

## Ontological Foundation of Human Rights

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### Abstract

*Ontologický základ lidských práv.* – Koncept lidských práv hraje v současnosti roli náboženství, které je sdíleno téměř všemi lidmi žijícími v demokratických zemích, a přesto jeho základ zůstává skryt. Pokusy ukotvit práva v různých pojetích společnosti všeobecně selhaly. Nicméně je zde jeden návrh vyjádřený zejména v legendě o králi Artušovi, který byl obdarován magickým mečem, na němž bylo napsáno heslo: Vzporuj silným a ochraňuj slabé. Ve skutečnosti nikdo, kdo podporuje křehkost, nemůže morálně selhat. Toto heslo je dobře následovatelné, zatímco jeho aplikace záleží na distribuci moci mezi lidmi. V etice zasluhuje doporučení analyzovat různé druhy moci a kvalifikovat vztahy mezi minimálně dvěma nejdůležitějšími, kterými jsou moc mečů a moc klíčů.

**Keywords:** Human Rights, Duties, Power, Fragility, Potentiality, Universalizability, Conscience, Procedural Justice, King Arthur

**Klíčová slova:** lidská práva, povinnosti, moc, křehkost, možnost, zevšeobecnění, svědomí, procesní právo, král Artuš

### 1 Introduction

Since the beginning of the modern time when metaphysical framework based on theology has been lost the urgent question concerning foundation of human rights worries every political thinker. It has been assumed that the human being is endowed with some rights from birth on without any desert at all, yet there is always doubtful which of them might be waived on behalf of the governor or the neighbor (Hobbes 1968: 166–167) and which of them never ought to be encroached upon. The first among philosophers occupied with political issues who proposed inviolable rights was Locke who suggested three principle rights derived from the fact that the person has been created by God<sup>1</sup> and they encompass the rights to life, freedom and private property.<sup>2</sup>

Troublesome about such a list of rights is that there are always reasons to infringe upon some of them as for example capital punishment, imprisonment or collection of taxes. Additionally, these rights might be useful as a measure only for legal or legislative purposes while on the level of morality they lead at best to the *laissez faire* life: they require nothing except toleration in regard of indulgence to the rights of others and thus charge everybody only with the negative obligations. Conversely there are other rights like some social ones that putatively ought to be honored as being inherited despite they require positive duties of others.

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<sup>1</sup> Locke 1960, Second Treatise, ch. II (§ 6), ch. VI (§ 56-57).

<sup>2</sup> *Ibid.* – ch. VII (§ 87).

Yet inquiry into the mental dimension of human nature has not proved that anything like rights would be stuck at the bottom of it. Any notion of rights having been proposed till now thus lacks *apriori* anchoring and is dragged about by occasional influences, i.e. depends more or less on the contract achieved in a society and thus is based *aposteriori*. Despite this skepticism about foundation of rights all the political systems have appeared to be too cruel and unjust when a neglect of their FYSEI anchoring was committed by them. The main stream of contemporary discussion on ethics dealing predominantly with the question of justice and with the tenets it ought to be based on has been therefore promising to discover an absolute origin of rights since rights always represent either fruits or roots of justice itself.

There has been proposed several clue notions and these notions have found their followers who worked them out; the first and prominent one among them is that of Rawls (1971). Rawls has sketched a theory of justice on rather metaphysical grounds despite attempts to get rid of all the metaphysical rubbish; the reason is, that the approach itself is rather scholastic in the sense that it tries to construct a system on several tenets being a matter of belief in the particular American society and lacking any sophisticated foundations (Sandel 1982: 13–18, 23–24, 35–36). Applicability of it is due to its arbitrariness and awkwardness hard even to politics of the American people.

Exemplary in this way is the assumption held by Rawls that the first tenet ought to precede the second one (Rawls 1971: 60–63). The economical as well as social benefits must never be granted at a price of the loss of political privileges: liberty can be sacrificed merely to liberty of broader range and kind (Rawls 1971: 243–252). It renders that the value of freedom should never be encroached upon by other values like wealth; wealth be here a symbol of other goods. Yet there is no sharp boundary between these two sorts of values and we can ask for example to which of them the right to decent amount of health care should belong. In other words not only material benefits but also chances to make decision evade any attempt to be assigned equally to all: any kind of equality with regard to autonomy can never be achieved too.

