalisation of illegal immigrants. Namely, if we take the so-called ethnic middlemen in the immigration process for example, whose legal status is clear and who run a registered business in the host country, we see that their transactions are both formal and informal. This is often the case with Bosnian-Herzegovinian migrant workers in the region who are hired by such middlemen, as hiring workers from the middlemen’s country of origin involves both formal and informal economic flows.

Considering the increasing scale of illegal immigration and its importance for national economies in both legal and illegal channels, their enduring sustainability points to the necessity of an alternative approach to migration theory which would see membership as an all-encompassing political and economic inclusion into the community. Community as such has certain membership systems, and each of them implies participation in the production and distribution of social goods. Yet, the distribution of membership as a social good is conducted mainly through state channels and in practice implies legal and political status – citizenship – only, and it often corresponds with the majority national identity. This practice is precisely what perpetuates injustice, and undermines the survival of the community.

Invisible members of society

Generally speaking, migrants are people who move from their country of usual residence or nationality to another country. (Frigo, 2011: 31) Regardless of their reasons to migrate or their legal status, immigrants have a place in the economic system of the new country: included or excluded, they are part of the political make-up and have a certain reputation and material status in society and they establish personal relationships with citizens and non-citizens. Whether members or non-members of the community, whether legal or undocumented, immigrants are present in the membership system through the force of interconnected social relations.

The peculiar case of Bosnian-Herzegovinian wage labourers in Slovenia is a good example which illustrates that being deprived of political membership does not mean a lack of community membership, i.e., does not mean that community members who have citizenship status consider political membership crucial for the community. In Slovenia, the mass protests of the invisible workers of the world did not start in the homes of, for instance, Bosnian-Herzegovinian workers, but rather in a society which has a long tradition of coexistence with those same migrant workers. This manifestation of solidarity based on social membership¹⁸ points to the necessity of a transformative policy of treatment of migrant workers. Historically speaking, Bosnian-Herzegovinian workers found themselves in Slovenia out of economic necessity only, but their presence, regardless of their legal status, took root in society as such. This is proved by the fact that the wider – non-immigrant – community demands a transformation of the understanding of political membership and the criteria for attaining it.

The emergence of new membership systems, new forms of mobilisation, and reorganisation of make-believe borders reduces the relevance of the existing political communities based on the domination of political membership. This brings into question the concept of distributive justice limited to the distribution among members of the community. If membership is a social good too, and, as Walzer argues, if different social goods demand different ways and principles of distribution, in line with different understandings of different social goods and their social meanings, which inevitably results from historical and social particularism (1983:6), which meaning is dominant or crucial when it comes to membership? In other words, which social meaning defines the standards of membership distribution and can we keep the standards established on the basis of the social meanings which were dominant in the 19th century, when the process of formation of nation states entered its finale? If nothing else had happened in the meantime, are the changes brought about by the unprecedented globalisation of the economy not enough to question the criteria and norms of distribution in the same way as the principles and manifestations of state sovereignty are questioned?

Normatively speaking, the domination of political-administrative membership and legal statuses reproduces inequality and inequity. Behind the vision of full, equal members of a community (state) one sees the experience of injustice and subjection. But empirical insights signal the necessity of change as well. The concept of membership is much broader than any legal status conferred by the state (Bauböck, 2010: 2). As Gosewinkel argues, citizenship is a legal institution, which originated with the modern state and found its clearest articulation in the nation state (2008:6). In spite of the aspirations of the multidisciplinary approach taken by the transformative citizenship theory which strives to stretch the legal concept to include *status, human rights and identity* (Joppke, 2007:38), citizenship remains a legal instrument and a technical matter which does not substantially penetrate into community relations, and which imposes black and white conclusions. Could one argue that a member of a community who does not have citizenship is not in fact a member? The recent solidarity protest in France over the deportation of an immigrant family expressed popular dissatisfaction with this country's immigration policies yet again, but also brought into question the basis of the dominant understanding of community membership. Specifically, Leonarda Dibrani, a fifteen-year-old girl and a daughter of immigrants, was excluded from society of "legal statuses" and forced to leave her *social* status through the domination of anti-immigrant public policies. Everyday practice of deporting illegal immigrants had a different course this time round. Namely, the defamiliarisation of the experience of "social members" of the community by publicly arresting a fifteen-year-old girl on a school trip, led to solidarity

18) For a more detailed discussion see www.njetwork.org/IWW-Nevidni-delavci-sveta [Accessed on 22.10.2013]

protests which point to the existence of a kind of membership which can be categorised neither as political nor as economic, and especially not as ethno-cultural, the kind of membership which is often entwined with political membership in nation states. The protests of secondary school pupils and students and the blockade of schools and public institutions are a symptom of the emergence of new forms of solidarity based on social membership, on the commonality of everyday experience completely incompatible with the policies and practices of political membership.

This confirms Miller's theory of multiple interconnections within the community, in which he postulates that society is a living organism made up of groups and individuals, striving towards an institutionally ordered mechanism of social justice. Miller's theory of interconnected society necessarily includes institutions. The state is the umbrella institution, but it is not outside of society, thus it should modify its structure in accordance with the inevitable social evolution. However, we see the caprice of the rigid leftovers of the concept of national citizenship at play. The social relations and social membership of Leonarda Dibrani cannot be touched by the monopoly of political membership, for political membership is not part of the *dynamics of interconnected society*, it is there only because it has "always" been there, it is still in use and dominates and lives on reputation, turning a deaf ear to the social injustice of today.

Therefore, the domination of narrowly defined political membership shows the inability of the political framework to develop an inclusive, egalitarian and we may also say "just" way of dealing with economic and social issues (Wagner, 2012: 106). The goal of political egalitarianism is a society liberated from domination, which does not imply the removal of all differences, for "we do not have to be equal and possess equal amount of the same objects." Equality comes about when no one has control over the means of domination, in this case political/legal membership (Walzer, 1983:15). The sign "papers for all" carried by the protesters in France points to the fact that the evolution of the concept of political membership is inevitable, because the concept does not match social reality. At the end of the day, it also points to ignorance, failure and resistance of the state in the process of adjusting to said reality.

(Translated by Mirzah Purić)

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NEOLIBERALISATION OF FEMINIST ACTIVISM

Gender equality is a staple demand on the path to social justice. But nominal acceptance of gender equality in a neoliberal context opens up a multitude of deeper problems concerning women's position and emancipation. Feminist struggle and demands are either lost in the contemporary world of activism, or are used for the purposes of promoting neoliberal ideology. At home and abroad, projects intended to contribute to the cause of gender equality have a limited transformative potential and promote fitting in with the system rather than fundamental changes aimed to remedy structural inequality and subjection.

We have been noticing for a long time now that many international and transnational corporations promote gender equality as a pathway to a more equal future. As Adrienne Roberts puts it, "gender equality is increasingly presented as a solution to the problems of global capitalism; greater levels of gender equality will help to usher in a more equitable, socially just and sustainable capitalism that benefits women and capitalists alike." (2013) Thus the specific demands of the feminist movement are watered down, and the feminist struggle is channelled according to the needs of neoliberalism. This is increasingly noticeable in our region, so the question presents itself as to whether the strategy and practice of gender mainstreaming in non-governmental organizations or even in some governmental institutions have any amount of transformative potential and whether they lead to actual gender equality – one of the key demands on the path to social justice – or help maintain the existing, unjust order both globally and locally.

Neoliberal assault and the economic position of women

On the macro level, all indicators suggest that the neoliberal assault on the public sector exasperates the economic position of women: female unemployment and the domestic and familial burdens women have to shoulder are both on the rise. Because of the decline of the "family wage model" (Young, 2005: 4), women are less frequently in a position to opt out of the work and are condemned to the (often black) labour market. On the other hand, the flexibilisation of labour in accordance with the demands of capitalism has partly been initiated by women themselves, but this has not gained them financial independence, nor has it ended the double oppression of women. What is more, it has caused feminisation of labour and further feminisation of poverty. Unpaid female labour is dismissed, but at the same time it is relied on: "they take into account the flexibility of that labour, and ignore important factors such as female labour force mobility and sex/gender-based division of labour, and they stress that not only individuals have to adjust to the changes, but the households, too." (Waylen, 2007: 46)

The relation between labour and capital in the global economic policy affects developed and developing countries differently, according to Čakardić:

In developed countries, economic restructuring is carried out by allocating resources, which affects the male labour force in particular (transfer of industrial production to cheap labour force countries where physical work conditions are bad and the legal and social treatment of foreigners and migrant workers is extremely problematic), and by expanding the service sector which mostly employs women, while in the periphery countries precarisation and deregulation of labour are under way, which affects female labour force through part-time jobs and ubiquitous labour flexibilisation. (Čakardić, 2013: 26)

In such a constellation of relations, abandoning the welfare state model (a course of action promoted by the IMF and the World Bank through their structural adjustment programmes) is gradually starting adversely to affect the economic position of women.

The atrophy of the welfare state is primarily reflected in measures such as public spending cuts and privatisation of social services. (ibidem) The state gets less and less involved in social services and leaves them to the free market which is (supposed to be) controlled by an 'invisible hand'. Feminist political economy has proven that the so-called austerity measures introduced after the crises, just as the crises themselves, have affected both men and women (although not in the same way in different countries), as well as different social groups (for instance, poor women and those from higher social classes), differently. Some of the gendered effects of austerity measures are: increased poverty and unemployment, as women are more likely to be fired; insufficient public welfare programmes, as cuts in the social services affect women more; domestic violence, as the social constructs of masculinity and femininity, in conjunction with the neoliberal restructuring, promote the *normalisation* and *routinisation* of violence against women (for a more detailed discussion see Roberts, 2013).

In countries in transition, such as Bosnia and Herzegovina, the transition has had different consequences for women and men. For numerous reasons, such as increased unemployment, retraditionalisation, repatriarchisation, as well as the decay of institutions which used to be an important source of support for families, women are the "losers" in the transition process. (Gal and Kligman, 2000; Blagojević, 2002: 294) It is unquestionable that these negative consequences have affected the population as a whole, not just women, but it should be noted that this situation, "affects the restructuring of both the public and the private sphere, and therefore also the change of gender regimes." (Blagojević, 2012: 43) The resulting state of affairs can therefore be neither understood nor transformed unless we focus, theoretically and practically, on comprehensive questioning of social structures, instead of tacit and indiscriminate adopting of the dominant discourse of neoliberal ideology which boils down to procedural equality without any substance. In this sense, of particular importance is the dual system theory which considers capitalism and patriarchy as the causes of gender inequality. It points out the importance of domestic and especially of international structures and relations which impede the development of peripheral societies, as well as the development of vulnerable social groups within a given society. (Babović 2012: 50) As A. Roberts puts it: "As necessary as it is for feminists to mobilise for greater gender equality, they must do that within a carefully articulated critique of the patriarchal and colonial capitalist system which is reproduced precisely because of the exploitation of the majority by and for the minority." The question is, however, whether this understanding of the structural and ideational linkages between capitalism, patriarchy and subjection is reflected in the practical programmes of the feminist non-governmental sector.

Development without changes

Influenced by wider political and socio-economic changes, and to a certain extent by metafeminist critique, the development programmes of the non-governmental sector and (assistance) policies aimed at empowering women, improving their position and promoting gender equality have gone through several stages of transformation.

In the 1970s, the organisation *Women in Development* (WID) cited the fact that women were necessary for development as the rationale for its activities, and advocated the improvement of women's position as part of the empowerment of national economies. The next step was the approach of the organisation *Women and Development* (WAD) which claimed that women participated in development but were neither acknowledged nor recognised as subjects. In this period, development was equated with development assistance, and women were considered development subjects, but this approach did not prove very successful. Soon the UN spoke out on the increase and feminisation of poverty, and the period from 1975 to 1985 was declared the UN Decade for Women. But the old approach to development was not abandoned, on the contrary – it became widely accepted and spread out, whilst *WID/WAD* became extremely influential in conceiving and practising gender mainstreaming. The approach was embraced by the UN Development Programme and the World Bank, on account of its economic appeal and its modernist, liberal spirit, but also because of the hegemonic position of Western feminism, unlike Third World feminism which had criticised this approach from the outset. (Žarkov, 2012.) The criticism revolved round structural inequality and the representation of women as a unified category, which erased significant differences of class, race, ethnicity, etc., and the fact that greater importance was attached to the practical impact

of inequality than to strategising to change the conditions of inequality, etc. The changes were brought about by the emergence of the organisation *Gender and Development (GAD)* which directed its attention to the above mentioned structural differences (race, class, gender, etc.), which cast new light on development and development programmes. The focus was no longer on women but on gender, and gender inequality was brought in connexion with other forms of inequality (amongst women and men). Feminist economists criticise the liberal concept and practice of development, they warn of the consequences of a global economy and analyse gender relations in international capital flows (for example, labour force migrations). For the first time, the demand was made to include previously excluded aspects of socio-economic relations and processes in economic analyses, for instance, household work which had been excluded from economic analyses as non-productive and unpaid, as well as caring for the family, human reproduction, etc. But all these changes and demands remained in the realm of feminist thought (or at least some of its currents) and feminist political economy, and were gradually either reshaped or marginalised. For feminism's entry into mainstream and its resignification contributed to the dismissal of the above mentioned criticism during the implementation of development programmes. Gender mainstreaming¹⁹ has been a dominant gender equality policy strategy in recent times, conspicuously so. Although widely practised, it is a rather problematic concept from a feminist point of view, because it leaves out structural criticism and fails to achieve substantial progress. Thus Biljana Kasić argues that the whole gender mainstreaming "package", including the legal provisions and gender equality institutions on all levels, boils down to a technicist-normative performance which has almost nothing to do with women's lives and their actual position. (Kasić, 2012)

Today, the UNDP's Millennium Development Goals (MDG 2000–2015) are considered the pinnacle of international efforts in the field of development, and the efforts to achieve gender equality: 1. eradicate extreme poverty and hunger 2. achieve universal primary education 3. promote gender equality and empower women 4. reduce child mortality 5. improve maternal health 6. combat HIV/AIDS, malaria and other diseases 7. ensure environmental sustainability 8. develop global partnership for development. However, many theorists warn that the goals are completely compatible with the logic of capitalism in its increasingly neoliberal guise: "MDGs are part of a series of discourses that are intended to legitimize the policies and practices implemented by dominant capital and those who support it." (Amin, 2006.)²⁰

As has been mentioned, one of the goals has to do with the improvement of gender equality and empowering of women (MDG3), and it is supposed to be realised through education programmes and programmes of participation in the political and public sphere as well as the labour market, which should result in increased participation of women in the labour market and the public sphere, reducing the gender gap on all levels of education, reducing social exclusion, etc. Feminist theorists, however, dispute these goals and their instrumentalist and liberalistic role. The letter and spirit of MDGs are at odds with the spirit of feminism, because, in Naila Kabeer's words: „the vision and values of women's groups and organisations across the world have been translated into a series of technical goals to be largely implemented by the very actors and institutions that have blocked their realisation in the past." (2003:23) Kabeer then points to the potential they may show if they were implemented adequately, but also mentions the limitations of realisation:

Women's access to education may improve their chances of a good marriage or their capacity to sign their names on a document, but unless it also provides them with the analytical capacity and courage to question unjust practices, its potential for change will be limited. Women's access to paid work may give them a greater sense of self-reliance and greater purchasing power, but if it is undertaken in conditions that erode their health and exploit their labour, its costs may outweigh its benefits. Women's presence in the governance structures of society clearly carries the

19) Gender mainstreaming implies (re)organisation, improvement and evaluation of all political processes by including a perspective of gender equality in all policies, on all levels, as well as the acceptance of such policies by subjects involved in decision-making. The 1994 Decision by the Council of Europe sets out the promotion of equal opportunity as an EU priority, and gender mainstreaming has since been one of the leading principles integrated into all actions, policies and programmes.

20) i.e. first the governments of the economic triad countries (US, Europe, Japan), then the governments from the South. More at: <http://monthlyreview.org/2006/03/01/the-millennium-development-goals-acritique-from-the-south>

potential to change unjust practices, but if the women in question are drawn from a narrow elite, if they have been invited rather than elected, and if they have no grassroots constituency to represent and answer to, their presence will be only a token one. (Kabeer, 2003:23)

The very concept of the Millennium Goals does not promote change, but rather a more successful integration into the existing system and norms. It is no wonder then that MDG3 does not leave any room for questioning the existing gender regimes, gender relations and roles in the family and household, or the critique and restructuring of the sex/gender-based division of labour, as these are the areas where inequity and inequality are mostly engendered. Furthermore, the preferred areas of MDG3 clearly point to the shortcomings of these goals from a feminist standpoint, since the questions of housework, unpaid work, reproductive rights, etc. have been omitted. To understand the oppression of women one must research not only the sex/gender-based division of labour in the household and the labour market, but also the relation between them. "Women's reproductive work limits their access to paid work, and limited access to paid work is what encourages many women to marry." (Babović, 2010: 50) The distinction between the public and private sphere is actually an ideological construct of liberalism, because "equal presence of women in the public sphere is not possible without a change, i.e. the presence of men in the private sphere." (Okin, 1998: 131) MDGs do not question power relations, which is a staple issue when it comes to emancipation of women and gender equality.

In spite of serious criticism from all sides, women's position and gender equality are nowadays part and parcel of programmes of numerous international organisations, from the United Nations and their development programme and sub-branch UN Women, the World Bank, the International Monetary Fund, development agencies of individual countries (USAID, SIDA, ACED), to micro-credit organisations which specialise in empowerment of women and women's entrepreneurship. For the realisation of the programmes of these organisations and international institutions globally and locally, civil society and non-governmental organisations are of special importance. Not surprisingly, feminist activism did not avoid NGO-isation, and feminist organisations proved susceptible to neoliberalism, at home as well as abroad.

Abuse of feminist critique

In the scenario of post-socialist transitions, which are (this should be kept in mind at all times!) a sub-species of the grand transformation of global capitalism, the ubiquitous non-governmental and civil society organizations fulfil the obligations of the state which the state renounced or never accepted, for instance, certain social services, education, etc. Feminism is becoming part of the non-governmental scene both globally and locally (including our region), thus it is the NGOs and activist organisations that deal with women's position the most, although there are state institutions created to promote a more equitable society. However, this is precisely how the informal sector and women's activism came to play the role of the transmitter and promoter of neoliberal ideas and, in a way, an equal participant in the exploitation, which made the potentially emancipatory feminist ideas lose their emancipatory potential.

Nancy Fraser warns of three crucial ideas used to promote neoliberal ideology and as a legitimisation of the interests of capital, at the expense of women themselves. Fraser lists resignified components of critique²¹: the feminist critique of "family wage", the critique of "class analyses" and the critique of welfare state paternalism. In the first case, feminist critique is used to justify flexible capitalism, in the second case to redirect the debate to gender identity issues and cast aside economic problems. In the third case, Fraser explains, a critique which used to be progressive during the era of state capitalism, merged with neoliberalism's war on "the nanny state" and its cynical acceptance of non-governmental organisations. Microloans, presented as the feminist cure for women's subjection and poverty are the most blatant example of (ab)use for the purpose of promoting neoliberal ideology; what is usually left out is the

21) More in Fraser, N., 2012. *Feminizam, kapitalizam i lukavstvo istorije*, str 6- 8; and in Fraser, N., 2013. *How feminism became capitalism's handmaiden - and how to reclaim it*. Available at: www.theguardian.com/commentisfree/2013/oct/14/feminism-capitalist-handmaiden-neoliberal

fact that these loans emerged at a time when states gave up on macro-structural efforts in tackling poverty. "A perspective aimed originally at democratising state power in order to empower citizens is now used to legitimise marketisation and state retrenchment." (Fraser, 2013.) Alvarez argues that the discourse of "co-responsibility" of the state and civil society for social welfare permeates the neoliberal attempt to establish partnership with NGOs, which reduces and eliminates the obligations of the state and economic operators; help becomes self-help (1999:194). As for the role of NGOs in the neoliberal order, Silvia Federici says that: "NGOs have become instruments of directing many women who have built the commons out of the state and the market back into the monetary system. To me, NGOs are veritable shock troops of the neoliberal order." (Federici, 2012.) In that sense, NGO-isation creates the illusion that something is being done, but fundamental changes are missing, as we have seen in Latin America: "A discourse of State and civil society's 'co-responsibility' for social welfare pervades neoliberalism's recent quest to establish partnerships with NGOs. As virtually but targeted or emergency social programs are slashed, governments have promoted 'self-help strategies for combating poverty and providing welfare at the local level.'" (Alvarez, 1999: 194)

Non-Western authors had already warned of this, so Spivak talks of 'matronising' and 'sororising' of women from developing countries by women from developed capitalist countries trying to rescue women through the activities of organisations such as Women in Development, a branch of USAID. (2003:512)

This does not mean that these authors deny the existence of women's, feminist NGOs which work towards more radical social change. However, the professionalisation and institutionalisation of NGOs has dulled the edge of most of them. "[S]ome analysts see the development of a class of 'femocrats' who decide, often unilaterally, what is best for women. Although their decisions may be salutary, they have another consequence. [...] The reality of a visible women's 'movement' is replaced by the professionalization of feminism, resting in the policy decisions of a few individuals." (Lang, 2000)

Thus women's NGOs have become organisations which give feminists an opportunity to work on improving social welfare and gender equality schemes, and help women devise political strategies for obtaining benefits from local and national governments or get elected to office. (ibid) Thereby, most of them have put themselves in a dependent position (Gal and Kligman, 2000:95-6) and the effects of their activities on women's position are often contradictory, ranging from true empowerment to (inadvertent) strengthening of conservative aversion.

