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Liberal autonomy in a troubled context

Abstract   Autonomy, understood as self-rule, is almost routinely accepted as one of the core liberal concepts. Still, a closer view reveals that both the status and meaning of autonomy are controversial. The text departs from a short summary of the main theoretical disputes surrounding the concept. A critique of the standard internalist account is followed by an attempt to offer reasons for accepting a relational reading of autonomy. The central question of the text is context-specific. It asks about the possibility and meaning of liberal autonomy in a society whose past is marked by mass regime-sponsored (and sometimes widely supported) crimes. The background assumption is that mass crime leaves actors in heteronomous condition. At stake is reestablishing individual autonomies of two types of actors, whose group-specific identities have been created by crime: the ethical community of those who share collective identity with victims, and the ethical community of those who share collective identity with perpetrators.

Keywords: autonomy, harm, morality, ethics, special duties, memory, acknowledgment

1. Autonomy: the basic meaning and some conceptual controversies

Autonomy stands for self-rule, ability of a person to lead her life following her own reasons, preferences, motives, or desires. It requires that a person's life is free of external forces that would obstruct her own choices. Recall the famous phrase of Joel Feinberg: "I am autonomous if I rule me, and no one else rules I" (Feinberg 1980: 21). The opposite is heteronomy: it refers to the individual lives being led by externally imposed conditions or demands, which a person does not perceive as her own.

However, the simplicity of the introductory identification is deceiving. There are many questions to ask. For instance, the concept of autonomy is often constructed by a generous recourse to some other concepts: think of liberty, sovereignty, identity, authenticity, self-reflection, responsibility, or free will. Each of these concepts calls for elucidation, in general, and in its relation to autonomy. Besides, autonomy seems to rely on strong normative claims the status of which is not immediately clear. It is good to be autonomous, while it is not good to live in a heteronomous condition of oppression. But, this claim still does not tell us what the good consists of. Does the concept of autonomy supply ultimate normative meanings that serve as the basis for justification

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for other concepts, practices, and institutions? Or, do the normative propositions of autonomy themselves have to undergo the test of justification? Is it possible to think of autonomy as a substantive normative concept? In response to the latter question, one powerful stream among the theories of autonomy argues that normativity of the concept has to be restrained to a body of procedural requirements, which would focus on preventing interference with a person's free choice. In this view, presented in more detail below, the task of procedural fairness is to guarantee the condition in which a competent person would be able to decide independently on the content of her life choices (Christman, internet). The assumption is that all the substantive choices are equally valuable, provided that they are authentically individual. Recall finally that autonomy is routinely recognized as one of the foundational features of liberalism. Liberalism apparently derives the status of the individual, character of societal relationships, political obligation, and legitimacy of political authority from this concept. It is not plain how this 'strategy of continuity' travels uninterrupted from the original individualist departure point to the level of political community.

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Theoreticians who study autonomy are aware of these and related ambiguities of the broadly identified concept. Many disagreements unfold, pertaining to the nature of autonomy, its elements, conditions, and the conceptual (ir)relevance of the social and political context in which persons live (Dworkin 1988: 7-8). Still, it is possible to identify a dominant view, often labelled 'standard approach'. It focuses on the exposition of features and conditions of autonomy. Autonomy requires first the capacity of a person for cognitive and normative reflection. One should be able to understand oneself: a competent person defines her values, beliefs, interests, preferences, and the directions of her actions. Second, one should be in control of one's choices and actions in accordance with one's self-perception. A self-reflective person is not autonomous if she is prevented – by other people, by social and political power relations, or by any other contingent circumstances – from identifying and following her choices. These two conditions are sometimes summarized in the notion of authenticity: the core individual traits and the actions chosen and performed, shape and express a person's true self.[1] The opposite would be 'alienation', a condition in which we perceive what we know, feel, or do, as something that is not our own (Christman 2007: 12).