Besides this there is still a complication concerning the question who should be entrusted with which duties and who should be entitled by which rights: rights seem to be bestowed upon those who might be more useful to the society (Rawls 1971: 75–80) which is morally up-side-down; under such conditions any corruption with the consequence of benefit for all would be justifiable and thus another rule quite awkward and lacking any ground that officials should be impartial must be added (Rawls 1971: 183–192). Yet another question remains: which privileges are these impartial observers to be endowed with? After all observers seem to deserve the highest wages and if it is not the case they are morally qualified to receive money from the parties underhand; yet such money is ordinarily named – bribe.

The project of justice being an opposition to the former one and sketched by Nozick is much more simple in regard of rights: it in accordance with Locke homely assumes that some rights are bestowed upon people by birth; by and large Nozick merely reckons with this general precondition and owes giving any philosophical account of it (Nozick 1974: 10–12). Yet again: which rights can be claimed by which individuals? Decent amount of material goods is certainly indispensable for an exercise of basic human rights and it is extremely difficult to set which social, medical as well as educational protection should fall under the natural law too.

Both these attitudes were paved to defy utilitarianism that had been prevalent as a common notion of justice long before; yet justice in this notion has a flaw with the point regarding generalization of interests. Interests are always particular as well as individual and any generalization is crude so far that it distorts or even destroys the frail architecture of the concrete human personality in every single case; consequences of utilitarianism reveal that it always must be approximate and thus in principle fails to achieve justice as such while generalization should be attached to something else. Anyway, all the versions of utilitarianism lack guarantee of human rights in the sense that they are prone to sacrifice them to other goals.

## 2 Conception

It is urgent to establish the system of rights deeper. Taking this suggestion seriously one has to ask first whether any principle might be universalizable enough to fulfill demands on ethical validity: morality lacking such universalizability would be hardly worth dealing with (Hare 1963: 191–224) (it is the lack of communitarian that it refuses possibility to reach any universalizable principle to be valid across different cultures). (MacIntyre 1988: 327–329, 355–360, 365–369) The following question concerns application of such a principle to the concrete events for the sake of decisions would fit with them: it is necessary that any viable project of justice would be able to determine which rights should be attached to whom. Be now this question after application let aside while the main task is to find some principle or principles that would enjoy common acceptance: inquiry into this theme is the starting point.

### 2.1 Criterion

To get ahead in ethics always depends on whether there is some principle available absolute and abstract enough to serve as a criterion for concrete judgments. Contemporary notions of rights do not cope with this suggestion since rights are always relative to some duties and conversely (imperfect duties like religious ones lacking any human counter right at all are not in concern here and rights being rid of all the other's duties have no sense at all); yet this rule of coupling between duties and rights will permeate all further reflections while the proper attribution of them remains open.

The utilitarian solution based on assigning some rights to those who augment well-being either of a society in the whole or of everybody in it (the Mill's principle of utility)<sup>3</sup> *prima facie* misses moral level in the end since it lacks any reason not to victimize a minority that prevents the majority to achieve its common good; in that case military governors like Stalin or Hitler expanding their empire at any price as for example extermination of dissidents would be admirable. Correction of utilitarianism through protection of the oppressed ones (the Paret's principle of optimality prevents detriment of the poorest ones (Lekachman 1981: 107–111) while the Rawls's principle of difference requires an improvement of their well-being directly) (Rawls 1971: 75–80) offers a moderation of the utilitarian cruelty, but it still does not pass over the limits of this notion; even the Rawls's attempt despite its refusal of utilitarianism still sticks inside of it (the Rawls's principle of efficiency is close to it). (Rawls 1971: 65–74)

We dare to turn about quite bizarre and prevailing approach which considers allotment of privileges to those who deserve them because they are useful to others: it is common and

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<sup>3</sup> Mill 1957: ch. III and IV.

natural that everybody pursues her/his interests striving after her/his own merits whereas allotment of benefits reminds a socialist bias. There is much easier and more liberal way to concede freedom in gaining advantage while charging those who achieve them with some obligations; elementary morality of this approach is beyond any doubt and in accordance with the ancient wisdom. The Bible itself and particularly prophets exhort all the way down that the king as well as the rich ones ought to protect poor people: it is the voice claiming in desert support of orphans and widows who are the feeblest ones (Isaiah 1:17, 1:23). However similar norms can be found in other cultures including the oldest Sumerian and Egyptian ones and have precipitated into fairy-tales for children.