Individualism against the system

Analysing the trajectory of feminism in the region, Ankica Čakardić concludes:

Since the 1990s, the activists have been engaging with topical wartime issues such as physical and structural violence, safe houses for women and peace-building policies, while the academisation of feminist articulation has brought about at least three things: feminism has lost its progressive potential, it has lost the historical relation of class and gender from its perspective, and as a consequence of general pacification it has started to reduce itself to a theoretical and identity position which will come in handy as a space in which to promote the oncoming liberal, civic feminism and polymorphous gender mainstreaming. (Čakardić 2013:22)

Due to the dependency of these organisations on foreign donors and domestic authorities that dictate their policies and practices to a great extent, feminism in our country is entering the mainstream and the activism of NGOs is being "pacified, and is becoming an inefficient social interstratum. (Knežević, 2012:309) Thus the subject of the activities and modus operandi of these organisations, defined under the influence of liberal ideas of equal rights and opportunities, weaken the transformative potential of feminist struggle. Although some organisations are without doubt efficient in their efforts to improve women's position and empower women through specific action policies (for instance, the recognition of sexual abuse in war as a war crime), it is necessary to raise

the question whether such practices are damaging in the long run because they do not articulate original emancipatory feminist demands, but focus on mere alleviation of suffering within the existing framework instead, thus promoting the acceptance of the (neo)liberal system and its rules. Worse yet, they create the illusion of progress, while in reality a regression is taking place²².

If we look at the current trends, strategies and policies, development strategies and policies, and the development projects and programmes implemented here by international organisations, domestic and foreign non-governmental organisations, as well as some institutions with a view to improving the position of women and promoting gender equality, it may be said that we are still far from questioning the existing norms and demands of feminist struggle and feminist political economy. Such approach yields an extremely conservative answer to the crucial question of feminist activism – “should we aim for a change in women’s position such that they may fare better in the existing economic conditions, or for a change of the economy and the attached discourse, such that they function in accordance with feminist principles?” (Čakardić, 2013:30). In this region, over the last two decades, this answer has been reflected in quantitatively impressive yet qualitatively dubious project schemes. Examples are innumerable: from projects aimed at empowering women through education and training in the field of project writing and applying with women entrepreneurship funds, to leadership and management training schemes and global campaigns such as One Billion Rising (against violence) and the one where the idea was to use Google to draw attention to prejudice and stereotypes as global problems, etc.

However, we only have quantitative indicators to measure the success of these projects. There are no qualitative evaluations, except self-promotion. This does not necessarily prove a lack of transparency in these organisations; more likely, it is an indicator of the problematic approach to both problems and solutions which have often served as an instrument of further exploitation of women, and society as a whole.

In our region, progress is reflected in the establishment of institutional mechanisms²³ in the form of the Gender Equality Agency of Bosnia and Herzegovina, and entity gender centres which closely co-operate with various international organisations and, in co-operation with domestic organisations, promote gender equality and gender mainstreaming through GAP (Gender Action Plan), Gender Equality Act, the Committee on the Elimination of Discrimination of Women etc. The practice, however, shows that in spite of the present legal framework and institutional mechanisms there are no guarantees that actual equality would be achieved, and that the implementation of numerous strategies and projects does not go beyond mere formality.

Thus the targets of the MDG 3 for Bosnia and Herzegovina are: completely eliminate gender disparity in education (primary 100:100, secondary 84:84 and tertiary 50:50), increase the participation of women in the workforce to 32.5% and in Parliament to 25%. It seems that the domestic governmental and non-governmental sectors as well as the international subjects do not see any relevance in the fact that market liberalisation and the increased participation of women in the labour market in Latin America show that increased participation alone does not guarantee gender equality.

However problematic the targets may be, they remain unachieved. The 2010 Millennium Development Goals Report states that between 2006 and 2009 the percentage of employed women dropped from 33% to 28%²⁴, as a result of the global economic crisis. The crisis and the austerity measures (whose gender implications we have mentioned) affected women primarily through the above-mentioned assault on the public sector, where women figure both as employees and service beneficiaries.²⁵ Unfortunately, as is generally the case in our region, this report does not include structural cause-and-effect analyses of similar political and economic transformations.

22) For a more detailed discussion, see Blagojević, M., 2012, 36-37.

23) This fully meets the requirements of the UN’s 1995 Beijing Platform for Action which requires that signatories set up institutional mechanisms to ensure equality and better social position of women.

24) More in the report Progress Towards the Realization of the Millennium Development Goals in Bosnia and Herzegovina, UNDP, 2010.

25) For a more detailed discussion see Lethbridge J., 2012.

It seems, however, that the absence of analyses is not a coincidence – dealing with structural causes is simply not part of the strategy. This is best illustrated by projects which garner the attention of donors and the public at large. One such example is the project FIRMA, financed by USAID and SIDA. The goal of the project in Bosnia and Herzegovina is to improve “the capacity to cope with competitive pressure (sic) and market forces within the European Union” as a “a critical component of the Copenhagen Economic Criteria for EU accession” (see: www.firmaproject.ba/ba/sectors/sector.aspx?id=314). The project is also interesting because it operates within the woodworking, metalworking and tourism sectors, and works on labour force development, access to financing, inclusion of youth and gender, EU alignment and environment protection (green development). Except tourism, these sectors traditionally do not belong to the category of the so-called female occupations, which indicates that the project might have some potential, although it begs the question exactly how are women to be included in these sectors (excepting the usual administration jobs or, perhaps, encouraging women entrepreneurs in this sector).

Gender equality is one of the goals of the project: “The increased participation of women in the labor market, persons with disabilities, and Roma will enhance the economic growth potential of Bosnia & Herzegovina. [...] Our activities to promote and create equal opportunities will increase employment and the labor participation rates for women, persons with disabilities, and Roma.” The conclusion may be drawn from this that the realm of work or market economy are understood and accept as gender neutral, impartial and objective.

The activities of the FIRMA project include a series of training events and the drafting of a guidebook for raising awareness of the importance gender equality for the purpose of EU accession. The guide recommends improving business skills, networking and providing women/entrepreneurs with access to loans, as well as general improvement of stimulating environment for women.²⁶ The plans give the impression that the project promotes the idea of individualist entrepreneurship, almost according to the tenets of the classical liberal theory, because it suggests that success is achieved by dedication and perfecting of skills, training and conferences, which makes it possible for women entrepreneurs to function in a man’s corporate world. It clearly does not take into account a most obvious fact: economic independence of women does not necessarily mean their participation in the control of finances.

More importantly, although the participation of women in the labour market – the focus of this project – is problematic beyond doubt, what is completely neglected are the problems deriving from the general state of the labour market characterised by widespread exploitation and subjection of the labour force. When it comes to employment and the labour market, the situation in Bosnia and Herzegovina is generally horrifying (see B. Buljubašić and L. Čuljak, this volume), but that is a matter of structures and the idea of order, not individual skills (or a lack thereof). With all the poverty and unemployment, breaking of workers’ rights, flexibilisation of labour, introduction of non-standard modes of employment, changes in social services and provisions, which exacerbates social insecurity and grey economy, as well as corruption and preferential treatment in employment and at the workplace, it is difficult even to conceive of gender equality.

If we want to engage with this and achieve true gender equality, first we must first analyse the problems pertaining to women’s labour, and sex/gender-based labour division in general, and by all means take into account the socialist heritage and the post-socialist context. “For an analysis of problems of women’s labour we must consider the fact that there are mechanisms of social exclusion in the labour market which do not activate in the same way within and outside the labour market, and that there is a hard core tradition of dismissing empirical data on the unequal position of male and female labour force. In addition, the structural reasons underlying the division into male and female occupations and sectors (occupational segregation), feminisation of poverty,

26) Project FIRMA will undertake the following activities in order to improve gender balance in the three sectors: Access to networks and information, including grants to foster the development of women networking in tourism, wood processing and metal processing; Development of skills in women entrepreneurs: grants for business and consulting service providers (BCSPs) to develop the capacities of women entrepreneurs from the three target sectors which will be attuned to their specific needs; Improvement of stimulating environment for women entrepreneurs: organising a regional conference on gender equality and its contribution to the economic growth of the country, preparation of a guidebook for industries and service sectors, roundtables and promo events, grants for the development of gender equality standards in tourism, wood processing and metal processing industry, promoting public-private dialogue in order to raise awareness on equal rights and employment opportunities for women in tourism, metal processing and wood processing.

privatisation of unpaid work, costs of free time allocation, exogenous factors which influence elements of structural differentiation of labour force, and the transformational modes of the capitalist way of production -- all this is important for an analysis of ambiguous causes of double subjection of female labour force." (Čakardić, 2013:29-30)

Not only did the "demands for gender equality and non-discrimination bring women employment opportunities only in theory and the laws, but not in reality" as Bakšić-Muftić (2002:94) argues, but the socio-economic situation is such that one cannot bring up the issue of gender equality without bringing the whole system in question. To begin with, we must accept that in the generation of subjection there is a tight interconnection between capitalism and patriarchy, and realise that structural and systemic problems cannot be solved by isolated individual effort, since they did not come into being through the efforts of isolated individuals.

(Translated by Mirzah Purić)

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DIJALA HASANBEGOVIĆ

LULLABY FOR O.

Four times they took E. back to the hospital room
the first time to sleep the second time to dream the third time to sing
the fourth time it was as if there wasn't a fourth time for that wasn't E.
who was brought back to the hospital room the fourth time.
Four times E. left the hospital room four times
she was someone else: once you, once me, once a bird, once a stone.

(I shan't have kids
for war.
None! replace the plugs in their slimy sockets leave be
my intestinal pockets and stitch the placentas back
to the saddle-like cradles in which we won't incubate flesh
for your green meadows beneath the mountains
of no man's lands and golden valleys)

A. laughed thrice: once for you, once for me, once for
someone only she could see he's to her left and he must
be reclining or is down low or is an animal or a twirl of dust
which sometimes sets itself into a mosaic, into a jigsaw puzzle of light,
into a stripe of sense, and she's smiling. A. is smiling sweetly and sincerely, boldly,
as she's never smiled for you nor me as she'll never smile for
anyone love anyone trust anyone stroke anyone.

(Waters shan't break all the unborn shall be
namesakes they won't wake you up on May Days
you won't be making them paper aeroplanes you won't be
playing in the grass, in the sand, behind the fences and the cages
full of birds to which no one will have to tend and no one shall the unborn defend
except their non-creator)

O. was motionless and the birds born of lightlessness
flapped on the tin of the window sill with embers in their eyelets
with thin red thread wrapped round their footlets. A thin red thread O.
will twist into a bracelet for her daughter tie a wet knot with her teeth
just before she flaps barefoot down the icy stairs that mutilate the toes.

(There shan't be any kids
for war —
rotten peaches roll down the shaggy carpet
down the hairy tongue of the afternoon glides the nurse's razor
my hands are sticky my bonelets hurt begone and take naught of
mine — bravo! your section is worthy of a caesar!
Now go drown in the waters of happier wombs)

O. was the only one they remembered and they pulled plastic
curtains over the table where they removed her stitches
translucent red like tomato peel – she was the only one they remembered
and under the lamp the paper glistened on which
black ink glared the selfsame ink in which O. will write their names
once they're gone and no one can find them anymore.

(You shan't have my kids
for war:
I'm telling you with my palms facing upwards
palms sticky from the acrid yellow cords
which the cutthroats shall never cut.)

(Translated by Mirzah Purić)

YOUTH UNEMPLOYMENT: AN ATTITUDE ISSUE OR A RESEARCHER ISSUE?

Lazy students and their sentimental, unenlightened parents, all packed in metropolises – that's how and why the perfect brand of Bosnian capitalism went down.

Years went by in suffering, as the song says, transition has turned the war-torn country into a colony and its working men and women into slaves of international big business and local chicken-thieves. This prolonged agony – and we don't even know if it's over yet – has led this country to ruin and extreme dependence on others, whilst its workers, former self-managers, are stuck in a twilight zone of material poverty and all kinds of deprivation. Education has been degraded, as if in passing, according to a tried and true recipe, public health has been driven to the verge of ruin, if not pushed over the edge, the payment system has been gifted to the private banks. As the discontent of the populace with the economic conditions grows, the attempts to foist a certain not so fresh paradigm of thought onto the general public become more and more aggressive. According to this paradigm, bad policies, criminal privatisation and the cumbersome and inefficient bureaucracy are not to blame for the high unemployment rate and the economic collapse; the blame is on the *victims* of these plagues. We witnessed this kind of spin during the recent crisis and civil unrest in Greece, when top media houses set out to proliferate the myth about the lazy, irresponsible Greeks who are to blame not only for their own economic ruin but also for endangering European economic stability. These myths are produced and introduced into reality with a view to obfuscate the real nature of these events and processes, and create simple, easy to swallow explanations aimed to pacify the public, make it shake its head and shrug its shoulders in helplessness.

Late in 2013, a similar project went into full swing in Bosnia and Herzegovina. Regional news portals, always hungry for thoughtless content, started to run the results of a research titled "Youth unemployment: Do you have an attitude issue?". The research was conducted, and its results launched into the public sphere piecemeal, by the Sarajevan think tank Populari, while the topic, covered by Katarina Cvikl, was supposed to be the employability of young people in the country. Although the researcher has made extensive use of footnotes and the conditional mood, and made claims in the form of questions in order to cautiously assume a cold, rationalist bearing of a researcher, by asking whether this was *an attitude issue* she actually attempted to assure us that it was, or at least to dictate the terms of debate in which such a conclusion would impose itself.

Lazy students

As far as I have noticed, the trailblazer in the project of introducing youth laziness into the public discourse in this country was Alida Vračić, the director of the think tank Populari, who attempted, in an exceedingly clumsy article ran by a local internet portal, to release a trial balloon of sorts by postulating the laziness of young people as the cause of their unemployment. She backed her claims, rigorously, as becomes a researcher, by cynically listing a few people from her surroundings who choose not to look for any kind of a job anywhere in the country and prefer to parasitise on their parents who toil to feed their good-for-nought children. In this they undermine the labour market, whose invisible hand would generously offer menial jobs to university-educated citizens in every nook and corner of the homeland. Need one even mention that the article was ripped apart in the comments underneath at the Radio Sarajevo website where it was published, as well as in several barbed pieces published elsewhere on the internet?

After the trial balloon, Populari devised a new approach to saturate the public sphere with select keywords – they would write a series of reports in which they would examine the problem of youth unemployment from multiple angles. A noble intention, without doubt. The first of those benevolent documents features an endearing illustration depicting a reclining student with a straw in his mouth, his hands on his nape and his diploma hanging off his big toe, floating in the sky on a cloud. Nazi press was rife with such convenient use of caricatures for ideological purposes at the dawn of WW II, when certain political groups had to point to social problems and ballasts in a picturesque and easy to understand way. Lest it appeared that we're comparing the esteemed researchers with the Nazis, it bears pointing out that such tactics, in this or that form, are nowadays used by everyone who would want to shape the so-called public opinion without too much trouble and uncertainty of outcome.

After the endearing title which suggests a conclusion to the reader before anyone has read anything, the author, using rather sterile lingo, leads us into her "analysis" where she explains that "the predominant view holds that [the predicament of the 58% of unemployed youth] is *exclusively* due to the bad economic environment and lack of opportunities, but overlooks the factor of youth's behaviour and attitude when entering the job market," and that hers is the first in a series of reports which aim to give a serious analysis of the state of employability of Bosnian-Herzegovinian youth, by focusing on, to start with, the attitudes of youngsters, something that is "often overlooked in the studies of youth unemployment." It's interesting that the creators of this analytical approach have never asked themselves why youth unemployment studies don't use such scandalous methods. They probably count on the slumbering Bosnian-Herzegovinian public which is bound to respond to this claptrap with silence as is its wont, and finally fall for the trick and believe the auto-stereotypical lazy student myth.

The tone of the rest of the analysis is heralded by the first few lines, where the author says that "the youth of Bosnia and Herzegovina are widely regarded as knowledgeable, capable and willing to work," yet unemployed due to a lack of opportunities. Yet, in the next sentence we are asked if we have "ever wondered how many of the highly educated young people would be willing to temporarily take up any job, including bartending or working in a car wash just to get by and not be dependent on their parents?" Here she in fact parrots the theses and questions her director had launched in her earlier media appearances. Cviki displays the same disassociation from reality in the rest of the introduction, and asks, again in her boss's words, how many youngsters are prepared to look for work in other parts of the homeland, and if we know more than a single-digit number of young people who volunteer or are on placement and if it's ever occurred to us that "the attitude of the young and highly educated young people in BiH, when they are entering the labour market, might not be best adapted to today's capitalist markets?" This truly interesting question contains an unambiguous statement to the effect that university-educated young people, in Cviki's opinion, ought to adapt their attitudes to the capitalist market which, in all likelihood, sees them as occupying the posts of waiters, forklift operators, car wash workers and travelling day labourers. And it's a well-known fact that we lack jobs only in the cities, whilst in the smaller towns the factories, hospitals, shops and construction sites simply beg for labour force. We'd be all set if only we'd stop being pretentious urbanite snobs and move there. The author then pacifies the reader with a reluctant admission that economic crisis and the lack of opportunities do play some kind of a role in the examined problem, and promises that some future instalments of this analysis would deal with that. This is not the only part of the text in which the author, consciously or not, disassociates herself from the ideas expressed in her writing. This is also done towards the end of the document where she gratefully stresses that the analysis owes its success to the "insightful comments and creative observations of the entire Populari team" who have "significantly facilitated the development of the initial idea and pieces of desk and field research into a coherent and understandable narrative."

The author then thanks the informants for their participation in the research and their willingness to share their experiences pertinent to the topic; their contributions were "essential and indispensable, and this brief could not have been produced without them." Which means at least two things. First: "It's not just me – it's them, too!" which in a way betrays that the author is aware, on some level, of the shameful cynicism and stretched, fabricated points her work is packed with; second: a de facto admission that the "analysis" of Populari's researchers is basically nothing but "creative observations" (another name for bending the truth) and interviewing of like-minded individuals, which in no way can pass for serious research, but for a misfortunate and clumsy attempt to spin the facts.

Unconscientious parents

In a tried and true manner, the author, in the part of the text which deals with the quality of education, tries to impose a point of view which sees the problem in the Yugoslav heritage in conjunction with the later lack of investment in the education system, which in turn transferred obsolete knowledge to students and failed to help them acquire skills necessary to find employment in the future. It seems that she forgets, as if on purpose, all about the intentional destruction of the education system via the Bologna process. Or was it actually the lack of investment? The author wasn't specific enough, and this remains vague. In addition, it's as if the youth do indeed sleep on the cloud from the endearing caricature which illustrates the document, thus Katarina Cvikl claims that "students are made feeling (sic!) special and made believe (sic!) they are the elite, which leads to their inflated expectations and a clear misjudgement of the real value and applicability of their knowledge." There you have it, dear youngsters, unlike certain researchers you didn't get lucky and you never acquired usable knowledge in the field of purveying hot air, neither at uni nor at work (at a car wash, I suppose), so you'd better grab your hoes and spades. Dig without pay, as volunteers, for only do-nothings with unrealistic expectations refuse to work for free and live on nothing but air. Later the report tries to explain that we're fools for going to university in the first place, because, "Greece, for instance, has a very high ratio of students in relation to the rest of the population, a relatively low number of graduates, but at the same time one of the highest unemployment rates all in all. Germany, though, has a relatively small number of students and graduates, and yet low unemployment, which could indicate to (sic!) better targeted and better overall quality of its educational programmes," and the author goes on to say that "being a student or a graduate in today's economic situation in itself no longer guarantees a job to an individual, especially if one's academic education is outdated and not practical." The experts, therefore, recommend elitisation of education, the rabble are born for the spade anyway. All the troubles are due to the fact that "[s]tudents are made believe that they are elite or the so called 'academic citizens', and that a job is likely waiting for them at the doorstep of their faculty. This appears to be a part of the heritage of former Yugoslav time during which higher education was reserved for a small portion of the society." (sic!)

The degradation of the very idea of education aside (it's merely a normative superstructure of the research anyway), they could have at least read a bit of history, check some facts on the scholarship programmes, Tito's Fund and similar schemes from backward Yugoslavia. That is pure positivist basis. Lest it appeared that the research attempts to put all the blame for the moral and work-ethical deformation of educated Bosnian-Herzegovinian youth on the bad educational system only, it was only appropriate to point a finger at the main culprit: the students' parents. And when one aims to hit below the belt, it is best to hide behind a quote, so Cvikl quotes Mario Milanović, a like-minded informant, the director of the Entrepreneurship Centre Banja Luka: "The parents of those who are now considered young were born when comrade Tito was still around, when former Yugoslavia was in expansion, and when job opportunities were abundant and secure without the need to be creative and to stand out." She then draws her own conclusion to the effect that it's unrealistic to "expect from parents who were raised and lived in such spirits (sic!) to encourage pro-activeness in their children," and that it "also does not make sense for them to be looking for jobs for their children or to eternally support their studies, vacation and/or other spare time activities." Then another footnote and a quote (masquerading as a research method) from another like-minded informant, this time one Davor Odobašić, executive director at Posao.ba: "Instead of letting them find a job for themselves, to earn money on their own and experience hard work, parents are loading young people with pocket money, and then vacation money so that they can relax after a year of focused studies. Parents are subsidising their kids' unemployment!" Ergo, the parents should come to senses and start kicking their children out onto the streets on time, where all kinds of jobs await them – from digging ditches, sweeping the streets, to work in car washes and cafés that need waiters and cleaners. This will help increase the supply and decrease the price of labour, which suits the new transition elites just fine. Is that supposed to be the first step, the stepping stone without which we can't set out on the path to social prosperity and full employment? Without that we'll end up like the Greeks – eternal students, unemployed do-nothings who loaf about and live with their parents, instead of becoming like the Germans – creative hard workers. This could perhaps be believable if we were to disregard, among other things, the fact that the labour market and market conditions in developed countries differ substantially from those in their colonies, euphemistically referred to as "countries in transition" or "developing countries." Therefore we shouldn't dismiss the possibility that the hard working

youth of Germany would become demotivated and lazy if workers' rights, wages and salaries, enforcement of labour legislation, availability of any kind of work, etc. were on a par with those in Bosnia. Popolari's research doesn't deal with that facet of the problem at all, it merely allows for the possibility of doing so in one of the future reports.

Sell kids into slavery!

To list all the contentious claims and nebulous drivel in this research would far exceed the intended scope of this piece, which is why only the most representative examples of falsifying the reality under the guise of attitude research were chosen.

So, what's the takeaway? Social engineering is nothing new, and it makes perfect sense for capitalism, as it weakens the education system in its colonies and creates favourable economic conditions for brain-drain, to create at the same time a special elite class of university-educated mediocrities disassociated from reality. Their main task is to impose, from a position of intellectual authority and influence, a vulgar paradigm intended to explain to the wretched of the Bosnian-Herzegovinian labour market that their agony is in fact their own fault, and the fault of Tito, Yugoslavia, and their parents who spoil them rotten by providing them with food, clothes, schooling and holidays, instead of doing us all a favour and selling their kids off to slavery before they even started school. But whose suffering would fertilise the analysts' theories? What would happen to the employability of all those analytical NGO wiseacres if neoliberalism were to become reality? When that happens, there will certainly be no more need generously to finance the local folly, and the wretched researchers will end up in the same boat as the victims of their perverted logic.

If we cast the comical aspects aside, what remains is the tragic superficiality of this report in which there are no traces of the most basic understanding of the social crisis at home and abroad which crushes the last bit of spine of the labour force, stamps out the very idea of the welfare state – in itself a compromise, arduously negotiated between capitalism and exploited society – and shifts the blame for all the faults of the economic system to those who serve it. Just like the socialism of yore, this capitalism of ours is perfect, if only the people were better and more obedient!

(Translated by Mirzah Purić)

About the author

Srđan Žagovec was born in Sarajevo in 1978. Profession: eternal student, worker, writer. He has penned a collection of stories titled *Hard Core* (Buybook, 2003.). His stories were published in *Lica*, *Spleen* and other magazines. He wrote for *Dani* magazine, edited publications at the Centre for Contemporary Art Sarajevo. At the moment he is employed as an assistant at a construction company. In his spare time he studies evolutionary psychology and biology, Eastern and Western spirituality, music, physics, chemistry, medicine and other fields.

The background consists of several overlapping triangles in shades of gray, creating a dynamic, geometric pattern. A central horizontal band is slightly lighter than the surrounding areas, serving as a backdrop for the text.

**ON SOCIAL JUSTICE
WITH NO ILLUSIONS**

BOSANSKA DUBICA (2012.)
BRANIMIR PRIJAK



DIJALA HASANBEGOVIĆ

RECESS

There are places where grown-ups play,
displacing each other's bones
and eyes.
In such places, silence rises in a whirl and roars.
One of the players covers his eyes and counts,
and when he's done counting, he yells
out the assignments.
One assignment, assignment
two:
you go find your father's rib
you put all the food in a sack
you put to death the children of the one who's putting
all the food in a sack
you fire randomly at the crowns sticking
out from behind the window-panes
you play catch with chemical bombs
so your brain takes on colour and runs
like an aquarelle
for the art lesson.
Everyone loves the art lesson: we shall paint
signs, facias, bridges, geishas,
houses, forests, holes and walls,
paint ourselves with new names so they
don't recognise and find us, those hidden in holes counting to
ten. Thirteen.
The music lesson is the best lesson:
practise the songs of all the birds you've throttled
so the teacher doesn't notice they are gone.
In phys. ed., the teacher says
that I can run
away from you,
ever faster
ever farther
ever faster
ever farther
until I become
sheer thud of flight
until I become
stillness itself.

(Translated by
Mirzah Purić)

REVEALING REALITY IN FRAGMENTS: FORMS OF INJUSTICE PORTRAYED IN POST-WAR BOSNIAN-HERZEGOVINIAN FILMS

*This text gives an overview of post-war Bosnian-Herzegovinian cinematography in the context of social justice issues by analysing injustices portrayed in the films *Summer in the Golden Valley*, *Well Tempered Corpses*, *Snow*, *Grbavica*, and *No Man's Land*. The article aims to correlate notions of injustice and justice with the way post-war social reality is constituted in the film medium and the way traumatic experiences in a post-conflict society are articulated. "Reality in fragments" denotes the fragmentary and disorderly nature of the social body that is not based on a system of values representing the idea of justice and guaranteeing its realisation in social space. Post-war films often relate the issue of injustice with a sense of the absurd, giving the impression that in a world devoid of its own reality, justice, in the social or political sense, is not an actual possibility.*

From 1997 and *The Perfect Circle*, the first serious production of a post-war cinematic work (directed by Ademir Kenović, and based on a script by Abdulah Sidran) to 2013, when we can already start thinking about a continuity of film production and a certain poetics and aesthetics, not very much has been written about Bosnian-Herzegovinian cinematography. The *Sineast* magazine that contributed significantly to the development of the cinematographic scene in our country, and a few other publications that considered the development of cinematography from a financial and production point of view cannot be said to represent a continuous and systematic overview of cinematic poetics in the post-war period. This is a considerable problem for the central task of this article, viewing BiH cinematography from a perspective that pre-supposes the existence of a theoretical foundation against which a polemical opinion or discussion space could be defined, where we might consider what makes our films important, significant, valuable in and of themselves, and valuable for the totality of social and political issues in our country. Thus, the perspective of this article, aimed at each individual film, at the same time becomes its key problem. In other words, to tackle the portrayed forms of injustice in post-war cinematography, taking into account the concept of social justice, means thinking about film as a phenomenon that is *a priori* accountable not only to its own aesthetic reality, but also to social reality. At the same time, this also means ignoring aesthetic autonomy, a cardinal feature for any creation to be considered a work of art.

It would be equally incorrect to claim that there have been no debates between supporters of the idea of art having a social role and advocates of the view that art can and must be concerned only with itself, and that these same principles can be applied to creative activity in the 21st century when the circumstances of artistic endeavours are quite different from those in previous epochs. We have Sartre to thank for one of the key essays on committed art, and various avant-garde movements for insisting on the non-pragmatic nature of artworks, but we must also accept that the discussion must be started over if we are to consider art between demands for aesthetic autonomy and demands for socio-political utility without the presupposition of universal principles. The once engaged, and today the subversive poetics often fall into the trap of self-serving and self-proclaimed subversiveness or commitment. Works labelled as subversive often resemble completely sterilised commodities rather than works of art. This is precisely why the present time has made art ultimately banal, and has done the same to these terms. A theoretical vacuum has been created where every work can be inscribed as superbly engaged, and it is then also almost always a theory on itself, extremely rarely is it considered as an artistic given.

This article does not put BiH film on trial in order to closely examine shortcomings in films through a pseudo-objective lens and relate them to very concrete social, cultural and political issues of injustice. The very phenomenon of justice, as well as its antipode of injustice, has undergone a process of atomisation, so that it is virtually impossible to discuss justice, or injustice for that matter, as a comprehensive certainty. This is why we distinguish between manifestations of injustice in the social, economic, and political sphere, or in the sphere of cultural identities. These are, in my opinion, very abstract notions of justice and injustice because they come from supra-individual levels of thinking and practice, while people experience injustice not just through belonging to a social relation, but also as separate entities. The fact that in historically relevant systems the words “injustice” and “justice” denote quite concrete things and that they are articulated, generated or eliminated in the social space is a reality distinct from inner human reality where the experience of injustice begins, where the need for justice is engendered and where the deficit of justice is truly felt.

With this in mind, post-war BiH film should be discussed with a degree of critical caution, because no single perspective of a work of art can exhaust all its dimensions. Given that no single film is self-sufficient enough as to exist without a consciousness perceiving it, i.e. a concrete viewer, or so committed as to be viewed pragmatically as a political project, the aim of this essay is to provide an analysis of our films from the internal perspective of their poetic reality, not a judgement based in theory. The aim is to try to understand what these films say about our society, our problems, the injustice we constantly feel, which cannot be articulated through any other communication channel. The authors of the films chose the topics and issues to be tackled by the cinematic form. One distinction this essay will espouse is the relation between the portrayed and non-portrayed forms of injustice in our films. Such a distinction presupposes a value system, but I think it does not preclude the selected films from speaking themselves through analysis, and even bringing into question that very system of values.

I have selected the following films for analysis: *Grbavica* by Jasmila Žbanić, *No Man's Land* by Danis Tanović, *Well Tempered Corpses* by Benjamin Filipović, *Summer in the Golden Valley* by Srđan Vuletić and *Snow* by Aida Begić. This very selection is a value judgement of sorts, but not one that necessarily chooses films based on quality (though a claim in this respect could be made), but rather because these films can be viewed through the prism of the problem of injustice whose articulation in the films can be analysed. The analysis dwells on some of these films more than on others, which are introduced for the purpose of comparison. As insinuated earlier, my starting point is that these films, though important for the formation of social awareness of certain issues, are not accountable to any social or political project. Perhaps that is precisely why they are socially significant.

Making justice meaningless

The main protagonist of Srđan Vuletić's *Summer in the Golden Valley* (2003), a young man growing up on the streets of Sarajevo, finds out at his father's funeral that the deceased left a debt of 50.000 Convertible Marks to a certain Hamid, and that the lender cannot write off the debt. The young man, Fikret Varupa, feels called upon to right this wrong. When the honour, reputation and eternal peace of his father are at stake, Fikret Varupa acts as a representative and defender of tradition despite the fact that he lives in a diametrically different spirit and is endeavouring to succeed within the norms of an African-American and very global world view. Although he bears no semblance to someone desperately clinging to religious traditions, the mechanism of his upbringing and the social position that forms his personality force him to try to repay his father's debt.

Fikret Varupa is entirely unprepared for such a responsibility, and the means he employs are, therefore, primarily ridiculous—he tries to rob a corner shop, despite being inept—and subsequently unjust, because two wrongs do not make a right, as they say. Following the failed robbery attempt, a corrupt police officer recruits him and his friend to help in the kidnapping of the daughter of a prominent politician by delivering her to an agreed location at an agreed time and picking up the “ransom”. However, as usually happens with a band of incompetent cons, the plan falls through, because Fikret falls in love with the girl and decides to deviate from the deal.

Particularly interesting in the film is the attempt to combine the perspectives of diverse and incongruous cultures that intersect in the consciousness of the main protagonist. The way he lives, his immature and childish perspectives of the world intersect with responsibility to his family and religious beliefs. These same beliefs and family upbringing go against the criminal activities Fikret engages in so as to raise the money, whereby it is quite clear that his models of behaviour have been taken from a different world; they are, so to speak, industrially fabricated in the sense of informing the desires of hip-hop fans with gangster themes, the whole apotheosis of street life, glorification of crime and aggressiveness. The discrepancy between Fikret's aims and the means he employs is almost grotesque, because the pseudo-morality of Fikret's actions devalues the morality of the tradition upon which rests the aim of his actions. Srđan Vuletić's film was evidently conceived to portray this incompatibility arising from wider social changes that most powerfully impacted the lives of the post-war generation.

If we assume that Fikret Varupa is a representative of that generation, could we then say that the film's narrative articulates the interesting semantics of the father's debt as a burden of legacy? Is the debt then not the very source of the overall injustice? Because it is imposed by tradition, and the only path to resolution leads through crime?

The incompatibility of the two spiritualities in the actions of the main protagonist ultimately leads to a caricature of justice in the mind and life of Fikret Varupa, and the film ends on a note of absurdity. It turns out that the entire story of the debt was fabricated by a gambler who loses the collected money playing roulette before Fikret's eyes. Nevertheless, Fikret then forces him to return to his father's grave and forgive the debt, which further voids both tradition and religion, and ultimately, the very path traversed by this young man to reach the desired level of justice. This twist in the plot makes all previous developments seem absurd, and where the absurd reigns supreme, it is impossible to talk about justice as such, and therefore also of injustice. What was supposed to be the just result has been made meaningless, but the same also goes for what was seen as an unjust world where only unjust action is possible. The accumulation of injustices to maintain the order of interpersonal justice, only to show that the original injustice was fabricated, that all that was done is truly absurd and that justice is impossible, because the "interpersonal" does not exist.

A strange form of the interpersonal does exist, however, in the film *Well Tempered Corpses* (2005) by Benjamin Filipović. What this film lacks is an order – just or otherwise. In this, one of the strangest post-war BiH films that begins and ends with two coroners wagering on the number of dead that day, both justice and injustice are completely meaningless categories. Given that the wager is whether there will be four corpses or not, we follow the story of four potential corpses and their loved ones. The first is Ruždija Kučuk, a man who transports passengers to Sarajevo on a train he put together himself and plans to privatise part of the railway. The second is Envera Hadžić, a serious politician and minister, an actor in international negotiations, forceful and malevolent, especially towards her husband Braco. The third potential corpse is Riad, an architect working in a local construction company for a bully of a boss and planning to move to Amsterdam with his lover Maria. And then there's Srećko, an inventor who has reorganised his entire apartment block with the aim of constructing an aircraft contraption to traverse the Atlantic and land in New York so that he may finally see his daughter. The characterisation of all the main protagonists, or potential corpses, is achieved through others talking about them. At the end, all the characters talking to the camera will lose the ones they had been talking about, some fortunately, some unfortunately.

Although these four protagonists are indirectly connected to a greater or lesser degree during their lifetime, it seems their strongest connection is the morgue. They are well tempered as corpses because circumstances bring them all to the same place due to a fateful wager by two coroners. Still, it should be noted that the narrative is not teleological. Constant incursions of coincidence create the impression of a burlesque comedy of the absurd, and where the absurd prevails, as I said before, it is difficult to talk of justice or injustice. Can it be said that Envera's death was just because as a minister she was unscrupulous and unethical? I think not, because such an interpretation does not apply to the death of Srećko the inventor, not to mention the young architect Riad. However, it could be said that these four protagonists are also connected by an ambition to do something grand, something that goes beyond the opportunities offered to them. They do not belong in the world they inhabit because it is simply not enough for them.

At the fateful moment when these characters meet in the morgue, we see no order of justice (or injustice). Their deaths are made meaningless by the circumstances under which they transpired and one of the characters constantly re-living his death. It seems that the wager element had to be introduced to hold together this fragile structure, because there is no other law that could do so. And where there is no law, where everything is left to chance, there can be no order, no justice or injustice.

The transcendent and the interpersonal – possible habitats of justice in an unjust society

Aida Begić's film *Snow*, produced in 2008, is about a group of women from the village of Slavno trying to make a living in the immediate aftermath of the war by selling home-made jam and other food products. Almost all the men have been killed in the war; only the oldest villager remains, a man referred to as Grandpa, and a boy who keeps having to get his hair cut because it grows at an incredible rate.

It could be said that the villagers have different opinions on the future of the village. Some, including Alma, the heroine of this story, believe their lives should be just as they are, tied to the village of their birth, spent in cooperative labour. Other women in the village, however, would rather sell their farms and seek their happiness in the city, a thing that becomes clear with the arrival to the village of Miro, a man who suggests that they should sell their land to foreign investors. However, Miro is not merely an intermediary in the sale arrangement, but also a former villager, a Serb with knowledge about how the husbands and children of the women from Slavno had disappeared. He later brings Marc to the village, a foreigner dead-set on buying up the land. After some time, when many of the village women had already signed contracts, either out of a desire to leave or out of pure ignorance, the whole business starts looking like a set-up to cheat the villagers.

From the perspective of many of the protagonists of this story, the village of Slavno is not a place fit for life. There, everything reminds them of a past they would rather forget, of violence and war; it is a place to be escaped from at any price, to seek a better life elsewhere, but not all the women are prepared to make this move, which leads to a conflict between them. Miro's position is quite ambivalent. Is he a bearer of good tidings, a man finally offering them a way out, or just a veteran of the Serb side coming to do business, to effect another instance of injustice?

It seems the people in the film cannot resolve this conflict between them, and it is ultimately resolved by a higher power, a blizzard that keeps Miro and Marc in the house of one of the women, where later other women gather in an effort to steal or destroy the signed contracts. It seems the women of the village had come to understand that the only future they can have is already inscribed in the tissue of their community, where community is not just the spatial congregation in a territory, but also a temporal congregation around a common past. From the perspective of people like Miro and Marc, it would seem the time of war was left firmly in the past, but in the village of Slavno, that time is accumulated in every word, every gaze, every gesture of the village women, and the value of their community is precisely in their remembering.

We cannot know the meaning of a better life for these women. However, the fact remains that their final decision is influenced by a higher power, which implies that not everything in this world is determined only by human will. We should ask what does the snow stand for? The snow that brings joy to the little girl from the film, the snow that comes in the end. The snow belongs to the symbolic dimension of this film that definitely opens up space to consider the influence of superhuman, metaphysical reality in the human reality we belong to with all our endeavours, desires, possibilities and impossibilities. *Snow* is a film that indicates how injustice, whatever its nature in the human world, is not so often a result of human will, but something closely connected to a speculative transcendent world. In contrast to the impression left by *Well Tempered Corpses*, in *Snow*, there is no trace of absurd coincidence, there is faith in order.

And then again, as opposed to *Snow* where justice comes from the superhuman, in the film *Grbavica*, the potential source of justice

is the interpersonal. The film *Grbavica* by Jasmila Žbanić, produced in 2006, is important for this paper because it correlates the problem of justice and injustice with the notion of truth, and this correlation is portrayed through an intimate family drama. The family, however, is not as it should be, it is nothing like the ideal families of American sitcoms and commercials. It is a family with missing members, that is to say, a genuinely post-war family.

In one of the opening scenes, we see Esma, the main protagonist, being woken up by her daughter Sara. A carefree pillow fight ensues until a moment where the mother falls to the floor, the daughter falls on top of her, grabs her wrists and the mother interrupts the game. The position had reminded her of the rape she had suffered, and the iconographic image of the situation complements this impression, except for the very essence of the mother-daughter relationship. The mother-daughter relationship contains something violent, a traumatic substance, something unspoken, repressed, a secret to be lived down. That secret forms the narrative matrix of this film. How does the mother live with the fact that her own child reminds her of the trauma she suffered? How does the daughter live with a mother whose present is marred by traumas from the past, whose present is almost entirely enveloped in a past that she cannot overcome? Or: how does a mother live with a daughter who is the very embodiment of the injustice she suffered?

Adolescence as the stage at which we encounter Sara is no coincidence, given that her physical awareness of sexual differences initiates her need to find out about her father, her need to find out about men as beings different from herself. Sara's father is the missing member of the family, as mysterious and important for the structure of the family as he is for the constitution of Sara's character (or personality). We find out from Sara that her father is a *shahid*, literally a "victim", but in our cultural context, a soldier killed during the war. Given that she knows nothing about her father, that she never met him, and that he is never talked about at home, she builds him up in her imagination into the ideal father. A father who will never grow old or weak, who will never disappoint her or deprive her of anything, apart from being able to have a real father. Paradoxically, Sara created her own father, the hero, the fighter, the warrior, inscribing her subjectivity into the complete post-war system of social values.

Sara has an imaginary relationship with her imaginary father. While from her everyday conversations with her real and present mother, it becomes clear that these two blood-related social beings hardly have anything in common. Just as her mother cannot understand what Sara is trying to say, so Sara cannot understand what her mother is going through. The two of them, complete strangers, must become mother and daughter.

On the other hand, the mother knows who Sara's father is and she carries the burden of that knowledge in the form of fear of men in general. Whether they are an actual threat or not, she perceives men as threatening. The composition of the film can be defined as a relation of parallels and contrasts in the separate lives of the mother and daughter, and one of the parallels relates to the school trip that forms a narrative node. While the mother is trying to find money for the school trip, the daughter is seeking a document to certify that her father is a *shahid*, because in that case the fee for the school trip would be waived. It is important to note that the mother is not trying to raise the money only because she doesn't have enough, but also to keep her secret, and the daughter is trying to get a certificate not just so her mother wouldn't have to pay for the school trip, but also because she has no other confirmation of her narrative in the parameters of this world. In other words, she understands that her father-narrative is no longer self-sufficient, that it needs to be legitimated, verified within the framework of the administrative truth. When three girls call her out because her mother is paying for the school trip instead of showing a certificate, Sara tries to prove her father was a *shahid* using a narrative she had heard from a friend, in other words, somebody else's story. Reproducing another's narrative, Sara literally adopts a system of values and a norm of truthfulness, letting them speak from her in a moment of anger as if they were her own. Sara herself knows that she is lying, because she is already within reach of the truth about herself, and therefore also truth for herself, having found out what the truth means for others.

It seems that in relation to issues of justice and injustice, truth plays a dual role. Truth is connected to the entirety of value frameworks that do not allow people to objectivise their private lives in something social, which is when the private takes on characteristics of a sinister secret. On the other hand, the only way to end this story with a halo of justice is to let the truth out. The school trip is, thus,

the key to letting a private crisis out into the zone of the socially visible. But what if society cannot deal with the fact Esma lives with, and that ultimately Sara will have to live with? What if society cannot create the mechanisms to liberate individuals from having to suffer private injustices alone? An example of a place that offers possibilities to articulate trauma is the Centre where women who have suffered injustices during the war go for counselling. It seems that the only mechanism to liberate individual suffering is the possibility to publicly articulate that suffering, but only in the company of those who have suffered the same or similar fate.