Then there is a legend running like a red thread through the European tradition and exerting great impact on its history in the whole as well as on several historical events in it; the core of this tradition is the symbol of Holy Grail that was the chalice of emerald used by Christ at the Last Supper for wine and also used by the first disciples to collect drops of Christ's blood. This Holy Grail was sought by European knights like Lohengrin and Arthur who according to the legends committed plenty heroic deeds; they disposed of a miraculous sword and this sword was decorated with the carved slogan: resist strong ones and assist weak ones! Many lofty sects like "Rose and Cross" derived their origin from these traditions and if there is any characteristic European archetype worth mentioning it is just this one.

Be the commandment to resist strong ones and to assist weak ones named after the knight Arthur the Arthur's rule; rules like this one reveal a common ethical knowledge shared by all the ethnics we have an access to (it can be assumed that the sense of Arthur's rule is tightly connected with the human nature itself)<sup>4</sup> and we can discover the principle of equality inherent to it. An equality in itself refers to the realm of "oughts" and represents the goal that always ought to be approached while never will be attained, resembling thus the "Golden Rule" in all its applications.

Arguments on behalf of equality might be quite various and depending on metaphysical grounding: for example according to the Christian theology and belief any neighbor should be treated as Christ since Christ in potentiality dwells in her/him whereas other conceptions put emphasis either on protection and exercise of one's own freedom up to the range of other's freedom or on indiscernability of differences among people as to their important features. Yet the proper ethical argument comes from universalizability of the principle having the meaning that everybody including myself (Hare 1981: 112f) might be replaced by anybody else (in Rawls it is rendered as the veil of ignorance projected into the putative original position). (Rawls 1971: 135–142)

Resting on the principle of equality the Arthur's commandment might be expressed also as the principle of liaison; liaison either between power and duty or between powerlessness and rights: rights are thus coupled with weakness and betray always some kind of it while strength is coupled with duties and readiness to take over them.<sup>5</sup> The rule of universalizability applied to the mentioned principle reveals no obstacles at all; in accordance with it protection of the frail ones never fails and should be administrated. Conversely this principle allows: do what you want while gaining advantage you wish, yet reckon with that you will be charged with duties

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<sup>4</sup> Cf.: below the chapter on heuristic.

<sup>5</sup> Cf.: above the principle of difference – note 15.

accompanying them! Of course, not all duties as well as rights are confirmed by some legal limit and remain in the realm of moral choice.

There is a great temptation occurring predominantly in politics to split rights from weakness and to couple them with power; power thus joined with rights and offering privileges is extremely infamous and attractive for those who lack any moral constraint particularly if the legal order is compliant with it. It is necessary to stress here that such a temptation attires itself into an endless variety of deceptions and seem to be harmless; the more deception there is, the greater wickedness threatens. In a modern society all the boss chairs are considerably seductive since sovereigns entirely evade responsibility for their deeds except shameful resignation to their boss chairs and privileges accompanying them.

To let to be seduced by the deception that advantage fit with power and that power can be rid of duties entails total capriciousness which if ratified by the law represents a somber menace for the whole society that should be avoided in any case. Despite severity of this menace concerning capriciousness there has always been made suggestions even of philosophical kind that refused the principle of liaison and that consequently were vested with relativism about distinction between good and evil. Among the most prominent thinkers having attacked liaison between duties and power be mentioned particularly Marx who ascribed all the rights (and among them those which concern particularly ownership) to the governing proletarian class (Marx 1952: 596–588) and Nietzsche who scorned Christian solidarity with the crippled and humbled ones.<sup>6</sup>

It is noteworthy that both mentioned philosophers served as authorities vindicating the most atrocious regimes like Nazism or communism later on (of course it is not easy to blame anybody, yet some degree of connection between the structure of thinking and political outcomes like wanton despotism must not be omitted). Conversely a human society must be based on separation of power from various privileges and on liaison of power with austere obligations. Urgent is that this moral guide would shape legal order and in this case the order of law should obey separation of law into the public and private realm: according to the private law permitted is that is not prohibited whereas for all the institutions equipped officially with power prohibited is that is not permitted.<sup>7</sup> Naturally the amount of forbidden activities should be proportional to the measure of power one dispose of.