In *Grbavica*, as in *No Man's Land*, which will be analysed below, the truth is claimed by weapons: in an attempt to get to the truth, Sara will point a revolver at her mother's body. However, in *Grbavica*, this anagnorisis is made more dramatic because the tables are turned: the mother overpowers the daughter. In contrast to the opening sequence where the mother perceives the daughter on top of her as an evocation of violence, it is now the mother that performs the violence – in order to finally tell the truth. Self-discovery implies an act of violence, ever since the age of Oedipus. Sara is a “Chetnik bastard”, conceived in violence, against her mother's will, without her father's interest, a child created not out of love but out of the transposition of a historical nightmare onto an individual body, out of misfortune, almost by accident, without a plan, without agreement, without need. If Sara is a “Chetnik bastard” or some horrendous monster issuing from the violent conjoining of the national enemy and the victim, this means that she is also a blind spot in the discourse of suffering, because soldiers, apart from sowing death, through rape also sow life. The problem is how that life can be recognised within the framework of post-war society that bases justice on strictly and clearly separating perpetrators and victims as subjects with nothing in common.

The ending of the film is telling.

We see two plots taking place successively in the film, but simultaneously in terms of the narrative. While Esma is telling her story at the Centre, Sara is shaving her head. Esma talks about what she had felt, knowing that she was carrying an unwanted child, a child she did not want to accept, about how she had beat her fists against her belly trying to kill it, how she did not want to nurse the child. But she did nurse it. Why? Because her body started producing milk. The biological bond between mother and child knows nothing of the act of violence inscribed in the mind, it overcomes and overpowers it, becoming life-affirming, becoming a bond of reconciliation of the victim with herself. At the same time, in front of the mirror, Sara is shaving off precisely what, based on her mother's words, she believes to have inherited from her father. And therein lies the riddle. Why is she shaving it off when she knows the whole narrative of her father is false?

Shaving her head is a type of ritual with multiple meanings. Given the entire set of meanings defining Sara's character, for example, the fact that Sara belongs more to the world of boys than to that of girls, that she is more interested in her father's than in her mother's character, that her whole being is constituted through imagining the absent father, it could be said that in this ritual, Sara is removing not just genetic material, but the very narrative of fatherhood. Precisely by shaving her head, and thus taking on the guise of a boy, paradoxically, she becomes a woman.

The end of the film confirms this: there are no male characters, the imaginary is unmasked, the taboo of the past desecrated, all that remains are the mother and daughter. As the bus leaves, Sara places her hand on the window starting a new relationship between mother and daughter, this time based on their personal, common truth.

Grbavica is a BiH film treating the issue of injustice at the level of individual experience. However, *Grbavica* also portrays injustices on the level of society. The girls harassing Sara because they do not like her, or do not trust her, or simply do not understand her, the two men coming into the separate lives of the mother and daughter inadvertently adding to the crisis, the fact that the single mother is not given any possibility of stabilising family life in the material sense; all of these are social forms of injustice superimposed upon the subjective level at which injustice is manifested as repressed truth. The question being asked is what can society do for such a family? If the family is the basic unit of society, what is a destroyed family in an equally destroyed society? That society can

express solidarity when it comes to raising funds or hearing out narratives about a traumatic past, but it seems that the possibility of happiness exists only on the level of personal relations, in the reconciliation between loved ones, when mother and daughter come to know each other, when they are no longer separated by the hush of secrecy, but instead accept each other in silence. In this film, injustice is overcome only through its disclosure in an intimate human situation.

Impossible justice

Without oversimplifying, it could be said that our post-war cinematography is marked by the unresolved struggle with its own point of reference: the war. This is why I conclude with the film *No Man's Land* that not only revolves around the state of war, but also uses it as the space of the cinematic present. Danis Tanović's *No Man's Land* was produced in 2001 and is one in a series of films obsessively preoccupied not just with the topic of war but also with the topic of BiH as a space. It is a topic from Andrić – making Bosnia into a metaphor, elevating a small part of the world to speak for the world in general, the world as it truly is in its essence.

At the beginning: shots of the fog, reduced visibility, the whispering of a troop of soldiers stranded in the impenetrable unknown of the night. Morning, the dark maw of an enemy tank takes up the horizon of the visible, the soldiers scatter, most do not make it. Among the survivors are Čiki, and as we later find out, Cera. While Čiki, the protagonist of this story, tries to get out of the trench where he had been taking cover, a general of the Serb army orders two "volunteers" to stake out the trench. In the meantime, Čiki finds out the trench is booby-trapped and that he cannot get out of this abandoned dugout where war equipment is left to rust and deteriorate. It is a place forgotten even by the war.

And while Čiki aimlessly wanders around the trench, the two Serb soldiers take up their positions. Čiki sees them and hides in a shed from where he will watch the two of them, Nino and his mentor, an older soldier, the inventor of a maliciously morbid trap central to the plot of the film's narrative, as they slowly take over the space of the trench. Given that they have nothing to do until their shift ends, the older soldier suggests they lay the body of Čiki's fellow fighter Cera, who they assume is dead, over a bounding landmine. The director thought it very important that we remember how the old man booby-trapping Cera waxes lyrical about the mine, even kissing it at some point, and admiring the fact that it was, as he says, "made in EU". At that point, Čiki runs out of the shed, kills the older soldier and wounds NiNo. After a bout of cursing, smoking, and unanswered questions, Čiki makes Nino take off his uniform and jump up and down above the trench waving a white rag to signal to the surrounding soldiers that they should hold their fire. The trench is between the two front lines: the Bosnian army on one side, the Serb on the other. The trench is an in-between space that neither side dares try to conquer.

The turning point happens when Cera, who was thought to be dead, wakes up – on top of the landmine. If he stands up, the mine will explode. The weight of this body is both the only guarantee of security and the fact of overall threat in the trench. The fact that Cera is alive completely transforms the situation. Čiki will not leave his friend Cera, and Nino must remain with them. Cera's position on the mine is paradoxical because he is unable to make any decisions himself, and yet everything depends on him. He has just enough leeway to mediate between the other two when they come to the verge of conflict; he calms them down, acts through words, because everything depends on him. On the other side, Čiki and Nino can try to resolve the situation, they can do everything apart from making a decision on Cera's behalf, because the man on the mine, or the man-mine, possesses precisely that necessary minimum of free will required by a dramatic character. Paralysed by the fact of the mine, he is nonetheless the centre of that world. No one leaves the trench until the existential situation of the man-mine is resolved!

At one point, the shelling forces both the 'mobile' protagonists to take shelter, because cannon fire is dangerous to all, it does not discriminate. The shelling forms the backdrop for the famous conversation about who started the war, which is a very important issue in terms of establishing the historical truth, except that here history speaks through two characters, two individual subjects. For both, the truth entails their side not being to blame for the initial spark of the war. However, the truth is claimed by weapons.

When Ćiki points his rifle at Nino, the latter admits his side is to blame. This puts an end to the dialogical tension in the agon, in the discussion, the competition of truths, simply because the two are no longer equal. Truth is on the side of whoever is holding the rifle. When Nino later gets hold of the rifle, he also asks the question, "Who started the war?" and Ćiki is forced to respond just as Nino had been forced to respond earlier. In this way, *No Man's Land* sets up the paradoxical formula of truth: whoever has the rifle did not start the war. Or, whoever the rifle is pointed at started the war. It seems only the man-mine enjoys freedom from causal obsession, because he says,

"Does it matter who started the war – we're all in the same shit now."

And what does war look like in *No Man's Land*? Like a ridiculous farce, an obscenity fair, a carnival of boredom, a travesty of military strategy. The depiction of war as something ridiculous and boring is the aesthetic revaluing of history in *No Man's Land*. Not in order for an infantile artistic cynicism to jeer at history, but in order to juxtapose it to itself. Where is the real history happening in this film? Where is the genuine war taking place? In the trench. Where Ćiki, Nino and Cera, people of flesh and blood, sweat in the summer heat and feel the full intensity of war's drama. In a place that neither the Serb nor the Bosnian army can reach throughout the film.

Blissful idleness also prevails in the peace-keepers camp. The panoramic shots of nature contribute to our understanding of the battlefield as a deserted, cruel void where nothing apart from war ever happens and where people should never have set foot, let alone waged war. A soldier by the name of Marchand decides to take a step forward, assume responsibility, resolve the conflict, but the first obstacle he encounters is the hierarchy. The film's narrative contains a number of representatives of the non-intervention policy. Viewing the whole thing from the top of the hierarchy is a man named Dubois. He sits in the shade of his office in Zagreb, in a magnificent palace, surrounded by bookshelves, an attractive secretary swaying her legs off the desk while he says into the telephone the typical soldierly line that the chain of command must be respected.

Marchand decides to visit the battlefield – the abandoned trench is enlivened. For the first time, we are offered a view of the trench from the perspective of someone who is not in it. For the first time, we can view it from the outside. Faced with the trench, Marchand tries to help by enlisting the services of a reporter who can crucify the peace-keepers for their passivity, inertness and overall irresponsibility in this concrete case. The reporter, Jane Livingston, with solemnly pathetic declarations before the camera, describes the agony of a country, while actually seeking only what her employers in London are after – a good story.

The end of the film sees the arrival of the German mine expert who establishes that nothing can be done. Not because he does not want to help, but because Europe produced the mine ("made in EU") that he does not know how to deactivate. I do not want to go into the implications of this beyond the aesthetic, in the world of causal-historical interpretation: the symbolism is multi-layered and far-reaching. After admitting defeat, the mine expert receives orders to sit in the trench and pretend he is doing something, which is both ridiculous and horrifying, in a word, grotesque. In the meantime, the conflict between Ćiki and Nino keeps escalating. They shoot at each other and draw knives; there is no chance of reconciliation between them any more. They are taken out of the trench and separated, but at one point Ćiki fires a shot at Nino, the cameras record as Ćiki kills Nino while a disinterested peace-keeper shoots and kills Ćiki at the same time. Both are dead. Everything was broadcast live, the footage of the shooting reaches London where the editors are shocked into speechlessness.

It is time to leave the scene of events. Jane Livingston sees no need to shoot the trench. As far as she is concerned, this trench is like any other, unremarkable, boring, uninteresting, empty. She is blind to the story that no one has told, the real story. *No Man's Land* opens up the relationship between what is told and what remains untold, between the recorded and unrecorded, the visible and the invisible. *No Man's Land* is actually the struggle between the film camera and the reporter's camera, a kind of wrestling match between their two truths. While filming the trench and the immobilised Cera, the film camera was patient, deliberate, it approached its subject with more awareness and presented us with an image of hopelessness of the man-mine, the surplus man (but without

romanticising), a man equated with the scraps of war piling up in the abandoned trench. This is a man forgotten by the world, and the war, and the cameras. Just like the post-war reality of our society, the man-mine is the only survivor, even though he had been considerably less alive than all the other key protagonists in the film. The paradox of the man-mine is that even if he explodes, he will hurt no one but himself. The film ends on this note, with images of a barren “post-war” land where the man-mine continues to lie motionless. It is a horrifying image and leaves anyone with a consciousness of injustice under a strong impression that the war does not only take lives, but also leaves lives in a desert of loneliness.

It would be easiest to claim that the overall injustice portrayed in *No Man's Land* issues from the fact of war, but things are not so simple once we realise that the war is not portrayed as an unambiguous event. What is war? Perhaps it would not be wrong to conceive of war as a completely separate reality. But then we would have to understand this reality as made up of the facts of violence, terror, fear, death, injustice, a struggle to survive, hunger... and in comparison, peacetime reality, which excludes or regulates or makes up for all these elements in different ways, would be existentially different given that it makes life orderly, less intensive insofar as removing a continuous threat and leaving room for the development of habits, regularity, and ultimately mundane everyday life.

If we juxtapose peace to war, as is usual, distinguishing them as two significantly different realities, then we could say that a cinematography almost obsessively concerned with war sets up a comparison between the reality from which it refers and the reality to which it refers. To deal with war, however trite and obsolete it may seem to the faceless public or to concrete individuals, then also means to refer to peace as the current reality. Because, this peace we are living, however we choose to interpret it, is entirely determined by the past of the war. What defines the political sphere of the state we live in? The reconciliation between conflicting forces. Our social and political reality is so immersed in the past of the war that it remains unchanged to this very day.

Taking issue with that legacy meant critically re-assessing the present as entirely determined by the past, and this was precisely what BiH cinematography was concerned with in the early aftermath of the war. At a time when politics still refuses to face up to its role, i.e. the role of managing and regulating social relations, but conceives itself as an arena of competing truths, cinematography, like all other aware artistic practices, cannot ignore the process of truth being imposed from the outside. When I was in primary school, history in our textbooks stopped just before our war, i.e. there was a blind spot about our past, because the competition between truths was not over yet.

And what then do we do with the reality we inhabit? This “after-the-war” reality is collapsed, it is in fragments and it retains something of a past life that will never be revived, never resurrected. This reality can only be reached through remembering, with genuine nostalgia. Cutting off that reality from the present day is an abruptly violent reality that had been imposed upon the unsuspecting multitudes. They were forced to live in it without being able to believe in it, and they are still forced to live in the present reality without wanting to believe in it.

How will the art of film—that colossal invention of technological man, that enigmatic factory of imagination and illusion, that “hegemony of the eye” capable only of making reality into its double—react to the fact that post-war reality is barely a reality? Because, more than anything else, it is a mixture of nostalgic and traumatic remembering, a reality dissatisfied with itself, and not in the least self-sufficient. What kind of justice can there be in this non-reality, which again is not fabricated, because it is lived. What role does truth play in all this, if it cannot be realised internally or at the level of political consensus? How can we deal with the fact that the truth of experience in the world we live in is imperceptible, tiny, subjective, and therefore insignificant?

BiH film has taken the path of revealing a reality as not only removed from the principle of social justice, but a reality where justice is not considered possible. The analyses of these films lead to the conclusion that fictional reality does not present a homogeneous amorphous society into which projected aims can simply be inscribed to suddenly make everything functional. It could be said that

the cinematic art of our cultural environment is quite passive towards the current problems tormenting our social, economic and existential basis. But then we should ask why certain issues are missing from the spirit of our cinematography? If we start from the fact that in the sphere of spiritual practice, art is the first to register a certain image of the world, we open up the possibility of interpreting these films as warnings that we are trying to skip key development steps at the expense of remembering and implement a certain consciousness before the necessary preconditions have been put into place. For it seems BiH film has not yet posed the question of social justice; not because it is lagging behind reality, but because, truth be told, it may not believe in such a concept. Instead, these films ask: what sort of project of justice is conceived so abstractly as to bar every non-abstract being, every individual, from emotion, memory, loneliness, absurdity, from personal desires and needs, etc. Ultimately, perhaps the point of art is not to adhere to wider tendencies or to give people what they want, but rather to take them back to what they do not even know they need.

(Translated by Ulvija Tanović)

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THE CHALLENGE OF SOCIAL JUSTICE IN DUAL TRANSITION: THE CASE OF BOSNIA AND HERZEGOVINA

The paper analyses the links between transitional and social justice through the prism of dual, post-conflict and post-socialist transition in Bosnia and Herzegovina. Neither the mechanisms nor the discourse of transitional justice deal with the degradation of economic and social rights or economic crimes within transition. The conclusion this paper reaches is that transitional justice based on the liberal paradigm, which insists on civil and political rights, does not have the vital potential to transform society, as would be needed to achieve aims such as historical justice, truth and reconciliation. These aims require an expansion of the paradigm to include social and economic rights.

The relationship between transitional and social justice in societies that have recently undergone mass violence and human rights violations and are now undergoing “transformation” and “transition” to more just social relations is key for understanding the possibilities of social recovery, or rather, the possibilities of transitional justice in general.

The intention here is to take issue with something transitional justice does not deal with in either theory or practice, namely, the role of economic liberalisation in transition, issues of social justice, and in particular, violations of economic and social rights.²⁷ In the field of theory, there are some exceptions to this general rule, and this article will touch upon them in its endeavour to determine whether transitional justice, in its current terms, possesses the vital transformative potential to change socio-economic circumstances and relations.

Links between transitional and social justice will be analysed through the prism of the dual transition in Bosnia and Herzegovina (BiH), namely, post-conflict and post-socialist transition. At the start of democratic reforms in the early 1990s, the citizens of BiH certainly never expected to lose all semblance of social security embodied “back then” in a very wide range of guaranteed economic and social rights. This range was considerably narrowed by the destruction of war, but also by economic liberalisation in its aftermath. In that sense, all citizens of BiH, apart from the tycoons in the economic and political elite that made a hefty profit from the war and the transition that followed, can be considered victims²⁸ of the war and of transition. However, the essential degradation of economic and social rights, and the crimes committed within the scope of economic liberalisation were never seriously considered or sanctioned; nor does the discourse on transitional justice in BiH find any room for them. Why?

27) Economic and social rights mean the rights defined by the International Covenant on Economic, Social and Cultural Rights (New York, 16 December 1966). 993 UNTS. 3, which came into force on 3 January 1976.

28) Definition based on the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. 1985. A/RES/40/34, which states: Victims are persons who “individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights”. This definition also includes “the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization”.

Transitional justice and the missing links: The liberal paradigm at the core of understanding justice

What permanent achievement is there in saving people from torture, only to find that they are killed by famine or disease that could have been prevented, had the will and appropriate controls been in place? (Eide et al., 2001: 7)

Transitional justice is used to denote the response of a society to systematic and large-scale human rights violations from the past.²⁹ It should not be understood as a special form of justice, but rather as justice adapted to societies undergoing transformation following a period or episodes of human rights violations. (ICTJ, 2010: 1) It is claimed that the importance of this justice lies in the high likelihood of social divisions becoming deeper unless society deals with mass crimes from the past, their potential to generate distrust between groups and state institutions and prevent or stall the development of society and the establishment of a safe environment. (ICTJ, 2008: 2)³⁰

Concrete steps towards achieving the aims of transitional justice refer to individual rights of victims and collective duties of the state as defined by international law (the right to justice / just satisfaction; the right to truth / the right to know facts; the right to reparation / damages and the right to ensured preconditions that crimes would not be repeated).³¹ These obligations and rights serve as the foundation for the four mechanisms or “pillars” of transitional justice developed to date, which are rarely applied individually: criminal justice, determining facts and speaking the truth about crimes, institutional reforms, and material and symbolic reparation. Even though the fundamental rights of transitional justice are understood as individual rights, they are most often violated on account of an individual belonging to a group or collective within society (where society as a whole is never the target), which is why the institute of collective reparation, more often symbolic than material, is sometimes applied. Still, these cases are exceptions that prove the rule: these rights are mostly defined as individual rights of victims, which leads to the liberal paradigm being inscribed into the fundamental ideas of transitional justice.³² It should be noted that one of the causes of this position is based on the principles of the international system for the protection of human rights, which up until 1993 and the Vienna Declaration and Action Plan, put civil and political rights above economic and social rights.³³

The end of the Cold War brought about changes in global policy, and today human rights are considered inseparable,³⁴ which means that economic and social rights are at least nominally equal to civil and political rights. By that logic, transitional justice—defined as a “response to systematic human rights violations”—should develop mechanisms or strategies to enable societies and individuals

29) For more on the concept and definitions of transitional justice, see, for example, Kritz, N. (ed.), 1995. *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, US Institute for Peace Press; McAdams, A. (ed.) 1997. *Transitional Justice and the Rule of Law in New Democracies*, University of Notre Dame Press; Teitel, R., 2002. *Transitional Justice*, Oxford University Press; Dinah L. Shelton (ed.), 2004. *Transitional Justice*, *The Encyclopedia of Genocide and Crimes against Humanity*, Woodbridge, Macmillan Reference USA, tom 3, pp. 1045-1047.

30) This also implies the possibility of renewed conflict, as adequately illustrated by the conflicts accompanying the dissolution of Yugoslavia and their ties to discourses related to World War 2. For more, see Đokić 2002. *The Second World War II: Discourses of Reconciliation in Serbia and Croatia in the Late 1980s and Early 1990s*, *Journal of Southern Europe and the Balkans Online*, Vol. 4, issue 2.

31) Principles against the impunity of those responsible for mass human rights violations (Principles against Impunity) were proposed by professor Joinet in 1997 (E/CN.4/Sub.2/1997/20/Rev.1, Annex II), and are therefore known as the Joinet Principles. They were augmented by Prof Orentlicher in 2004 (E/CN.4/2005/102/Add.1). The UN Human Rights Council noted them in its resolution 2005/81 dated 21 April 2005, whereby they became part of international law.

32) Thus the right to justice, one of the fundamental principles of transitional justice, is implemented exclusively through war crimes trials and trials for crimes against humanity according to international humanitarian law.

33) The Cold War ideological confrontation between liberalism / capitalism and communism / socialism, and between fundamentally different understandings of freedom and equality led to the separation of rights, which in 1966 resulted in two UN covenants: the International Covenant on Civil and Political Rights and the International Covenant on Economic and Social Rights, instead of the single international legal standard that had previously consolidated these rights under the Universal Declaration on Human Rights. Western liberals recognised only individual civil and political rights as human rights, while economic and social rights acquired the pejorative denotation of “second generation rights” and the status of second-rate importance. Eastern bloc countries, on the other hand, insisted on the importance of economic and social rights. At the level of the Council of Europe, even today we have the European Convention on Human Rights that includes only the right to education while all other economic and social rights fall under the European Social Charter.

34) For more on the principle of inseparability of human rights, see: Nickel J. (2008). “Rethinking Indivisibility”, *Human Rights Quarterly* 30, pp. 984–1001

that have suffered systematic violations of economic and social rights the full enjoyment of these rights during transition. This can be achieved both through their progressive implementation and by compensating for the rights violations suffered. This, however, as we see from the practice of transition, is not the case. (Laplante, 2008: 333) The reason, as Morvaridi states, lies in the so-called neo-liberal policies: "The predominance of neo-liberal policy has, however, politically and ideologically constructed human rights as the protection of individual rights in defence of property rights. The more encompassing economic, social and cultural rights have tended to elapse in theory and practice, because the neo-liberal economic paradigm that governments are encouraged to adopt [to put it mildly] glosses over the underlying causes of inequality and poverty." (2008: 68)

Although in both theory and practice, the concept of transitional justice has from its very inception applied exclusively to responsibility and compensation for violations of civil and political rights, and guarantees that the violations would not be repeated (Arbour, 2006:4), it should be noted that there are certain developments in the field of theory towards examining the possibility of transitional justice dealing not just with the political, but also with the economic aspects of transition. In the past ten years, the failure of transitional justice mechanisms has been timidly pointed out, while neglecting the socio-economic dimension of perpetrated injustices has been identified as the cause. A number of authors have started introducing broader requirements into the concept and practical aspects of transitional justice, relating them to development, social and economic rights, and (rarely but worth noting) social justice.³⁵

These voices are becoming more frequent; in 2006, Louise Arbour, the UN High Commissioner for Human Rights, gave a memorable lecture on economic and social justice for societies in transition and advocated a holistic approach for transitional justice that should include violations of economic and social rights. This is important, Arbour pointed out, because "[a]s we pursue the establishment of democratic institutions in post-conflict societies, it is irresponsible to assume that vulnerable minorities will fare better in the pursuit of their [economic social and cultural] rights than they do in ensuring respect for their civil and political rights, and in protecting themselves from discrimination." (Arbour, 2006: 5)

In that sense, Rama Mani claims that in impoverished and dismantled societies, transitional justice will lose all credibility if it does not deal with social injustice, corruption, exploitation of resources and economic violence. (2008: 253–254) Laplante points out that it is extremely important to find a way to expand our understanding of transitional justice to address structural violence, the socio-economic conditions that cause poverty, exclusion and inequality, or simply put – to address injustice, and have "the concept of social justice [fold] into the general definition of transitional justice." (2008: 333)³⁶

35) Due to the global rise of the (neo)liberal doctrine and the disappearance of the Eastern Bloc, the concept of social justice has simply been wiped from the vocabulary of international institutions and politics. It has been replaced by the term "development" inextricably tied to economic progress, while the discourse of economic and social rights retains a subversive potential in relation to the liberal market economy paradigm. "Development" entails, above all, the improvement of socio-economic living conditions for individuals and groups within a society, as defined by the International Covenant on Economic, Social and Cultural Rights (1966) as well as other international legal documents, and can, therefore, also be understood as a progressive implementation of economic and social rights. Economic and social rights are primarily rights that states party to international legal documents such as the International Covenant on Economic, Social and Cultural Rights are obliged to "progressively implement". Non-progressive implementation towards full entitlement in terms of economic and social rights, as well as any regression, constitutes a violation of these rights. Regression can be seen in new policies that move away from full exercise of the existing scope of rights, and this is clearly a direct consequence of introducing a free market economy and minimising state interventions to redistribute goods.

36) Andrieu, for example, distinguishes a number of levels of transitional justice: retributive justice that entails prosecuting criminals and (re)establishing the rule of law, reforming the security sector and the justice system, and restorative justice: gathering facts about past events, empowerment of victims and rebuilding communities through reconciliation and collective memory. Andrieu is one of the few scholars that introduces social justice into the discourse on transitional justice; she defines social justice as overcoming economic, political and social injustices that have contributed to the conflict, and as the basis of a just and stable society achieved through reparation, material and symbolic affirmative action programmes, gender sensitivity, development, etc. (2010:4) A publication indicatively titled *Transitional Justice and Development: Making Connections* (International Centre for Transitional Justice, 2009) contributed to the development of this field, since it points out the separation of these fields and tries to reconnect them.

Concealing injustice: (neo)liberal economic transition as subtext and context

The role of transitional justice and its mechanisms in creating dominant narratives connected to power structures was first highlighted by Mahmood Mamdani in his now already famous critique of the work of the South African Truth and Reconciliation Commission³⁷ (TRC) that had been active from 1995 to 2002. According to Mamdani, the work of the TRC resulted in “institutionally produced truth, as the outcome of a process of truth-seeking, one whose boundaries were so narrowly defined by power and whose search was so committed to reinforcing the new power, that it turned the political boundaries of a compromise into analytical boundaries of truth-seeking.” (2000:177-8) This approach produced a new narrative on apartheid because the Commission awarded reparations for only a little over 2000 people, defining the relationship between the state and entire communities as the relationship between the state and the individual. The same effect was achieved by separating the political from the economic, when the state took responsibility only in cases of violations of the right to bodily integrity [civil and political rights], but not in cases where rights to means of livelihood were violated [economic and social rights]. (Mamdani, 2002) Both narratives clearly exhibit the neo-liberal project based on the doctrine of classical economic theory usually understood as hostile to society due to its commitment to methodological individualism. This manner of truth-telling is “based on an initial act of abstraction that consists in dissociating a particular category of practices [...] from the social order in which all human practice is immersed.” (Bourdieu, 2005:1)

Let us assume that socio-economic rights are an important element of social justice understood as the redistribution of goods, and that this redistribution plays a crucial role in development understood as increasing social well-being and improving socio-economic conditions for all individuals and groups in a society.³⁸ In order for economic and social rights to be implemented progressively, such as, for instance, the right to an adequate standard of living from Article 11 of the International Covenant on Economic, Social and Cultural Rights,³⁹ the state must intervene, performing a certain redistribution and responding to poverty and inequality through justly designed social security measures, which, of course, is not in line with the foundations of a social order based on the free market that derives justice from the logic guided by the “invisible hand”. The consequences of ignoring just redistribution can be seen today in South Africa; the lives of the impoverished majority are just the same as they were in the time of apartheid⁴⁰, and the degree of guaranteed civil and political rights is proportional to increasing insecurity, violence and crime. (Žižek, 2013)

Big business and the process of economic transition dictated by international financial institutions are dimensions of conflict and transition neglected by transitional justice or concealed by its legalistic approach based on civil and political rights. (Miller, 2008.) This process is often key for understanding violent conflicts (Chua, 2003), but also the violations of economic and social rights committed during and after conflicts by political elites and international interest groups through predatory privatisation and corruption. Miller explicates the link between the neo-liberal doctrine of economic practices and transitional justice: “Both conflict and transition are entrenched as stories of political and legal change and of physical violence rather than as tales of economic liberalization or structural violence. Although a government may separately pursue development options, the redistribution of land or other plans for economic change, the argument here is that the divorce of those strategies from transitional justice mechanisms allows a myth to be formed that the origins of conflict are political or ethnic rather than economic or resource based. It suggest that inequality is a question of time or development rather than the entrenched ideology of elites...” (2008: 268)

37) Hayner (2011:11) defines five characteristics of truth and reconciliation commissions: focus on the past and not the present, investigating causes of events during a certain time period, immediacy and range of relations with the population whose experiences are being recorded, temporary nature—because their work is done upon publication of the final report, authorised by states.

38) See: Morvaridi B., 2008. *Social Justice and Development*, Palgrave Macmillan.

39) Article 11 states: The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

40) In an article titled *How the ANC's Faustian pact sold out South Africa's poorest* (The Guardian, 24 June 2013), Ronnie Kasrils identifies the main reason as taking the first instalment of an IMF loan taken immediately after the first democratic elections, calling it a Faustian move or a deal with the devil, www.theguardian.com/commentisfree/2013/jun/24/anc-faustian-pact-mandela-fatal-error [Accessed on 10.12.2013]

It clearly follows that the neo-liberal hegemony neutralises the ideological roots of social reconstruction [as had been taking place in the former Yugoslavia in the early 1990s] presenting human rights violations during the war and transition exclusively as decisions of individuals or political and military subjects, with no connection to economic structures. (Kasla, 2012) According to Miller, the invisibility of the economic in transitions actually illustrates the inability to understand and address three extremely important problems: hesitation to resolve crucial issues related to the economic causes and effects of the conflict, the preference of powerful countries to impose market liberalisation instead of socio-economic redistribution, and plans and interests of local ruling groups in line with such a market environment. (2008: 266) All of these processes perpetuate inequality and oppression and create opportunities for further political manipulation and exploitation by ruling political elites during peace-time, a pet name given to this state of affairs.

Possibilities of transitional justice in BiH: economic and social rights in exile

A common characteristic of societies in transition from the 1990s to the present is the transitioning to a market-oriented economy whose impact on economic and social rights is not treated by transitional justice despite the fact that they are the root cause of perpetuated inequality and injustice in transition societies. BiH is no exception. But what does this mean in the context of transitional justice?

The three key challenges facing our post-socialist society today are the post-conflict situation, transition and poverty. (Bašić, 2012) Judging by the assessment of the international community and local analysts, the general political, but also the socio-economic situation in BiH has never been worse since the end of the war. (Papić et al. 2013) For almost two decades, the country has been undergoing two transitions, post-war and post-socialist (democratic?) transition, while stabilisation—either economic or political—is nowhere to be seen. It is common knowledge that the workers and citizens of the former Socialist Federative Republic of Yugoslavia enjoyed exceptionally advanced economic and social rights. The right to adequate housing was embodied in the so-called tenancy right: housing automatically awarded on the basis employment (although sometimes subject to longer periods on the waiting list), health insurance was universal, and education was free—and not just primary education, as per the international legal standard under Article 13 of the International Covenant on Economic and Social Rights, but also secondary and higher education. The BiH Constitution from 1995, annexed to the Dayton Peace Agreement, recognises these rights only indirectly, through human rights treaties ratified by BiH. As opposed to civil and political rights included in Annex 6, economic and social rights, with the exception of the right to education, are not explicitly mentioned.⁴¹ (See also: Mlinarević and Lalović, 2010: 20)

The long-term process of post-war economic stabilisation and development in BiH—if you can call it that—can partially be accounted for by effects of the war (destroyed economic infrastructure), but also by the constitutionally reinforced ethnic division of the country and its population whose importance, it would seem, pushes every other issue not just aside, but off the grid; including the issue of extreme poverty and inequality. Apart from that, the breakdown of the socialist paradigm and the entire context of the dissolution of Yugoslavia have their part to play in the refusal to even think about socialist experiences and social and economic rights as a valuable reference point for rehabilitation of a post-conflict society.

Transition towards an all powerful, self-regulating, Breton–Woods type of free market contributed to gradual increases in poverty in BiH, concurrently—as indicated by Papić et al.—with the process of predatory privatisation by way of corruption whose social repercussions were worse than those of “primitive accumulation” from the dawn of capitalism. Misplaced international aid and the degradation of the real sector through predatory privatisation rendered the BiH economy incapable of development and fundamentally changed the structure of society, destroying the middle class and increasing poverty for the benefit of a thin stratum of

41) As aptly pointed out by N. Kulenović (see article in this volume), due to a sui generis organisation, the state of BiH has no authority over redistribution, i.e. economic and social rights, although social aspects of the state are referred to, albeit only nominally, almost in passing.

the new tycoon elite. (Papić et al., 2013:1) The socio-political situation in the country was further destabilised by the global economic crisis of 2007 caused by a hegemony of the financial sector over sectors of the real economy, and the complete unwillingness of the ruling elites to face the crisis and respond in an efficient manner. (Papić, 2009:17) All these developments, commonplace in the aftermath of mass crimes and violence, can have a significant effect on the ability of society to develop, especially in the direction of social justice. (Andrieu, 2010.) However, following the wartime destruction of BiH, and given its constitutional order where structural violence is inherent, it is simply impossible to establish developmental policies that would not lead to further social fragmentation and erosion of what Putnam terms “social capital”. (Putnam, 2000)

This is the context where attempts are made to implement transitional justice by using various mechanisms, both judicial and extra-judicial, and where it faces a series of problems. Already in 2003, Alexander almost presciently claimed that poverty cannot be reduced without effective mechanisms addressing past violations of rights. “Tensions between former parties to the conflict will remain unresolved, threatening political stability and economic growth. Large sections of the population will remain marginalized, vulnerable and traumatised, in many cases unable to participate in economic activity due to the injuries and losses they have suffered. Nevertheless, an effective, post-conflict transitional justice strategy is vital to ensuring the political, social and economic conditions that are necessary to achieve poverty reduction.” (2003: 47) BiH is one of the few countries with a Transitional Justice Strategy,⁴² or rather, a draft strategy for the period 2012-2016. As its authors state, the aim of the strategy is to thoroughly and comprehensively point out the greatest problems in implementing various extra-judicial mechanisms of transitional justice, meaning everything apart from war crimes trials, and to try to provide concrete solutions to these problems.

The Transitional Justice Strategy has not been adopted to date.

This non-existent Transitional Justice Strategy

The Strategy encountered resistance already when its draft was presented. A. Pandurević, a member of the House of Representatives in the BiH Parliament, was among the first to react, pointing out that paying the foreseen reparations to war victims would push BiH into economic collapse: “There are certain pressures for BiH to take on financial obligations that we would not be able to bear, unless we want to country to go bankrupt. I cannot accept this. When we talk about reparation to war victims or detention camp survivors—we have the example of Germany paying reparations only 60 years after World War 2, and someone is expecting Bosnia and Herzegovina to do this now. Bosnia and Herzegovina does not have an economy, our economy is in chaos.”⁴³ What Pandurević is saying is, in fact, incorrect, at least as far as German reparations are concerned.⁴⁴

However, the fact that our country’s economy is in chaos is indisputable. It is evident that there is a certain tension between reparation programmes and general developmental policies. “If nothing else, budgets are finite, and competition for resources is particularly fierce in a post-armed conflict or post-dictatorship context where the economy and infrastructure may be damaged or destroyed and common crime is likely to surge.” (Roht-Arriaza and Orlovsky, 2009: 173) But let us also look at the other side of the coin. The BiH National War Crimes Processing Strategy was adopted in 2008 and went smoothly into parliamentary procedure even though its implementation has clear implications for the budgets of all levels of government (Strategy, 2008:32). If we assume that the state

42) The Draft Transitional Justice Strategy was developed by an expert working group appointed by the Council of Ministers already in 2009. It defines the extra-judicial mechanisms for fact and truth finding about events from the 1992-1995 period and foresees the development of transitional justice over a period of four years. The strategy was supposed to go to parliament for adoption, which has not happened to this day.

43) BIRN, Unaprijed problematična strategija tranzicijske pravde, www.justice-report.com/bh/sadr%C5%BEaj-%C4%8Dlanci/unaprijed-problemat%C4%8Dna-strategija-tranzicijske-pravde [Accessed on 28.7.2012]

44) According to the provisions of the Potsdam Conference and individual treaties, Germany started paying reparations for World War 2 immediately after the War. It is possible that Pandurević erroneously invoked World War I reparations whose last instalment was paid in 2010, but Germany had also started paying these reparations immediately after the end of that War.

really does not have the funds for a more just redistribution of reparations to victims, it seems to have no trouble finding them for the legal-political dimension of transition.⁴⁵ To be perfectly honest, BiH has plenty of problems implementing the retributive, judicial dimension of transitional justice and the above mentioned strategy is being implemented much more slowly than planned. There are many reasons for this, and although lack of funds is usually cited as the primary reason (OSCE for Oslobođenje online: 2013), the Strategy is nevertheless being implemented, while the social dimension is not even being considered.

Waldorf, on the other hand, claims that the existing mechanisms—focusing on civil and political rights, or rather the political dimension of transition—are already overburdened with problems in achieving the already ambitious goals, and that economic and social rights should not be included in the discourse of transitional justice despite newer efforts to consider this possibility. (2012: 171-179) We cannot agree with his argumentation because if justice during transition is tailored, *inter alia*, according to the economic capacities of the country, how can the economic aspect of transition be left out, with transition remaining in the sphere of the political? Are we to leave out violations of economic and social rights and economic crimes?

Let us go back to reparations, though, as they are allegedly the greatest obstacle to the adoption of the BiH Transitional Justice Strategy. Reparations are a clear redistributive intervention of the state to move away from crimes committed in the past and attempt some sort of compensation. This is precisely why reparations are problematic in the context of neo-liberal economic policies. They are the only existing institutional mechanism to systematically remedy the socio-economic effects of the conflict through the redistribution of material goods to victims. We will not go into the problem of the narrative generally produced by the system of reparations (Mamdani, 2003 and Miler, 2008) but focus exclusively on its redistributive function.

The existing war-related benefits system in BiH⁴⁶ has a number of problems related to unjust redistribution. First, the system is defined so that reparations for victims of violations of international humanitarian law and mass violations of international human rights law cannot be considered in terms defined at the level of the United Nations.⁴⁷ Second, these are not, strictly speaking, social benefits. Reparations are often defined as compensation or, quite inappropriately, as benefits. The Strategy defines them as reparation. That is to say, in BiH, the right to monthly payments is not based on a right that has been violated, but is determined according to the degree of disability that both civilian and military victims of war must prove, and the amount of the payment is also determined by the degree of disability. Families of those killed in the war also receive compensation, but in both cases, there are large differences in the amounts between military and civilian war victims: military victims receive far greater compensation. (See: Hamamberg 2012) The amount also differs between and within the administrative units of BiH: entities, cantons, and the Brčko District.⁴⁸

The Strategy proposes changes pointing out that the existing system is unjust and unsustainable (*ibidem*, 2012: 51), a claim supported by the International Monetary Fund when it also insisted on the untenable nature of the existing system of compensations and social benefits and – in determining the conditions for the new loan instalment—proposed changes. (Popić and Panjeta, 2010) However, we dare say that the changes proposed in the Strategy are not crucial for justice in transition. Although reparations at the level of individual rights can contribute to mitigating and maybe even somewhat reducing inequality and poverty at the moment of their application, they do not address the root causes. Furthermore, the proposed changes simply redefine the status of victims within the group(s) that already have that status or are supposed to acquire it on the basis of violations of political rights. In line

45) This year, the European Union secured 7.5 million Euros from IPA funds for the justice sector in order to speed up war crimes prosecution (Delegation of the European Union, online); and one million two hundred and fifty marks / 640,000 Euros have been allocated to defence of war criminals before the Hague Tribunal to date (BIRN, Džidžić: 2013)

46) See: Popić, L. and Panjeta, B., 2010. Kompenzacija, tranzicijska pravda i uvjetovni međunarodni kredit u BiH. Due to differences in defining the nature and titles of these benefits, the authors propose the phrase “war-related benefits”.

47) A/RES/60/147 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (www.undemocracy.com/ARES-60-147.pdf)

48) See N. Kulenović in this volume.

with the liberal paradigm of transitional justice, the Transitional Justice Strategy does not deal with the economic dimension of the conflict and of transition, or with violations of economic and social rights during and after the conflict. As a whole, transitional justice and its mechanisms

focus on violations of civil and political human rights through war crimes and crimes against humanity. The function of these mechanisms in establishing liberal democracy is quite clearly formulated through the already mentioned ultimate goals that are spun around within the discourse of post-conflict transitions to the point of becoming devoid of all meaning: reconciliation, truth, justice, etc.

That is why, of course, twenty years of transition towards democracy⁴⁹ and implementation of various transitional justice mechanisms – that the ruling ethno-national elites have mostly been obstructing at the first sign of any threat to dominant ethno-national narratives—has not brought about reconciliation or justice, nor any inkling of a generally accepted truth about the events of the 1990s. There is no justice in the transition of BiH; no one is actually aiming for justice. The real aim is to avoid disrupting the existing power relations, which means constructing and maintaining a society based on inequality stemming directly from the injustices committed during the war: “If transitional justice partially exists to reconceive society, then the inability to reimagine economic distribution makes full reconstruction impossible. If economic liberalization accompanies political transition, then to ignore its presence as a piece of regime change and a factor in determining the parameters of justice may end up serving a few individuals in the name of the entire citizenry,” says Miller. (2008: 275) Isn’t that precisely what is going on in BiH? In that context, it is clear that reparations are less important for justice in transition because, by their very definition, they are unable to redistribute power or wealth to an extent necessary to effect fundamental changes in the balance of power during the political transition of the country. Reparations cannot take the place of fundamental redistribution based on the principles of social justice.

In that respect, the above mentioned Strategy offers mechanisms of justice narrowly conceived and has very limited transformative potential: it lacks mechanisms for what Louise Arbour discusses here:

“Individual and collective reparations to individual victims will never substitute for more broad based and longer term socio-economic policies that aim to redress and prevent widespread inequalities and discrimination. And we would be mistaken to believe that these policies are better left solely to the responsibility of development actors. Transitional justice mechanisms thus have a crucial role to play in recommending the adoption of such measures as part of the necessary reparation for victims and as part of a comprehensive strategy of national reconciliation and peace. It is justice that is at stake, justice in its deepest sense, which includes social justice and guaranteeing essential equality in the enjoyment of all rights.” (2007: 20)

The tacit (neo)liberalism of reconciliation

What is more difficult: to live with perpetrators of crimes or with those enjoying the fruits of crime? If victims and perpetrators have a past that needs to be overcome, do not the victims and profiteers have a present to deal with? (Mamdani, 2006)

In an article indicatively titled *Reconciliation without Justice*, Mamdani claimed already in 1996 that the concept of justice as retributive, focusing on perpetrators, can be reoriented towards social justice only if we direct our attention to those who have benefited from crimes, to profiteers we are all too familiar with—understood in the broadest sense.