The demand on liaison between duties and power deserves a remark regarding also religious thinking: a general presumption being valid in any theology is by the very definition that god is almighty, i.e. equipped with the perfect power to influence every event. Consequently god must be entirely charged with duties whereas nothing but rights can be assigned to the human beings that always dispose of lesser power in comparison with the divine being (it must be naturally raised the question whether the human being might be under such conditions equipped with any power at all which entails further research on what power as such properly is).<sup>8</sup>

In that case there would be no moral duties to the God which entails two solutions: obligations are either transmuted into ritual rules or turned toward other human beings; the latter

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<sup>6</sup> Nietzsche 1930, §§ 2, 7, 29, 51, 62.

<sup>7</sup> Hayek 1973, ch. VI.

<sup>8</sup> Cf.: below the chapter on heuristic.



version is the case of the Christian religion where Jesus having taken weakness on himself and having been even crucified is believed to be an incarnation of the God himself. If the God is identified with the abased human person then it is necessary to recognize that this person has moral rights while we all have moral duties; duties of this kind are of course duties to the divine being. The more we comprehend meaning of the divine humiliation the more we emphasize ethics with secular interpretation of religion (Cox 1966: 17–38) while neglecting rituals and conversely an exercise of rituals betrays little awareness of anonymous and *incognito* faith (Bonhoeffer 1955). This rule is a necessary theological consequence of the principle concerning liaison between power and duty when taken seriously.

## 2.2 Heuristic

Since justice is based here on duties and rights while vestment of rights and duties is based on the principle of liaison between duties and power the individual is endowed with, it is urgent to study power thoroughly. Although power represents an important factor so far, there has been amazingly little attention paid to it. If we let aside Nietzsche who despite his proposal that the “will to power” is an essential motivation of every human being (Heidegger 1989: 21–25, 268–273) still owes any serious account of it and employs it as a mere poetic license the sole philosopher throughout the past centuries who assumed power to be an axiomatic instinct of the social mechanism was Hobbes (1968: 137). Hobbes who made the first account of what power is (Hobbes 1968: 125) as well as the first distinction of various manifestations of it (Hobbes 1968: 161–162) has not been probably overcome till now. Anyway, both these thinkers strictly refused the principle of liaison between power and duties while having conceded privileges to the fortunate ones.

Of course there are other thinkers who later on carried out some inquiry into the nature of power among which particularly the political philosophers Jonas, Canetti and Arendt as well as the psychotherapist Adler should be mentioned; despite their contribution to the issue their analysis is still one-sided.

In Adler the will to power as a general motivational structure is an outcome of the human creativity (Adler 1956: xxiv, 91) and can be saturated with various fictions of either sick or sound kind (Adler 1956: 241), which represents a deeper devices for description of power itself; this approach has been later on transformed by Adler into the notion about relief of inferiority and effort after superiority in a society (Adler 1956: 104) with the goal of integration into it (Adler 1956: 347). The contribution of Arendt deals with the distinction between power and its imitation, concerning particularly violence as a result of the loss of power as such (Arendt 1972: 27f) whereas for Jonas power is a backbone of his account of responsibility as a product of the growth of technical knowledge (Jonas 1979: 172–179). Although both infer some moral duties from the conceptions sketched by them, they offer no account of justice applicable to the concrete society.