49) According to the BiH Presidency website, the type of political rule in BiH is “[e]merging federal democratic republic” (www.predsjednistvobih.ba/o-bih/?cid=8143,2,1). The authorities in BiH lack even the bare minimum of locating their own place in the coordinate system of confusion: they are at such a loss to define what the state of BiH is that even this basic information about the characteristics of the state found on the website of its Presidency has actually been translated from the website of the American Central Intelligence Agency / CIA (www.cia.gov/library/publications/the-world-factbook/geos/bk)

Although on the face of it, transitional justice primarily deals with conflict and overcoming conflict, it clearly serves establishing stable liberal democracies, and not just in our region. This can be inferred from a number of terms it employs: “justice represents the struggle for a ‘depoliticized,’ trustworthy rule of law, truth represents the rights of victims to tell their stories” (Miller, 2008:10), reconciliation of citizens as members of identity groups. Thus, transitional justice defines the key aspects of injustice, crimes committed during transition, but does not treat violations of economic and social rights as crimes and does not criminalise failure to fulfil obligations that would enable enjoyment of these rights. However, if transitional justice leaves out economic development and the issue of redistributing goods in order to mitigate perpetrated injustices and consequent inequalities—i.e. social justice— institutions of justice in transition are implicitly telling society that inequality as such should not be condemned. (ibidem: 3) There is no room for different approaches to facing the past and crimes from the past, and the existing approach is not constructive in terms of facing the present. Reconciliation following mass crimes requires a credibility that can be provided only by the implementation of concrete economic and social programmes. (Terreblanche, 2000, and Hayner, 2001) Economic policies that are not aligned with achieving social justice cannot provide for the achievement of transitional justice. (Neo)liberal economic policies are certainly unable to do so, and in order for justice in transition to achieve broadly defined goals such as stability and reconciliation, it must include in its discourse not just the economic and social rights of individuals, but social justice broadly conceived: justice for society as a whole in all its aspects.

(Translated by Ulvija Tanović)

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TRANSFORMING THE IMAGINARY: SOCIAL JUSTICE AND BOSNIA AND HERZEGOVINA

Institutions play a crucial role in the establishment of just social systems, but state institutions are not the only institutions. Still regarded as the primary locus of social justice, these institutions are a site of social and political conflicts, but at the same time also that which is at stake in these conflicts. The causes of such conflicts lie in even deeper conflicts – on the level of fundamental imaginary institutions of society. Imaginary institutions, as defined by Castoriadis, exist on a symbolic plain and represent an expression of a society's self-understanding, its fundamental beliefs and dominant visions of development. This paper posits that the debate on social justice must take place first and foremost on the level of these imaginary institutions because this is where basic coordinates of what defines a society, as well as the parameters of social justice discourse, are set. This concept developed by Castoriadis helps us pinpoint the historical and social forces which every theoretical and practical effort aiming to establish a more just society must take into account.

In medieval Europe, medical care was available to a small fraction of the populace, to those who were able to afford it, but confession, Holy Communion and baptism (cure of souls, as Walzer (1994) calls this kind of care) were available even to the poorest. This was not considered injustice back in those days, but received opinion has long been different. The emergence of the nation state probably had decisive influence on the historical transformation of the understanding of justice. Bordered territory became the framework within which it was possible – not immediately, though, but much later – to talk about universal healthcare or education, eradication of poverty, elimination of violence, mass employment, *reasonable* distribution of social wealth and social burdens, and political freedoms as the results and goals of social processes.

If these are the concepts associated with the idea of social justice, the modern state (along with the internationalisation of relations and the establishment of transnational institutions) is of fundamental importance for the contemporary understanding of this idea. The role of the state in it is twofold: the state, acting through its institutions, through *activating* mechanisms and mechanisms of *coercion*, is able to maintain and supply the system which potentially facilitates all of the above-listed and represents a certain order of justice (or injustice). The state is also the framework within which the direction and goal of a given social process are defined, and dominant social forces expressed through institutions and different kinds of activation and coercion.

We are interested in this twofold function of the state, and in the tension between the institutions of the state, and something which we will dub imaginary institutions of society, a concept taken from Castoriadis (1978). Our thesis is that the debate on social justice must take place first and foremost on the level of these imaginary institutions because this is where basic coordinates of what defines a society are set, as well as the parameters of social justice discourse. To demonstrate this, we will make a brief overview of the understanding of the role of institutions in thought on social justice is understood from Rawls onwards, and point out that this debate must necessarily be supplemented by a debate on institutions of *a different kind*, which are actually fundamental. Then we will examine the concept of the imaginary and its connexion with social institutions. Finally, within this framework, we will examine the role of imaginary institutions in the structuring of the social reality of Bosnia and Herzegovina. Therefore, to reflect on our reality – our post-war reality, one must stress (cf. Vlaisavljević, 2007) – and to wonder about the conditions of social equity in terms of imaginary institutions must entail not a search for some ideal principles which would establish social justice but an analysis of fundamental social formations and processes which already express different understandings of justice, as well as specific discourses and places where justice and injustice are articulated.

Justice and institutions of the state

A description of perfectly just institutions is a central effort in many modern theories of justice from Hobbes onwards (Sen, 2009: 8). John Rawls's influential work *A Theory of Justice* follows the tradition of thought on social justice. For Rawls, just like for many others, the question of the scope of justice is answered within the state, for only there it is possible coherently to reflect on a community set within an institutional order of any kind. Rawls thinks that the basic subject of justice has to do with "the *basic structure* of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation." (Rawls, 1999: 6; my italic) The elements which Rawls explicitly describes as basic structure institutions are: a political constitution which defines basic political institutions, the division of power, as well as the legal rights; legally recognised forms of property; structure of the economy and the nature of family. (Abizadeh, 2007: 326) Being minimally determined, the applicability of the idea of basic structure will depend on the precise determination of the scope of basic structure and the elaboration of the reasons for which a structure thus determined is to be understood as the basic subject of justice. (ibidem: 320)

This is most likely still the dominant opinion. Abizadeh claims that there are at least three ways to understand the institutions which make up the basic structure. These are (1) institutions that determine and regulate the fundamental terms of social cooperation (2) the institutions that have a profound and pervasive impact upon a person's life chances and (3) the institutions that subject persons to coercion. (ibidem: 321) As pertains the questions of mechanisms which will be in charge of maintaining or establishing public order as the order of justice (or injustice), one will intuitively first bring up the question of the institutions which in a certain sense are indeed responsible for the distribution of "the good and bad things in life [...] among the members of a human society." (Miller, 1999: 1) which is Miller's minimalistic definition of social justice. This means, first and foremost, institutions of the executive, the legislative and the judiciary branch, the organisation of the division of power in the state, and the economic institutions. According to Miller, the concept of social justice, if it is to be applicable in practice, must assume three elements: a society made up of interdependent parts, an institutional framework which influences individual members of society, and institutions that can be changed in order to produce desired results (1999: 4). A few things should be noted here.

First, although we certainly can ponder a change of institutions in totalitarian and repressive systems, it seems that Miller invokes democratic institutions of some kind as the third element, ergo, his understanding is applicable in a democratic context. Second, for Miller, a society made up of interdependent parts is still defined or delineated by the framework of the state. Still, crucial for the setting of parameters and terms of change and for differentiating between the minimal and the maximal understanding of justice (Walzer, 1994) is that which is within the framework, namely the substance of society. Minimal morality is made up of abstract concepts such as justice, truth, good – about which there is universal agreement, whilst maximum morality is made up of tightly intertwined historically, socially and culturally specific content within a given context, associated with a certain moral problem or question. (ibidem: 5-6)

Particular conceptions of justice always appear in the maximal form, immersed in a specific historical course and cultural code. (ibidem: 6) The gap between different conceptions of justice is visible even in the maximalist paradigm which is dominant in the West, and, according to Walzer, is made up of the language of rights and human rights. Civic and political rights defined through one, and social, economic and cultural rights defined through another UN Convention point to a conflict of different understandings, different maximalisms. An identical context comprised of tightly intertwined, pre-existing, dynamic content engenders institutions of society which influence institutions of the state, to a limited extent, though. As pertains voting rights, for instance, the state is still the only framework – except in the European Union – within which there exists something like an individual voting right at the general elections, understood as a mechanism with which it is possible (in principle) to influence the definition of institutions. Today, popular democratic legitimisation of the order at periodic elections is the dominant way of defining the political. It is precisely there that we face the effects of the imaginary. An elected legislative body, electoral rules, representation formulas and demands, these are all expressions of imaginary *democratic representation* as the founding institution of Western democracy, a form which embodies a certain principle of the political, just like the privileged position of private property is an expression of an old institution which found

its ultimate expression in the modern liberal appropriation. Such a basic structure should always be understood as context-dependent. Historically constituted sites of exertion of power, or even coercion, derive from formal, institutional forms of the state which are, in turn, always immersed in the dominant regime of thought, i.e. the imaginary whose purpose, borders and cross-border areas, are defined, one way or the other, by society itself.

This renders all the more futile the efforts of, for instance, Rawls or Nozick who used hypothetical arguments to try temporarily to suspend this immersion in a specific system of established imaginary and material relations and construct an ideal theory. If Rawls's theory, according to his original hypothesis, is applicable to "well-ordered societies" and appropriate for political liberalism only at a later stage (cf. Rawls, 1993.), then this complementary perspective, just like many others of its kind, does not offer anything special in the way of facing the specific social antagonisms and challenges faced by many countries today, including those from the so-called First World.

One could claim that such theories were conceived as a measuring device, a yardstick with which to measure the justness of the institutions of an order, and perhaps improve the order itself. But for Rawls's theory of justice, still the most influential in theorist circles, the presupposition of 'a reasonable individual' (Rawls, 1993: 17) as the benchmark of justice is more important than the presupposition of ordered society, as is the assumption that 'free and equal persons' (ibidem: 13) would agree with the principles of his idea of justice. In the root of these presuppositions, as a primordial cause of sorts which makes it possible to formulate them, lies one of the imaginaries crucial for the shaping of so-called Western civilisation – the *Ratio*. In order to formulate his theory of justice in the first place, Rawls relies on an imaginary which is engendered and maintained on a level deeper than the manifested institutions of the state and society. The defined structure and modus operandi of institutions as a basic structure indicate the stability of the effect of imaginary social institution that defines the conditions under which institutions and state apparatuses come into being and operate. Instability of institutions, their difficult functioning and bureaucratisation are merely indicators of tensions on the level of imaginary institutions. All this points to the imagination as the central field of social transformation (Berardi, 2013: 27) for "institutions and apparatuses do not 'posses' their own 'power', but simply express and crystallize class powers." (Poulantzas, 1975: 70) Regardless of whether or not we adopt the class discourse, Poulantzas reminds us that institutions do not have power as a matter of course; rather, they derive it from the depths of society's self-perception, after which they are ultimately shaped.

The questioning and testing of institutions and the order in general, on that deeper level transcends the division to the material and the symbolic criticised by Honneth (Fraser and Honneth, 2003: 113), and theories are considered valid to the extent to which they are able to cope with a consistent reconstruction and normative legitimisation of political demands of today. (ibidem) In that sense, the questioning of the idea of justice and its possible transformation must start from the imaginary.

Imaginary institutions

"*Imaginaire* is [...] how we imagine the world order, what the conditions for our actions are, and for what values it is worth struggling or, if necessary, make a sacrifice". (Bauman, 2013: 3) Institutions are, according to Castoriadis, socially sanctioned, symbolic networks in which a functional component and an imaginary component are combined in variable proportions and relations. Castoriadis, for example, claims that Marx's analysis of fetishism of commodity should be understood in terms of the imaginary and its fundamental importance for the functioning of the capitalist economy. (1978: 132) The imaginary is a process of creation of social-historical and mental figures and imagery on the basis of which the social reality is established. (ibidem) Imaginary institutions are stable points which maintain a certain world order and meanings, and they establish and ensure the stability of the social. They also determine the boundaries and contradictions of the order, and in a certain sense form the basis – understood as a set of basic meanings, basic formulas of sociality – on which the institutions of the state function. If we make a connexion between these institutions and justice, we must then talk of the "social situatedness" of justice (Balibar, 2012: 32) but also of the competition between different *conceptions* of justice⁵⁰.

50) Balibar (2012) uses the phrase 'language games of justice.'

In that sense, the institutions of the state apparatus are an expression of symbolic-cultural, economic and political figures and forms, and the relative stress placed on this or that manifestative institutional form is an indicator of the influence of certain imaginaries. Keeping this distinction is useful as it helps us avoid reductionism on all levels. It is necessary to insist on the interconnectedness of the economic reproduction of sociality and the symbolic reproduction: in no stage of evolution was the relation between civilisation and revolutionary historical changes reduced to functionality, because something is functional in relation to certain goals which are not set by the framework of functionality only, nor are they explicable from the standpoint of functionalism. (Castoriadis, 1978: 136) In contrast to the reductional procedure of functionalism, it is necessary to postulate a comprehensive concept of the imaginary which produces specific meanings, figures and elements as well as material and symbolic reproductions of a given social structure. However dependent on the economic-functional society may be, it is just as inexplicable in its particularity; it is inexplicable in the distinctiveness of its institutions which perform identical functions almost everywhere (ibidem: 130), yet they differ substantially from society to society.

If the primary role of institutions is to organise the world, seen as a field of disorganised processes, into a form of comprehensible (social) reality (Boltanski, 2011), then imaginary institutions perform the function of establishing *epistemic equilibria*, i.e. transforming our individual knowledges into a common knowledge which makes possible the stability and permanency of certain interpretations. (ibidem: 73) In the course of history, two institutions proved to be extremely significant in this sense: class and nation; they have had a profound influence on the understanding of justice and on the development of the idea of a just order.

Class is the institution which has shaped the understanding of social relations, not only the understanding of the economic sphere. In terms of the classical class analysis: capital on one side, working masses on the other, and the state is the stake. What has changed in the meantime? The still ongoing social experiment of socialism has happened, but it no longer serves as the other pole. For now, capitalism is winning, although its victory may ultimately prove to be Pyrrhic, and it has undergone substantial changes. Although capitalism is the economic system of most countries, it is clear that capital has been internationalised to an unprecedented extent; the CEOs of a corporation, agency or company which runs a mine in some African country, a university or a hotel in Qatar, or cheaply buys qualified labour force in India, China and Eastern Europe, in most cases live on the other side of the world. Risky financial transaction on Wall Street in 2007 shook the world economy to an unprecedented extent and exposed the fragility of the foundations of our knowledge of the economic system in which we live (cf. Varoufakis, 2011), and they demonstrated how truly global today's economy is, with all the problems this entails.

It therefore seemed that revolutionary international workers should have been the new fundamental imaginary institution, but it was not like that. Workers are still predominantly tied to the form of the state and, it seems that they are about to lose what little power they still have. Unions, as the surviving form of organisation of workers, are constantly becoming weaker, and the general drop in domestic product creates an atmosphere in which the vast majority of unorganised workers, petty business owners and irregular workers have only one demand: employment, for "[u]nder capitalism, the only thing worse than being exploited is not being exploited." (Denning, 2013:79) As it has recently turned out throughout Europe, strike – long the most powerful method of workers' struggle – is nowadays available to an ever narrower group of privileged workers, those who are still concentrated in (relatively) great numbers and who control the functioning of the public system. Hence it is clear that the horizontality of the working class which used to be an important component of workers' solidarity is disappearing, whilst an enormous mass of essentially working class population survives on the labour market without any political voice.

In the former Yugoslavia, the degradation of workers is even more dramatic. (B. Buljubašić and L. Čuljak, this volume) Yugoslavia attempted, via self management, to bring the workers as close to the processes of production, exchange, and distribution of

responsibility as well as enjoyment of social gains. (For a more detailed discussion see Pateman, 1970) All this was intended to "eliminate wage labour", which, according to Marx, must be the goal of every workers' struggle; in other words – socialisation of

production and ownership as the path towards egalitarian society⁵¹. In the transition process, self-managing workers, as a political and economic subject, have been thoroughly erased and delegitimised as an undesirable atavistic leftover of communism, which meant a radical departure from the former practice of involving the workers in the production process where the means of production were collectively owned. Now we have typical wage labourers without any direct decision-making power. For decades, this was the dominant form of labour in Western democracies, and it was only when the workers unionised en masse that they were able to ensure a better position in the negotiations with the capital and the state, and to construct a class compromise which determines the relations of controlled exploitation. (Harvi, 2012) In the West, systematic attacks on the unions are part and parcel of the policies intended to reduce the so-called state-care in a welfare state. While workers in the West have lost – thanks to a number of measures taken by the state – the power of the organising principle and instituted organisation (ibidem), in the former Yugoslav countries the working class, as defined by the West, has simply disappeared.

After transition, workers have never been constituted as a social-political force which has substantial bargaining power, thus its mobilising component has lost power. More importantly, among the working as well as the middle classes, political organising en masse on the basis of class solidarity has been replaced by ethno-national solidarity: processes of ethnic mobilisation always demobilise other political signifiers. (Mujkić, 2010 b) In this sense, during and after *democratic processes*, the elites constitute themselves as – why not say it – a hybrid class.

The transition, therefore, entailed a violent construction of a new social imaginary – the nation has been enthroned as the main stake in the recognition game, whilst the patterns of division of economic and political power have been defined after a tripartite Western matrix: parliamentary democracy, private sector and free market.

If we define revolution as a radical transformation of institutions (Castoriadis, 2010), then the political changes in Yugoslavia and the former Eastern Bloc countries after the fall of the Berlin Wall were a true revolution. Here each of the elements of Rawls's basic structure has undergone a radical transformation, except maybe *the nature of the family*⁵². Modern revolutions, starting with the French and the American, articulated themselves round demands for liberation and freedom. (Arendt, 1991:68) Freedom and emancipation were new figures behind these movements. However, what the "democratic revolutions" have brought in this part of Europe by way of freedom, apart from the redefinition of political and civil liberties, is above all the "liberation" of the market and the *postmodern* constitution of the ethnic subject. (cf. Sarajlić, 2010)

In this whole story, Bosnia and Herzegovina, although constitutionally a *sui generis* structure (N. Kulenović, this volume), is certainly a special, but by no means an exceptional case. An extremely complex state apparatus is the consequence of the "institutionalisation of the ethnic" (Biber, 2007) by two peace accords. A unique case is also the Office of the High Representative, as the sovereign legislator, at the same time within and outside of the political and legal structure of the state. Still, it is just a very peculiar case (for those directly affected also quite an interesting everyday experience) of that which is often sinisterly called a *divided society*, the examples of which we can see everywhere nowadays. The consequences of *unfinished* revolutions in North Africa, the destruction of the social fabric, completely upset relations in Libya, Egypt, Tunisia (cf. Ali, 2013) and elsewhere, *permanent* revolutions in Afghanistan and Iraq... point to social destabilisation as contingent on specific social-historical conditions within a defined framework as on the struggle of social imaginaries for domination.

At the same time, when it comes to ratios and parameters of participation in the distribution, that is, the things which Castoriadis

51) Here, too, inequality had persisted, and the formation of a special socialist class whose power was based on controlling the bureaucratic apparatus has been well-described (Đilas, 1975, pp. 38-39; also Vlaisavljević, 2006)

52) The referendum on the constitutional definition of marriage which took place in Croatia in October 2013 clearly shows the extent to which the classical definition of marriage which follows Christian dogma still represents an indispensable part of the imaginary constitution of society and indicates the power of religion in the constitution of basic imaginary institutions.

ascribes to the material reality of society, social differences do exist in these societies, but not an ideological gap that cannot be bridged; capitalist relations and free market have been established, in this regard there are hardly any conflicts, that is, if there are any, they revolve round disagreements on realisation methods, not about the system itself. Agreement has been reached on austerity measures, too – although many claim that its basis is, in practical and theoretical terms, highly suspect, to say the least. (Varoufakis, 2011 and Stiglic, 2013) In that sense, Bosnia and Herzegovina does not differ from the rest of the world, and it illustrates something which Mouffe (2013) called “the end of politics”, that is, the construction of a new economic imaginary round centrist policies, economically focused on growth policies.

Depoliticisation places the economic outside of the conflicts which take place in the identity arena. This is how liberal-capitalist imaginary, the liberated market, the private initiative, personal gain and enrichment are institutionalised, without any disagreements on what constitutes justice and just order in such a constellation of economic relations. At the same time, outcomes of identity conflicts, in which the parties strive to ensure social reproduction to ethnically homogenous communities only, are decided on the issue of fundamental self-perception of society as a social community of diversity.

One of the consequences of this is the fact the defining of the economic process as neutral, technical and structured almost in line with the laws of nature, has precluded the possibility of a political critique of it from the standpoint of economic modalities of the future which contain so much as an obscure reference to the forgotten but still spectral socialist/communist imaginary⁵³. The effect of social institution of this kind is the masking of class tensions and the domination of a given segment of society in the form of manifest institutions of the republic or civil law. On the axis of recognition, the conflicting parties cease to be in conflict once they problematise the basic definition of distribution as the precondition for justice. In Bosnia and Herzegovina and elsewhere.

The imaginaries in action

In order to further examine the relation between justice and the imaginary institutions of society in Bosnia and Herzegovina, we will use a distinction that Nancy Fraser insists on (1997 and 2003). She thinks that an historical analysis of development and mobilisation of social movements in the second half of the 20th century points to the need to take a two-dimensional approach to the questions of social justice: *distribution* of goods in the economic-political sphere, and the *recognition* of the Other, of this or that group organised round an identity determinant, that is, to relations in the cultural-symbolic sphere which, over the last few decades, have considerably supplanted the demands for redistribution. Regardless of the objections which may be made to the specific historical analysis (Honneth, 2003.), the two-dimensional schema is a useful analytical procedure aware of its advantages and limitations (Fraser, 1997). In this schema, imaginary institutions may be presented as basic social meanings which result in patterns of distribution/recognition, and an idea of how sociality is established and institutionalised as equity, in a material and imaginary sense.