Remarkably Canetti (1960) pursues the relation between power and mass psychology which has scanty references to the very question of human rights. Anyway, neither of them has shown a method as to recognition or assessment of how the power is designed in the concrete human being (the individual psychology of Adler is exceptional in the sense that it at least recommends empathy into the other). (Adler 1956: 335)

Now it is necessary to pave two ways to power as such. First of all a categorization of it must be listed. What deserves mentioning is that there are different sorts of power and that they might even interact with each other. As an example be suggested several cases of what it means to be weak: weak ones are those who lack any education or those who are inflicted by some pain; they both have some rights and those who are better off have moral duties to satisfy them. In accordance with it the rich ones have duties to cover some expenses for the poor ones and therefore collection of taxes is in accordance with the principle of liaison mentioned above.<sup>9</sup> Yet the moral rule counts also for prisoners who are indicted for some crime and detained in the jail; even if having been a murderer the prisoner has the right to an attorney who would plead for her/him.

The exigency to protect the weak ones seems to go throughout every social realm while aspiring to an absolute validity; despite this aspiration we still can conjecture that power in various cases is not all the same. If making an attempt to sort power we can consider training and wealth, health and strength, wide education and military force, office and the like. There is a diversity of power and it appears difficult to find some order in it. Yet there is another qualification of power that runs across the former one and it has the two following kinds:

i) The “S” power or the power of swords is the first one. The sword as a sharp tool suitable for cutting off either heads or branches is a symbol of crude force that simply manipulates reality just due to itself. Of course, this power does not concern only physical sphere of things, but it also includes psychical phenomena inherent to the other, since they too can be violated, violated here by the sheer word: this behavior is called indoctrination (medicine is acquainted with this phenomenon which bears the title either hypnosis or assertivity). Common to all kinds of this power is a smug calculation with one’s own capabilities regardless of possibilities inherent to the things themselves; therefore the essential feature of it is that an individual disposing of it is dogmatic in the sense that she/he is perfectly and in advance convinced about what is ill and what is well around; this individual then endeavors to achieve a certain good by any means. Such a ruthless control over events of every kind is inevitably tied with the political power and therefore it should not astonish that the symbol of sword has always been attached to the kings striving after control over the peoples.

ii) The “K” power or power of keys is the second one. The key is an instrument that is equipped with the bite of information compatible with the lock so far that with help of it despite tiny force used even a huge gate might be opened up whereas the sole force would achieve nothing. Such a power reminds practical wisdom in the sense that wisdom has capability to assess proper possibilities inherent to the things. Yet these inclinations cannot be read out from the **causal** network since causality is dependent on repetition of the same, whereas the concrete propensity to change is always singular and original, differing from all alike: therefore the symbol of key neatly fits for it. The sole way to those tendencies toward further development is an anticipation based on **final** ends which resembles ancient vaticination: expectation of what is expectable (ELPIS ELPIDOS) perfectly renders the power of this kind, that is based on the prudential art of judgment (FRONÉISIS) concerning tendencies hidden in the real things. Of course, this power is always sceptical about what would be well and what would be ill till the last moment before the decision is made.

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<sup>9</sup> Cf.: above the principle of liaison.

Thus there are two distinct powers: power of key and of sword with totally different kinds of reliance on assessment either of one's own forces based simply on confidence to oneself or of forces in reality due to interpretation of it. What is the relation between them? If the notion is valid, according to which the difference between "K" and "S" power is that the latter one is dogmatic whereas the former one is sceptical about the good in the concrete decision making, then these powers are strictly contrary while excluding each other: to have a common sense requires abandonment of smug lust after government and conversely. Relevant is here the notice made by Kant about the failure of Plato who suggested that philosophers should be sovereigns: sovereigns cannot be philosophers since they lose their ability to think in the moment they begin to reign (Kant 1922: 341).

Despite the opposition of these two kinds of power they share the fact that they are powers and as such they are always charged with duties; duties are solely moral in the case of "K" whereas any "S" must be tied with duties of legal kind. An interesting question then appears concerning the conflict between strong and wise individuals as to whose duties should prevail and who has more rights.

To attach a just configuration of duties to the individual then requires proper evaluation of her/his power and it again requires a heuristic clue. Contemporary sciences have nothing to help here, since they have been proposed to focus themselves merely at **actuality** whereas power is by the very definition **potentiality**, **potentiality** inherent to the reality itself. If we refuse scholastic fancies about other worlds then it is hermeneutic dealing with interpretation that is available here. The aim of interpretation is assessment of personal tendencies in others as well as natural tendencies slumbering in reality itself:<sup>10</sup> these forces of the natural world can be conceived of by another symbol, symbol of flames and fire: fire is the power launching processes in reality representing life itself and any forecast of outcomes is due to assessment of them. Therefore power of fire is a natural servant of "K" power which employs knowledge of the former one while taming it.

The taming of fire concerns natural processes including processes in the human being and thus assessment of one's own potentiality might be done too, which is an alternative of "K" to "S" in regard of self-confidence: confidence to oneself is thus feasible too and if humble enough need not be contrary to the practical wisdom.<sup>11</sup> A person endowed with this common sense enjoys usually esteem of natural authority important particularly for education of others, yet it is beyond feasibility to reach with such a modest reliance to oneself any significant political position at all. This lenity must always fail in a competition with the ambition to control others.

An ally with the domain of any power is awe; awe is a mixture comprising particularly terror that is the centre of it and glory that always accompanies it. There is an ordinary experience that face to face the fame of anybody we feel some kind of dread whereas dread itself threatens by the power behind it (a menace of death is the last outcome). Of course, it might happen that no power is behind and that dread is merely a deception; despite this imposture people are obedient as if actually some power would exert fear in them. This gamble with fear in the people is a favorite means of every sovereign to prevent an upheaval (Hobbes 1968: 205–206) as well as of every terrorist to make it. On the contrary if anybody reveals that the power

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<sup>10</sup> Cf.: above the power of keys.

<sup>11</sup> Cf.: above self-confidence.



has become extinct, troubles with fear vanish and the people can get rid of its terrifying yoke: to dethrone an “S” has always been the task of “K” and will be in the future too: this is the topic of allotment concerning duties in accordance with the principle of liaison and with the measure of power either “K” or “S” among the people.

Now there is still the question about interpretation of behavior which is an expression of putative power behind. What is then the power in itself? It must be remarked that the power has remained a taboo through the ages; the reason is that taboo itself is power as such.<sup>12</sup> To sketch a proper analysis of what power would be is beyond this essay; yet it must be stressed what has been mentioned above<sup>13</sup> that power is potentiality (potentiality and power as well as *pouvoir* in French have the same Latin root *posse, potere* and *potestas* which is parallel to DYNAMIS in Greek while in other languages power, potentiality, possibility and “to can” have the same root (for example in German it is the string of *macht-mögen-möglichkeit* and in Czech it is the string of *moc-moci-možnost* that reveal it).<sup>14</sup>

The trouble is that potentiality being the very core (HYPOKEIMENON) of every actuality is not accessible for the modern sciences and that the sole way to it is hermeneutic. Hermeneutic disposes of means to open up hidden resources in the world around (Man 1984: 131–132); yet these resources are of two kinds: either indetermined or determined. Determined potentiality has in Greek the name DYNATON whereas the word ENDECHOMENON has been attached to potentiality of bifurcation and renders freedom as the possibility to act also in other ways. The latter possibility is then the proper domain of hermeneutic while the former one is a concern rather of the semiotic research studying structural wholes in linguistics named SYNTAGMA which are tendencies inherent to the things (Saussure 1959: 122–127). It is to regret that both disciplines are often confusedly replaced with each other.

What is the counterpart of these disciplines in the human soul? While semiotic is based solely on the **conscious** grasp of things, it is **conscience** being a distinguished competence of the mind as such (Callahan 1991: 13–36) that is capable of making assessments about freedom of the will either in oneself or in the other. The agenda of conscience is to make judgments about what could have been done otherwise which is the only possibility to blame anybody; there is no moral as well as legal guilt in the case of lacking possibility concerning a different behavior. Therefore conscience is properly the hermeneutic competence which announces both that somebody has breached a duty and that she/he has been charged with that duty because of freedom which is the power she/he disposes of (Callahan 1991: 115–119). This competence named conscience which is an important part of the human nature might be rendered as the sense of Arthur’s rule being thus inborn to the human being.<sup>15</sup>

The other issue is of course whether conscience is just and exerts justice in the sense that it ought to fulfill universalizability of its conclusions and to apply the same measure on the neighbor as well as on oneself (yet any appeal to sameness is rather a particular application and abstraction of the Arthur’s rule based on interpretation that masters the human nature itself). A notion of justice is thus dependent on the conscience alone. Yet conscience although distorted is still aware of the norm it should obey which is the Arthur’s rule in its various grasps;

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<sup>12</sup> Eliade, Cuianu, Wiesner 1990, § 21.1.