We have already outlined what is at stake on the level of imaginary institutions of society in today's Bosnia and Herzegovina: common historical experience, common institutional and symbolic framework, but also the recent experience of hostility “crowned” by a horrible war and all the results of the nationalist policies which have emerged since. The experience of this region teaches us that the social justice which is to *ensue in the aftermath* of the conflict, war, division... must also be a transitional justice, i.e., that the definition of justice stops (if it can indeed ever stop) being a question of the present moment and in a substantial sense becomes a question of the past (A. Trkulja, this volume). The conflict has included in the imaginary new figures and images (victim, executioner, concentration camp, genocide) and connected them – permanently, it seems – with the institution of the ethnic or the national. This fact is perhaps the clinching evidence for Castoriadis's claim that the social and the historical cannot be told apart (1978:215).

53) The great reform of basic healthcare which Barack Obama tried to undertake (known as Obamacare) was repeatedly labelled as “socialist” by his political opponents, in order to discredit this effort to re-empower one of the traditional and crucial policies of state care.

Developing the figure of “zero institution” introduced by Claude Lévi-Strauss, Močnik designates the nation as the zero institution (2002: 87-91). If we understand the zero institution as the one which institutes the meaning of the social and makes possible the institutionalisation of society, then the case of Bosnia and Herzegovina is rather close to this definition. The national is the primary frame of reference, and the membership that Walzer understands as the primary good (1983), which is the starting point of every debate on social justice.

Since the constitution of ethno-national communities, in a material and symbolic sense, throughout history mostly took place either outside of institutions of the state or even in opposition to them, the strictly institutional and procedural justice mechanisms essentially do not meet the demands of the ethno-national community for justice, nor do they correspond with the community's idea of justice which may be based on a sense of particularity, the role of the ethno-nation in the historical teleology, role of the victim, etc., that is, all those things which are hard to grasp for the rational, administrative networks of state institutions. In opposition to the stress placed on the fairness of procedures and outcomes, on the axis of recognition one must bring up the questions of self-realisation of an individual and the conditions of *the good life* (Fraser, 2003:10), and these questions in today's Bosnia and Herzegovina are steeped in the national imaginary, without exceptions.

In that sense, the domination of the ethnic effectively makes the economic structure of society invisible, or hardly visible. The struggle for recognition, or the struggles for recognitions, we witness almost every day organised around ethnicity cast economic processes as ideologically neutral occurrences which have no influence on the class-based distribution or on the recognition of the ethnic, although they are obviously connected with the ethno-national, as pertains the material control of “national wealth.” As a result, everything that occupies the public sphere, if only momentarily, such as the enforcement of the Sejić-Finci v. Bosnia and Herzegovina verdict, the protests of parents from Konjević Polje, or the question of the “third entity”, manifests itself as a political question of ethno-national subjects par excellence, as opposed to the ostensibly purely technical issues of oil price formation, oil imports, labour laws, the condition of the railways, etc.

This results in a literally divided subject: an individual collectivised in the symbolic sphere through the figures of group, belonging, self-perception, and individualised in the material sphere through the notions of equal opportunity, choice, individual responsibility, competition, etc. Attachment to the institution of the ethnic in a particular historical constellation of relations presents representation and recognition as the fundamental figures of imaginary institutions and defines them as the most important stake of the social conflict. The economic, in terms of its basic definition, in Bosnia and Herzegovina and elsewhere, has been institutionalised as the primary non-conflict field. If the structure of socialism was made up of institutions formed primarily round basic economic meanings, then the inauguration of the ethnic group/nation as the “zero institution of the social” meant that these institutions were to be delegitimised, deconstructed and forgotten.

It seems then completely futile to seek a solution within a common institutional framework, as the state as an institution cannot alter the imaginary which constitutes sociality just like that (Mujkić, 2010a). Mujkić attempts to solve this problem by re-establishing a makeshift class tension between the *class of ethno-political entrepreneurs* (ethno-nationalist politicians, instrumentalised clergy, “ideologically sound” intellectuals, businessmen etc.) and the *class of the disenfranchised* of all ethnic, cultural and gender backgrounds. (ibidem) In addition to introducing classes where there can be no talk of them in the proper sense of the word, Mujkić, by postulating the class of the disenfranchised approaches Hardt and Negri's concept of *multitude* (cf. Hardt and Negri, 2004). The problem with this concept is the fact that it does not have positive content; instead, it represents “accumulated resistance” as Negri explicitly writes somewhere in the book. In the 21st century, this kind of resistance is, doubtlessly, easy to see around the world. However, it is just as easy to see that a subject, understood in these terms, proves unable to elaborate a framework of some kind as an alternative to the ruling capitalist imaginary. It remains a longing for some new auto-constitution of the historical subject.

Justice as a political question

According to Bauman (2013), the West saw the triumph of a *bourgeois* imaginary: only the growth of GDP will bring progress to human kind, while personal happiness is attained by consuming things that bring happiness. Although this diagnosis is to a great extent sound, it should not be forgotten that the *Occupy* movement, which shook the very foundations of the practice of 21st century social movements, emerged in the heart of the West, just as the left itself, together with its ideological and theoretical discourse. This movement has shown that the imaginary of the social is never homogenous and is rather a site of conflict, and it has brought about a restoration of the economic imaginary as a deeply problematic social force.

At the same time, we are witnessing *unfinished* revolutions in full swing in North Africa which reveal that the antagonisms in that region are about the definitions of the fundamental social institutions: how to define the state, what position is religion to assume in relation to the state? What law to follow? What rights will particular collectives have?

In parallel to these processes, economic institutions of society are being redefined, and it seems that we are witnessing, in the 21st century, a renewed assault – transnational and multilateral this time round – on the remnants of social control, severely reduced as it is, over the economic processes on free markets. (cf. Harvi, 2012: 236)

The only relatively safe conclusion is that the democratic form itself assumes the possibility of changing the institutions in accordance with certain rules of political contest, and in that sense social justice as a goal of political activity is possible at least in principle. Yet, we have shown that, unless the domination of certain imaginary institutions of society is destabilised, the creation of just institutions can never be anything more than an intellectual experiment or an academic exercise. Because this destabilisation never happened, the attempt, tentatively speaking, at liberal-national critique and the introduction of the civil society model in Bosnia and Herzegovina has proved to be no match for the purely national. This is precisely why a thorough reconstruction of Bosnian-Herzegovinian society, one that would bring about basic preconditions for the constitution of just institutions, today seems almost impossible. It would entail putting an end to all the tangled stories of this country's past, and their relocation from the fundamental imaginary in which they reign supreme at the moment.

Marx teaches us that justice is above all a political question which manifests itself in economic-political⁵⁴ and cultural-symbolic registers which, when paired, make up what we still might call ideologies. Therefore, a critique which aspires at least to outline a new founding institution of the social must first critique the capitalist manner of production and appropriation as the natural state of man; it must ponder the idea and the practice of social self-management. Considering the most likely untouchable position of the institution of the national, the only option left is to make a reversal and analyse Bosnia and Herzegovina as a place which puts the contradictions of the global condition in a nutshell, a place from which the giant mechanism of global institutions, capital, power relations exploitation, violence and resistance can be seen more clearly. Marx proclaimed the proletariat to be the segment of society which establishes the very universality of society. In the age in which class was forgotten for the sake of naturalisation of economic exploitation and domination as well as bureaucratic institutional concentration of political, economic and symbolic power, it is necessary to re-problematise the place of the universal, the places of social resistance and economic and political power.

(Translated by Mirzah Purić)

54) A usual objection to Marx's teaching stresses his economic reductionism and the resulting base-superstructure schema. However, man's economic activity is by no means the only element of sociality, nor is it, as many critics erroneously impute to Marx, privileged. Rather, it is special in a consistently materialistic sense, because it represents the very material production of sociality in any era. As the analysis of the economic conditions of social reproduction is bound up with the production of sociality, images, meanings, interpretations and groups, the process of displacing the economic from the social described by Polany (1947) only adds to its importance and to the importance of the way in which it is being placed outside of ideology, whilst at the same time it remains an undeniable material force whose influence is global.

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POTENTIAL FOR SOCIAL JUSTICE IN BIH: AN ISLAND OR AN ARCHIPELAGO?

Is social justice possible in BiH? Constitutional and legal insistence on social justice is ever-present, but results differ in practice: claiming a number of civic and political rights - especially economic and social ones - depends decisively on where in BiH a person ended up living. The principles of social justice are essentially implemented on the local level (district, entity, cantonal, city and municipal), but only within the existing ethnic boundaries. Is this state of affairs in some important way necessary? Is it inherent in the existing legal-political and social structures in BiH, which makes it inevitable and thus justified? In this paper we examine the feasibility of such modal claims, while taking into consideration the political theory debates on the extent of (social) justice, as well as political, constitutional and legal discussions on the possibility of existence and stability of a welfare state in the context of federations and multicultural society, and finally, in the context of BiH itself.

The Constitution of Bosnia and Herzegovina (BiH) “clearly contains the principle of welfare state” (Ademović, Marko, Marković, 2012: 92)⁵⁵, while the constitutions of lower levels of government don’t shy away from proclaiming (social) justice as a founding constitutional principle. However, what practical use do the citizens of this country have from it? For many of them, BiH is a deeply unjust country. The passive electoral right is denied partially or completely to one part of its population – the constituent peoples in the “other” entity, as well as the Others throughout the country. Individuals who do not identify with one of the constituent peoples are as a consequence discriminated in claiming many other civic and political rights. (Hadžialić-Bubalo, Korajlić, Kulenović: 2010) Perpetrators of same criminal acts are treated differently depending on the court that processes the case (Kadribašić, Izmirlija, 2013), while a similar occurrence takes place in civil lawsuits (Šarčević, 2011). Claiming the right to free legal aid, access to healthcare and its quality, including the rights pertaining to women’s and maternal health care (Husić, Hasanagić, 2013), financial aid amounts for disabilities, pensions as well as other economic and social rights (Obradović, 2012a, 2012b; Obradovi, 2012c) is crucially linked to where in BiH a person resides.

However, why would aforementioned examples even point to injustice? The reason could lie in the belief that all citizens of a country must have the aforementioned rights, as well as have access to social and other care under the same conditions. The assumption here is that the frame of reference is “the nation as a whole, meaning the entire country of Bosnia,” meaning that the citizens support “policies directed at interregional differences” and not only those policies that only matter to their ethnic group (Fox, Wallich, 1998: 273, 297). Otherwise, one could claim, we would have to face arbitrariness of the division of good and evil in our society. This means that, on the sole basis of one’s origin or place of residence – which are often matters that we can’t influence much (or at all) – citizens of a country should not have less advantages (or carry a heavier burden) compared to other citizens of the same country. Some theorists see the essence of social justice exactly in those issues (Miller, 2000: 1, Abizadeh, 2007: 320). However, the aforementioned constitutional principles of welfare state did not contribute to the resolution of these injustices. Why not? Does the reason lie in the fact that they weren’t even supposed to achieve that, so they were bound to remain purely on the level of a political program? One has to keep in mind that invoking justice in this context assumes the pre-existence of a specific type of an ethical relationship, and thus requires more than random-based humanitarian aid and benefaction. (Nagel, 2005: 118) Justice, in fact, points to something

55) Practice and theory derive this conclusion from a systematic interpretation of the first and fourth lines in the Preamble to the BiH Constitution (“Based on respect for human dignity, liberty, and equality [. . .] Desiring to promote the general welfare and economic growth through the protection of private property and the promotion of a market economy”), and the fact that the Constitution itself, as well as the international treaties ratified by the state guarantee numerous economic, social and cultural rights.

that people have a right to. (Caney, 2005: 104) Those who see injustice in the aforementioned actions and division, assume that the scope of justice is much wider (or it should be) than usually assumed, meaning that the principles of distributive justice do not allow for the idea of justice on one side and injustice on the other side of the administrative-territorial division, to paraphrase Pascal. In other words, the proponents of this view claim that it does make sense to discuss social justice in BiH and, when the recognized principles are disregarded, to talk about recognizing the injustices. The opponents of this view deny it all. Specifically, even if the nature of demands for social justice is acknowledged, that which is mutually owed is owed within a much smaller area. In such views, it does not make sense to discuss social justice in BiH (at state level); instead, one can only speak of social justices. The reason for this is reflected in two underlying assumptions of this point of view. The first one refers to the idea that it is logical to discuss social justice only in the context of divided political communities whose governments have enough legal and political capacity to implement any and all principles of social justice, in case they can be achieved. The other refers to the type of society that can be expected to be open to demands of solidarity as well as a more or less homogenous nation state. In this aspect, BiH thus doesn't allow for egalitarianism of the first point of view, since it is a complex country whose "parts" can self-organize to a significant extent, with its more or less completed legal and political systems and a significant spectrum of exclusive jurisdictions. In addition, BiH is also a country with a divided society where the war related circumstances led to homogenization of ethnic groups on certain parts of its territory. In other words, in BiH there are many borders and quasi-states and very little trans-national binding tissue in the form of an all-inclusive "nation." To paraphrase Kukatha's metaphor (2003), one could not refer to BiH as an island of justice, but rather an archipelago of justices, which means that the discourse on social justice would make sense only within those fully formed political or administrative and territorial units.

To further clarify, in terms of the BiH context, the dialogue within the field of social justice is for the most part only a confrontation of opinions of imaginary collocutors, considering that the question of economic (in)justice⁵⁶ in BiH was not a subject of any large-scale (or any other) theoretical research, unlike the issue of political (in)justice, which was well theorized in the wider context of discussions about recognition. (B. Mraović, this volume) Therefore, despite a series of unresolved significant issues in the area of civic and political rights in BiH, which is the locus of political justice, in this paper we will dedicate most of our attention to aspects of economic and social justice. In terms of that, one should keep in mind the fact that, in political theory, general economic justice tends to be a controversial issue, while political justice is often, and without any specific issues, seen through the prism of universalist principles.⁵⁷ (Caney, 2005: 77)

All of the aforementioned is the consequence of the specificity of the BiH constitutional order, whose complexity "points to a sui generis system." (U-1/11: §64) Truly, examples of political injustice are a reflection of the specific political regime in BiH, that is, of consociational democracy (Stojanović, 2007: 64), while the economic injustices are mostly a consequence of a complex system of government which is closest to a federation. (Marković, 2012, Šarčević, 2010: 322) In other words, this state of facts has clear legal and political ramifications. We pay close attention to the issue of whether this condition is necessary in some important way, whether it's inherent to the current legal, political and social structure in BiH and thus unavoidable, which would make it justified.

In the rest of this essay, it is our intention to question the significance of such modal claims. Starting from abstract and moving towards more concrete theory, from discussions on global justice in political theory to politological and legal-constitutional discussions on the possibility of welfare state in the context of federations and multicultural societies, our goal is to examine whether social justice is possible everywhere and under the same conditions in BiH – where all imaginable issues that are usually examined separately in this context (federation, multiculturalism, consociation, a divided society, etc.) come together.

56) In the interest of conceptual accuracy, it should be noted that the matter under consideration pertains to various aspects of justice. Issues related to the enjoyment of civil and political rights are a matter of what could be called "political justice", while the enjoyment of economic and social rights has to do with what is often called "economic justice". (Tan, 2004: 4; Nagel, 2005: 126-127, 130)

57) This is, after all, noticeable in BiH where ruling political elites recognise, for instance, the problem of discrimination of so-called "Others" and are unanimously in favour of removing it. The practical problem is not the necessity to change the existing situation, but the form of that change.

The first problem: sovereignty, borders and federation

If it is true that the principles of social justice are relational in nature in such a way that they don't concern only the position of an individual in the absolute sense, but also in comparison with others (Abizadeh, 2007: 320), it is necessary to determine who are those others. In other words, what does "society" refer to in the term "social justice?" (Miller, 2013: 150)

The traditional answer is that the principles of justice are applied to people who are in a specific relation to one another. In other words, "[j]ustice is something we owe through our shared institutions only to those with whom we stand in a strong political relation. It is, in the standard terminology, an associative obligation." (ibidem: 121)⁵⁸ The traditional point of view of political theory also points out that the seat of justice is distributed and that the limits of its reach are at the same time the limits of sovereignty: "[d]istributed justice is the norm, both in the sense of what takes place through divisional practice as well as the way people think." (ibidem: 149; also Walzer, 1983: 31, 62-63) Thus, Nagel warns that "the full standards of justice, although indiscernible by moral reasoning are applied [...] only within the borders of a sovereign state, regardless of the arbitrariness of those borders." (2005: 121) This is the context through which one has to read the well-known critique that Kymlicka directed at liberal theorists who – regardless of the standard defence of their theories in the sense of "equal respect of persons" and "equal rights of an individual" – often unconditionally accept the world made of states with boundaries, and who in their discourse often make a silent digression from the debate on "equality of persons" to the discussion of "equality of citizens," therefore accepting the principle where citizenry/citizenship with all its benefits can be limited to members of one specific group. (1995: 125)

The necessary conceptual link between justice and sovereignty is explained through the opinion where all concepts of justice depend on coordinated actions by a large number of people, which is not possible to achieve without the state and (its) right followed by the monopoly of physical coercion. It is claimed that only the state and its institutions can deal with the demands of justice.⁵⁹ Without that necessary premise, "individuals, no matter how highly motivated, can find refuge only in the pure desire for justice which has no practical expression except for the desire to support the institutions of justice only when they become viable." (Nagel, 2005: 116) Considering that there is no such thing as a global sovereign order, as this order is limited, hence justice is limited as well, so that citizens of Hungary – for example – direct their demands for justice to their own compatriots and not, say, to the Japanese.

One can probably see why this abstract discussion on the borders of justice might be relevant to BiH and other complex states. Dworkin claims that one of the defining principles for acceptable theories of distributive justice – those that are determined by means and abilities that each government has to make available to people it governs – is the principle where the government has to show equal concern for the fate of each person over which it claims to have the rule. (2011: 2) Even if we accept this claim as convincing, it is clear that within the context of complex state there are questions to be asked: who has the power in that kind of a state? Over whom? In what area? For instance, a complex state is mid-way between ideal positions of two sides which usually discuss the limits of justice: we are still not talking about the "global level," but the standard discussion on justice on the "national level" is likewise complicated. This is especially obvious in federal states because federal units, although formally and legally a part of the same state – especially in a decentralized system of government, and here for the purposes of political theorizing – exist as independent seats of sovereignty or government: they usually have *their own* institutions which create laws, and their own justice and executive institutions. As Kymlicka puts it, "moving from one region of a country into another, we're subjected not only to different laws, but also different institutions that act in different languages and even according to different legal systems, so that the transition from one region to another is in important aspects similar to entering a different country." (2001: 256) In the background of this discussion lies the idea where recognized autonomy is reflected in the sense that "where a people is self-governing then it,

58) Hence Hobbes' idea that speaking of (social or any other) justice in the pre-political natural state, when we were running around the savannah semi-nude, would be quite pointless, even though, biologically speaking, we were the same people back then as we are now, with significantly similar needs.

59) Miller adds that "[p]rinciples of social justice are applied within state boundaries by institutions that are powerful enough to ensure that rights, opportunities and resources are distributed according to relevant principles such as equality, desert and need" (Miller, 2013: 149).

and not external bodies, is responsible for ensuring that its members receive their just entitlements". (Caney, 2005: 129) The claim here states that we cannot create such a wide space for self-determination and self-government and assign moral importance to it as well, while at the same time expect the results to be dictated according to principles of preferred determinism and *not* the always potentially random will of political subjects. To paraphrase Nozick's statement directed against distributive justice as such: autonomy disrupts the patterns. (1974: 160) Thus in this context it makes perfect sense to ask "whether the founding principle of federal welfare state is an oxymoron?" (Banting, 2006:65) In other words, "federal welfare states are defined by the tension between two basic principles: the principle of social citizenry and the principle of federalism." Social citizenry presupposes provision of social benefits to citizens under equal conditions, regardless of the region that they inhabit; federalism presupposes regional diversity of social politics which reflect the preferences of regional communities and cultures." (ibidem, 2006: 64; 44-45, 47)

While examining the works of political philosophy on these topics, it is interesting to note the frequency of the idea that global justice can be achieved through the constitutionalization of a global federal state, which would then have both enough sovereignty and enough political power and will to establish global social justice. The aforementioned dilemmas, however, show that a federal state is not necessarily the solution to the problems that existed before its creation. "Borders" could be called "demarcation lines," but the consequences might in many ways be the same. Thus in the context of complex states there is an issue very similar to the problem at the centre of the debate between the contextualists and the universalists: who are the principles of justice in that type of a state apply to, and do those principles cross over the demarcation lines between the federal units? Political science research is unequivocal: "If there is a single consensus on anything in the literature on political consequences of federalism, it's this: the size of the public government and the adherence to social providing is lower in federal states than in non-federal states." (Simeon, 2006: 23; also Miller, 1995: 85) Meaning, "there are no studies which suggest that federalism promotes egalitarian redistribution." (Simeon, 2006: 29)

The first problem in the context of BiH

As we have pointed out earlier in this essay, BiH is a complex state – most probably federal in terms of organization – which exhibits a significant amount of decentralization. The Minister of Education and Science of the Federation of BiH (FBiH) has recently pointed out the final consequences of this situation on FBiH by stating that "[w]e don't have ten cantons in BiH today, but rather ten states. And those ten states sovereignly and independently decide on everything related to education, and not only for kindergarten, primary or secondary schooling, but also for higher education." (Mašić, 2013: para. 12) The matter is made worse by the fact that it isn't only the cantons that are the issue, nor the matter of education. The Constitution of BiH has allowed for a particularly small amount of control for the state level of government, with the assumption that the cantons will take precedence over the jurisdiction, where those jurisdictions include all of the most important issues in terms of economic justice. Thus the conclusion that "on state level, we don't have a single law that regulates the exercise of rights on social welfare," is true, meaning that BiH "passed this responsibility onto the entities so that they can independently and autonomously regulate it, and in that way ensured the lack of a singular or unified legislation and a system of social policies throughout its territory." (Hunčec-Pita, 2012: 8-9) Thus, in terms of the Constitutional Court of BiH, many if not all notable and different actions are based on "the principle of territoriality within the complex constitutional and legal organization of Bosnia and Herzegovina, where there is a constitutional delineation of the jurisdiction of administrative-territorial units" while in some (many/all?) contexts "the question of unequal treatment of the citizens of Bosnia and Herzegovina is not [even] asked." (U-17/11: §35) Thus the imbalance between the different levels of the country (entities, cantons, cities, municipalities)⁶⁰ considering their economic power – on which depends the quality of public services, as well as the general possibility of achieving social justice – is also a consequence of fiscal federalism in BiH which is characterized by "multi-level asymmetrical architecture of the government sector and a high level of fiscal decentralization." (Antić, 2013: 280) Historically, the motivation for the establishment of fiscal federalism – meaning, the decentralization of it in BiH – was a way of conflict management, that is, an attempt at mitigating the points of disagreement between the warring parties, so it is understandable why the system wasn't structured to economically efficient or fair. (Fox, Wallich, 1998: 297)

60) In FBiH, multiple combinations of inequality in social benefits are possible, including between municipalities in the same canton (Hunčec-Pita, 2012: 23).