<sup>13</sup> Cf.: above the potentiality.

<sup>14</sup> Canetti 1960, § 7/1.

<sup>15</sup> Cf.: above the Arthur’s rule.

a purgation of conscience then depends on improvement of its hermeneutic competence, competence to make assessments about freedom of the other as well as of oneself.

### 3 Conclusion

The proposed notion of justice based on power has several advantages over other projects of justice that are discussed now; the qualification with regard to procedural foundation shared by them all is of course shared by this one too: any priority as to option for some good is refused while everybody has essential freedom to choose what she/he wants and to achieve it. Yet besides it there are other boons.

One sort of theories is too constructivist and even metaphysical in the sense that they try to infer social order from several simple tenets accepted in the original position regardless of the concrete historical conditions (Rawls 1971: 17–23); duties and rights are then hinged on the building of such a justice while they poorly fit with the individual needs. It is rather awkward to endow each person in a society with her/his privileges simply due to inference from the elementary tenets that are purposely scanty in number and that are despite the claim to rationality quite wantonly chosen. The theory sketched above evades this constraint since it always reckons with the assessment of reality rather than with the estimation of budget.

Yet there are other flaws in these theories with the main of them being the presumption of rationality inherent the human being.

It is ridiculous to maintain what must be preferred by every rational person; humans simply want what they want and they always find enough reasons for it even if it would be quite peculiar wish. It is perfectly rational for monks or nuns to waive their lives in order to coalesce with the being or to relinquish all their property and to serve to those who are in poverty: certainly, it improves the situation of the whole society and such people thus should be a measure for others. Why then should anybody have advantage merely on the ground that she/he helps to all?

On the other hand, a sheer rationality can be found also in the intention and conduct of Raskolnikov who killed two users having harmed to others for the sake of having means for further studies and for the future political carrier aimed at rescuing the whole society. Salvation from what? It is indeed another, rather confused question. Basically, we can assume that Raskolnikov being totally rational fits neatly with the project of Rawls and it requires additional arguments going beyond Rawls to reject anything like such messianic atrocity, particularly those concerning inborn human rights that however should have been derived from the theory itself. And again: which one?

The other sort of theories mostly utilitarian is much more compliant with reality evading artificiality in the sense that these theories reckon with the good of the people, yet the good is here an average of all the wishes, be they whatever. Therefore, the trouble of these theories is that they are prone to victimize minorities on behalf of majorities unless some other principles alien to them and concerning rights are put through.

The very advantage of the here proposed theory is that it is based on rights as well as duties and that allocation of them has ontological anchoring; any ontological sketch must

reckon with power which despite its almost mystical background has its foundation in the very philosophical term of potentiality. Differences in the concrete competence to do something is then the measure for charging individuals with duties and for assigning rights either of moral or of legal kind to the people (any legislation ought to have such a backbone).

Of course, there are two kinds of imposture concerning either proclaimed duties or claimed rights. While the second version exceeds proportional share of rights pretending weakness, strength is exposed by an array of duties one takes over despite her/his proper ability to fulfill them. The motive for such behavior might be miscellaneous satisfaction of needs: for example, a favored way to improve one's own image is to accept exaggerated obligations whereas to stress demands helps to the helpless one in avoidance of responsibility as well as of perpetrated guilt. Yet such an imposter might affect any project of justice whereas justice in the notion sketched above is not only discredited by it but also it has means for elimination of it: a profounder interpretation of behavior.

Therefore, rights both are and are not bestowed upon the person by birth: the proper configuration of them is relative to and dependent on the historical conditions while this configuration is ruled by the absolute principle of liaison between duty and power; power then is the proper ontological skeleton.

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