Whoever has the exclusive jurisdiction, it could reasonably be said, must also be exclusively accountable. His freedom of action is limited only by vague constitutional-legal principles that, despite not being completely useless in this context,⁶¹ ultimately require the implementation of justice within the existing demarcation lines. There is no doubt that in the current political-legal state of affairs, the boundaries of social justice coincide with the boundaries of competence of various administrative-territorial units of BiH and that demands for justice are usually made and redistributive policies usually conducted within these boundaries.

The second problem: motivation, reciprocity and multiculturalism

Just like with federalism, a state of diversity is subject to the same question of whether the “idea of a multicultural welfare state – a welfare state that respects and accommodates diversity – is a contradiction in terms”. (Banting, Kymlicka, 2006: 4) Here, tension is seen between two aspects of the liberal ideal of equality: the idea of equal citizens, meaning that all members of a political community enjoy equal rights, and the idea of “equal treatment of citizens as members of cultural groups” (Miller, 2006: 323) that inevitably leads to differentiation among citizens. The underlying idea is that ethnic / racial heterogeneity itself, or rather multicultural recognition policies, produce an “unintended social dynamics” (Banting, Kymlicka, 2006: 2) destructive for the welfare state. How is this manifested?

First, it is pointed out that given various cultural groups, the impossibility of reaching agreement about principles of justice is to be expected in a multicultural society. (Miller, 2013: 73) Second, cultural groups may be more willing to practice justice (in the substantive normative sense) towards their own members than in relation to other fellow citizens towards whom they may apply only those obligations of justice owed to human beings anywhere. (ibidem) This is correlated with the idea that sacrificing one’s self for one’s fellow citizens, as required by the idea of solidarity, is to be expected only provided that there is a likelihood that those receiving the sacrifice will respond in kind. (Kymlicka, 1995: 77; Miller, 1995: 93) However, claims are made that this type of trust is difficult to generate across ethnic lines because it is “it is easier to sanction ‘defectors’ within one’s own ethnic group than to sanction members of other ethnic groups” (Banting, Kymlicka, 2006: 26-27), that is, trust – as a component of social capital in Putnam’s sense – has a harder time developing in ethnically heterogeneous neighbourhoods. (ibidem) Namely, “a situation in which groups live in parallel universes is not one well calculated to advance mutual understanding or encourage the cultivation of habits of cooperation and sentiments of trust.” (Barry, 2001: 88) Because multicultural policies foreground differences and not similarities, they “weaken redistribution by eroding trust and solidarity amongst citizens, and hence eroding popular support for redistribution”. (Banting, Kymlicka, 2006: 11) They thereby also corrode a comprehensive common identity. This makes multicultural societies where it is presumed that the state contains a certain number of separate cultural communities particularly problematic, and this will inevitably weaken interpersonal solidarity, which is the *conditio sine qua non* of social justice. Third, ethnic / racial diversity endangers the creation, maintenance and stability of political coalitions and parties that could support a welfare state, which has a negative impact on “forming a unique and strong labour movement” and leaves room for right-wing populist parties often oriented against the welfare state. (Banting, Kymlicka, 2006: 27) Fourth, multicultural policies are accused of “diverting time, energy, and money from redistribution to recognition” (ibidem: 10). Finally, it has been pointed out that multicultural policies lead people to “misdiagnose” the problems they face, claiming that the problems are due to the “misrecognition” of a certain culture, even though the problems reside elsewhere. (ibidem: 12-13)

It has been noted that the number of cultural groups and their demographic size is secondary to their dispersion in the territory, that is, the intensity of their interaction. Particularly problematic are situations where relations between groups take on the form of segregation, where “cultural communities live in separate areas and [...] most often interact only with their own members”, and

61) Cf. the following decisions of the Constitutional Court of BiH: U-12/09 of 28 May 2010 (maternity benefits for employees at the Parliamentary Assembly of BiH); U-7/12 of 30 Jan 2013 (salaries and other emoluments in judicial and prosecutorial institutions at the level of BiH); U-9/12 of 30 Jan 2013 (different treatment of persons with disabilities in FBiH based on age). Cf. U-17/11 of 30 March 2012 (tax discrimination based on place of residence). We cannot neglect the fact that even positive decisions of the Court completely neglect the fourth line of the Preamble to the BiH Constitution and invoke the principles of the welfare state as justification, giving the impression of an ad hoc approach and legal pragmatism.

where a strong feeling of justice towards one's own group can be expected, along with indifference towards others. (ibidem: 74) Such a constellation of social relations becomes practically significant when groups are not equally endowed with resources, and we can expect resistance to transferring resources to members of groups that are not identified with and trusted. (ibidem) This form of segregation acquires its full destructive political-institutional potential in states that recognise the right to self-governance for cultural groups, which can be considered to represent "the most complete case of differentiated citizenship, since they divide the people into separate 'peoples', each with its own historic rights, territories and powers of self-government; and each, therefore, with its own political community" that they can consider "primary, and the value and authority of the larger federation as derivative". (Kymlicka, 1995: 182). In other words, under such circumstances, the boundaries of a cultural / political community or 'people' coincide with the boundaries of its administrative-territorial entity.

The problems of complex states lead to the conclusion that social justice is most easily achieved in states that foster a unifying identity, these primarily being nation states (Miller, 1995: 95-96, 141). Namely, in states with a "common underlying conception of political identity, one should expect strong electoral pressures to treat individuals similarly, irrespective of where they live.", in other words, in such a situation "the unspoken frame of reference for policy-makers is likely to be the country as a whole" (Banting, 2006: 63; also Jeffrey, 2006: 88).⁶² In other words, based on this understanding, nations are ethnic communities, so the obligations we owe our compatriots are different, and wider-ranging than those we owe other human beings, which stems from the belief that "people who live together have much stronger (mutual) obligations" (Walzer, 1983: 33; also von Hayek, 1982: 89-91).⁶³ This understanding is the foundation of the model of the welfare state "conceived to ensure advantages exclusively to those that belong within the same borders as we do". (Miller, 1995: 10-11, 191)

Ensuring social justice within own cultural / political communities or peoples, in this view, is not just politically justifiable, but conceptually necessary; others cannot expect to receive much more than humanitarian consideration, and the discourse on wider social justice is pointless because, if social justice is to have any effect on people's lives, then it must be at least feasible.

The second problem in the context of BiH

When it comes to achieving social justice principles, a discussion of the negative effects of a divided society is of great importance for BiH. Fox and Wallich pointed this out in the immediate aftermath of the war stating that "if [in BiH] people's primary allegiance is to the national groups within the entities, there will be a more limited view of the domain of concern, and differences in the average incomes of groups within an entity or between entities, or in the average level of public service provision, may not be the predominant concern of these groups". (1998: 273-274) And in fact, summing up the situation in the country at the time, the authors conclude that "[c]urrent attitudes in Bosnia appear consistent with the views that many people in each ethnic group see themselves as members of their group, rather than as Bosnians, and are not broadly concerned about welfare of the entire country or access to public services outside the group". (ibidem: 297) Has the situation improved fifteen years after this pessimistic view?

A significant number of statements by BiH analysts and theoreticians indicates that society is still divided to a considerable degree. Important the purpose of these considerations is the assessment that the Dayton agreement constituted a "pseudo-existing community of three separate subjects" (Sarajlić, 2009: 228), or "three social segments created along the line of division of the

62) Jeffery furthermore points out that it is "important to reiterate that this territorialisation of social citizenship need have nothing to do with territorial differentiation of values about the role of the state in social policy. People can share values, yet for reasons of identity or money seek to realize those values within territorial rather than state-wide communities. The outcome may well be, over time, a differentiation in how the state delivers social policy in different places [...] Territory can, and does, trump equity." (2006: 90)

63) Also: "Admission and exclusion are at the core of communal independence. They suggest the deepest meaning of self-determination. Without them, there could not be communities of character, historically ongoing associations of men and women with some special commitment to one another and some special sense of their common life [...] If a community is so radically divided that a single citizenship is impossible, then its territory must also be divided, too, before the rights of admission and exclusion can be exercised." (Walzer, 1983: 61).

population into three nations that have formed a network of their own organisations and institutions and function as separate sub-systems. (...) Division is so pronounced that it often resembles segregation where the multi-ethnic has partially survived or been revived to a minimal extent. Apart from participating in rights and obligations imposed by the legal order and public institutions (education, paying taxes, healthcare, participating in elections, etc.), individuals belonging to different social segments in their micro-environments (for example in municipalities or towns) have little contact". (Marković, 2012: 215-216)

This social situation was fertile ground for a specific form of political regime: "ethnocracy". It entails "the rule of one people over a state territory inhabited by that people alone or together with other peoples", that is, "it denotes a state situation in which ethnos rules, a situation in which ethnic belonging determines political status". (Šarčević, 2009: 25; also Haverić, 2006)⁶⁴ The latter indicates the fact that legal and political theoreticians have mostly focused on political injustices stemming from ethnocracy, but even they implicitly admit that ethnocracy necessarily influences the cultivation of economic injustices, for example when they point out that "where the 'nation' [in the colloquial sense] is the widest and most fundamental circle of identification, the glow of cosmopolitanism is extinguished and ties are formed to the "tribe", to origin and region". (Šarčević, 2010: 300)⁶⁵ If Kant's remark (1917: 144) that the moral quality of the constitution shapes the social morality of the community, and not the other way around, then these positions could lead to the conclusion that in BiH a particular type of ethnic solidarity has been cultivated over the past two decades.

The chances for achieving social justice across demarcation lines do not seem good in the context of significant social segmentation of BiH where, through a series of unfortunate circumstances of war and ethnic cleansing, ethnic groups have become homogenised in certain parts of BiH, so that the boundaries of the ethnic group mostly coincide with those of the administrative-territorial unit. In such an environment "ethnic transgression, which would presume the possibility of 'traversing' ethnic borders in the political sense [...] has been denounced as supreme blasphemy and injury of the moral order of the culturally established existence". (Sarajlić, 2009: 234-235)⁶⁶ Such an environment provides a suitable habitat for the model of consociational democracy, but ultimately this paradigm "not only legitimises the existing ethnic (and ethno-constitutional) order, but sets the foundations for a permanent perpetuation of ethnic divisions in the country and their projection into the political future". (ibidem: 248) All of this creates a political environment of ghettoisation, where the possibility of building trust between groups required for solidarity as the precondition for social justice is reduced to a minimum or even destroyed.

Rescuing illusions?

If we take a break from this parade of philosophical-politological nihilism and see how these predictions have crystallised in the field, we come to a surprising conclusion: neither federalism nor multiculturalism have finished off the welfare state.⁶⁷ Welfare policies in many federal states differ little if at all from those of unitary states, in other words, even though there is a moderate negative relation between federalism and distributive justice "[w]hether or not federal regimes will be weak welfare performers, depends on other things [political, ideological, contextual factors] than federalism itself". (Simeon, 2006: 28) Thus, it has been pointed out that "[m]ajor income-transfer programs, such as old age pensions, unemployment benefits and child benefits are central responsibilities in virtually all federal welfare states." (Banting, 2006: 49), and also that even "the access of individuals to health services [...] is

64) Šarčević distinguishes three constitutional-legal cultures in contemporary BiH: exclusive ethnocracy (RS), complementary ethnocracy (FBiH), and participatory ethnocracy (BiH) (Šarčević, 2010: 42).

65) Along similar lines Sarajlić claims that "[in] Bosnian-Herzegovinian political reality, none of the self-appointed ethnic actors insist on the universality of political principles in a common framework, instead establishing the subjectivity of each ethno-cultural sphere (where incommensurate and incommensurable moral and social spheres prevail) as a consensual norm" (Sarajlić, 2009: 232).

66) In such an environment, there are no innocents among the ethnic elites, given that "[in] that context [...] both those advocating particularism (these are primarily key Serb and Croat ethno-political entrepreneurs) and those speaking from a presumed universal basis (which is the case with the Bosniak national discourse [...]) are cultural fundamentalists and exclusivists. The former because they negate any universally conceived solidarity that would transcend cultural boundaries, and the latter because they proclaim universality an exclusive cultural characteristic of their own ethnic community". (Sarajlić, 2009: 234)

67) "In theory, federalism promises diversity, but in practice federations organize themselves so as to constrain interregional variation in social programs." (Banting, 2006: 48, 53, 64)

determined in whole or in large part by a policy framework that applies to the country as a whole.” (ibidem: 50)

Similar conclusions are made about multiculturalism.⁶⁸ What is more, it is pointed out that the weakening of the welfare state is a global phenomenon with no direct causal relationship to multiculturalism, but that the welfare state is “under pressure throughout the Western democracies, including in countries that strongly resist [multicultural policies], like Germany, as well as pro-[multicultural policies] countries, like Canada”. (Banting, Kymlicka, 2006: 14) Furthermore, studies have even shown better redistribution indicators in countries with strong multicultural policies. (Banting, Johnson, Kymlicka and Soraka, 2006: 72) Perhaps because in conceptions of justice held by members of various cultural groups, there are no immeasurable differences, if we disregard the extreme cases. (Miller, 2013: 73-74) The fact that cultural injustices are emphasised obviously does not mean that individuals do not care about other forms of injustice. (Banting, Kymlicka, 2006: 19) Arguments of reciprocity and motivation can also be criticised because they are based on an “ahistorical and unchanging account of human nature” (Caney, 2005: 133), or on “an impoverished moral psychology, assuming that people are motivated solely by loyalties and attachments to members of their community” (ibidem: 133). Arguments of national identity are also criticised in relation to this, both because they neglect the fact that people can have multiple identities (Sen, 2009: 129), and because they are based on a “monocultural empirical assumption” unsustainable in the multicultural context of many societies. (De Schutter, 2005: 29)⁶⁹

The fault is in ourselves ...

As Cassius put it, the fault is not in our stars, but in ourselves (Shakespeare, *Julius Caesar*, I.ii), which seems to be a fitting conclusion to this discussion. Neither federalism nor multiculturalism as such are *necessarily* destructive for the welfare state. Perhaps the problem is not just that we reap what we have sown, but also in what we do with what we have reaped. However, these conclusions take us back to the very beginning, to explaining our current difficulties. Even optimistic theoreticians that we have considered are prepared to distance themselves from individual cases they consider beyond redemption. (Banting, Kymlicka, 2006: 17-18; Simeon, 2006: 22)⁷⁰ In truth, BiH is not fertile ground for applying abstract universal ideas conceived for an “ideal world” where society has not been divided by war crimes and where ritual political hatred does not exacerbate existing distrust on a daily basis. It is quite possible that in the context of a deeply divided society, the specific BiH combination of ethnic federalism is enough to bury the idea of social justice in BiH. Still, we believe at least three normative arguments against the status quo can be made.

First of all, who has sown what the citizens of this state are now reaping? There is no way around the fact of the non-participatory, and therefore illegitimate, establishment of this constitutional-political order. The autonomy argument as a solution to normative dilemmas can be countered by being exposed as unjust towards individuals held accountable for choices made by their political elites (Caney, 2005: 130) in secret, on another continent. The BiH population’s share in the original sin that led to the current situation is primarily made up of their complicity in processes that already in the early 1990s began creating political circumstances that made “agreements between peoples” a legitimate political reality, and in the later continuous legitimisation of political elites. However, it is more difficult to justify economic injustices stemming from the fact that someone who happens to live in an area condemned to financial disaster must suffer all the disadvantages that come with it. The idea of someone leaving their home in search of a better life elsewhere in BiH cannot be considered plausible – even though freedom of movement is what makes a complex state

68) “Taken on their own, MCPs are unlikely to have any ‘inherent’ or ‘natural’ tendency to undermine (or strengthen) the welfare state. However, in conjunction with other policies, and when operating under particular socio-economic and political conditions, MCPs may turn out to be important components in a larger constellation of factors that can strongly affect social solidarity and the welfare state.” (Banting/Kymlicka, 2006: 39).

69) “Kymlicka assumes that societal cultures are the cultures of territorially concentrated, monolingual members of mononational groups. He never considers the idea that societal cultures may be binational or even multinational, that two previously separated cultures who live on the same territory may in due time develop a sort of common loyalty and identity or even a shared choice context (...) [and makes] no mention of the mere possibility that natives might experience cultural membership in two societal cultures.” (De Schutter, 2005:30)

70) Still, Banting also reminds us that things are not that simple: “[S]ocial policy variation is minor in culturally divided Belgium and significant in the United States, where a common political identity seems unchallenged.” (Banting, 2006: 63)

fundamentally different from the global analogy,⁷¹ – and is just a theoretical panacea for all economic injustice. Social distrust also limits this kind of mobility, and new legislation about registration of residence limits the applicability of Walzer's suggestion that "domestic strangers" cannot be admitted or excluded whether they be welcomed or not welcomed. (Walzer, 1983: 36)

A higher level of abstraction is found in the argument insisting that citizens have the right to cash in the bond issued by the state through promises and proclamations of welfare in its fundamental legal document. This is a Poggean argument whereby the moral rights of citizens impose a general negative duty on others that they should not make a commitment and then fail to honour it. This will be particularly important – and it links this argument with the previous one – where the state imposes an institutional order on citizens that will, despite promises to the contrary, inevitably deprive them of enjoying the rights promised to them. In such a case "those who do participate in imposing an institutional order upon [them] fulfil this negative duty only if they see to it that the rules they help impose afford those on whom they are imposed secure access to the objects of their human rights, insofar as this is reasonably possible." (Pogge, 2007: 23-24)

If these endeavours were to fail, we could succumb to a purely self-interested argument. Namely, those that insist on consociational political constellations should be reminded that, without redistribution, the recognition they insist on will ultimately be superfluous. Namely, as Kymlicka points out, "[i]f fairness requires recognizing self-government in certain areas of jurisdiction, then presumably fairness will also require providing the resources needed to make self-government meaningful." (Kymlicka, 1995: 118)⁷²

The previous statement might find its practical expression in the attempt to build inter-territorial solidarity, through better fiscal equalisation.⁷³ This will be possible only if none of the participants find themselves on the losing side, which, given the experiences of Switzerland, is not impossible. (Mueller, Keil, 2013.) Important findings from relevant research indicate that solidarity, equalisation and legitimacy are inextricably linked and that, once a system is established, they reinforce each other. (ibidem)

However, whereas all of the above can be used as theoretical argumentation for (often insufficiently justified) proposals of legislative and constitutional reforms,⁷⁴ or as a practical suggestion to reinforce these normative arguments, it is unlikely to determine, let alone predict, the development and perspectives of social justice in BiH. As Miller notes in analysing the Canadian national health service: even though today it is the object of country-wide pride, before its introduction, Canadians did not believe so strongly in a public healthcare system. (1995:96) In divided societies, building trust requires a leap of faith: a bold venture into the uncertain waters of the archipelago mentioned at the beginning of this paper. The future of the illusion will depend on whether BiH is ready to take that step, which is – ultimately – a political act.

(Translated by Aleksandar Brezar)

71) The reasons may roughly be the ones noted by Rawls in the context of states: "[n]ormally leaving one's country is a grave step: it involves leaving the society and culture in which we have been raised, the society and culture whose language we use in speech and thought to express and understand ourselves, our aims, goals and values; the society and culture whose history, customs and conventions we depend on to find our place in the social world." (Rawls, 1993: 222)

72) On a somewhat different basis also in Walzer: "[A]ll the multicultural citizens have to work politically to create a state committed to sustaining its own pluralism: to distribute resources in a roughly egalitarian way to all the constituent groups so as to help them help themselves." (Walzer, 1998:97; also Tan, 2004: 199; Banting, 2006: 65)

73) While the principles of fiscal equalising are different at the level of the entities, at the BiH level, they have an exceptionally rudimentary form. (Jusufovašić, 2011.)

74) See, for example: „Preporuke za promjenu Ustava Federacije Bosne i Hercegovine“ 29 May 2013, US Embassy Expert Group, available at: <http://ustavnareformafbih.blogspot.com/> (especially §44 about the federal fund for uniform development of FBiH); „Isti položaj u FBiH u raspodjeli javnih sredstava“, Klix.ba, 26 September 2013, available at: www.klix.ba/vijesti/bih/isti-polojaj-za-opcine-u-fbih-u-raspodjeli-javnih-sredstava/130926138 (Nacrt zakona o izmjenama i dopunama Zakona o pripadnosti javnih prihoda); „Teret siromaštva moraju dijeliti svi segmenti društva“, Dnevni avaz, 25 November 2013. (campaign by the Federal Ministry of Labour and Social Policy "Ovako više ne može: reforma socijalnog sektora u Federaciji Bosne i Hercegovine").

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