The standard approach consists of intuitively strong propositions. It keeps investing an unwavering trust in the claim that self-government requires a person's sovereign choice of beliefs and actions in determining the meaning and course of her life. It insists that going for less amounts to denial of

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1   For a detailed critical analysis of the concept of authenticity and the controversies that surround it, see e.g. Oshana 2007: 413.

autonomy. The approach is 'internalist' or 'subjectivist'. Cognitive and normative capacities and choices of a person are set mainly in terms of personal traits.[2] This informs the analytical perspective: "Internalist theories take the perspective of the individual whose self-government is at issue to determine her autonomy" (Oshana 1998: 81). It follows further that these theories tend to see autonomy as empty of any content that could be prescribed from the outside, either for any person in any situation, or for a particular person in a particular situation. This is internalist proceduralism: the refusal to include substantive normative features is presented as a necessary step in the protection of the very core of the individual self-governance.[3]

Harry Frankfurt offers an important addition to this account. His core contribution is the claim that an autonomous person should possess and demonstrate the ability to revisit and change her volitions. Departing from the question what it means to act freely, Frankfurt develops a 'hierarchical' reading of autonomy (Frankfurt 1971: 6). Autonomy requires that a person assumes responsibility for her choices. An autonomous person enters a reflective process in which she engages with her 'first-order desires' expressed in her original values, beliefs, preferences, and plans for action. This 'second-order' reflective process is meant to provide for a proper identification of what it means to be autonomous, by stipulating which of our first-order desires are truly ours. A person disassociates herself from her immediate volitions, asks if she really wants those volitions, and acts on those original volitions only if the second-order test approves of them. In this process, a person reflectively identifies herself with what moves her thought and action (Frankfurt 1971: 6). This is how the criterion of authenticity is met.[4]

However, the critics of internalist proceduralism remain unconvinced. The objection of regress points that second-order desires are not defined in terms of normative reflection on the original volition. The question is what, if anything, such a reflection adds to the concept of autonomy. In other words, it

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2   "Internalist models understand ascriptions of personal autonomy to depend only on the structural and/or historical character of a person's psychological states and dispositions, and on an agent's judgments about them." Oshana 1998: 83.

3   "Only individuals can be the measure of their own autonomy. Apart from the formal good of an integrated personality, and the procedural good of autonomy competency, autonomous lives are remarkable more for their differences than for their similarities. To affirm a list of universal personal goods or an account of an objectively good personal life and to maintain that every autonomous life must realize such goods is to deny the uniqueness of individuals. It is to create a mold that autonomous lives must inevitably break." – Myers 1989: 82; quoted after Oshana 2007: 422.

4   Gerald Dworkin defines the identity-authenticity feature of the hierarchical approach in the following way: "It is only when a person identifies with the influences that motivate him, assimilates them to himself, views himself as the kind of person who wishes to be moved in particular ways, that these influences are to be identified as his." Dworkin 1988: 43.

is not entirely clear how second-order reflection makes a difference, or how it makes one autonomous in dealing with one's original preferences (Fischer 2005: 313). Second, Frankfurt remains vulnerable to the standard objections against the internalist position. While this view does not necessarily imply the refusal of any relevance of the person's environment, it refuses to see autonomy as a characteristic that would address the relationships among persons (Christman 2009: 33). It sees other individuals, social context, and political authority principally as threats that should be kept at bay, because each of them could negatively affect the person's ability to think and act in a self-governing way. Third, its persistence on the procedural independence – claiming that making sense of one's life is incompatible with social, ethical, or universalizable moral commitments that would be expressed in normative substantive terms – comes at a price that appears to be too high. In this reading, an almost exclusive focus is on the genesis (conditions) of autonomy, which is supposed to lead to the human condition respectful of one's identity and authenticity. This approach reduces autonomy to a kind of meta-concept that is ultimately incapable of accounting for the meaning of self-rule that it aims to promote.

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I find these criticisms convincing. In looking for an alternative, I depart from two trivially obvious points that are in themselves non-philosophical, but that may be still relevant for a philosophical inquiry of autonomy. First, we – assumptively autonomous persons – do not live our individual lives in isolation. In the standard account, the only reference to interactions with other persons is the requirement of procedural fairness, which forbids violating equal autonomy of others. However, recognizing the significance of living together requires more. The important fact that the standard idea of autonomy curiously leaves to one side is that no one is ever in a situation to set up a fully independent ensemble of rules for oneself. There is more to a person's life than internal reflections. We who live here and now are the persons importantly shaped by time-stretching narratives, which are individual and social, continuous and discontinuous, economic and political, as well as ethical and moral. Thus, autonomy cannot refer only to creating conditions for individual persons to make their life pursuits free of the interference of others: "An autonomous life implies not only a repertoire of possibilities but also actual involvement with the external world" (Spector 2013: 575). This is the relational approach to autonomy. Below I will try to show that it is neither communitarian nor relativist. It does not claim conceptual primacy of the 'social thesis', normative primacy of belonging, nor does it yield to determinism of a point of view allegedly created by a shared history and culture. Rather than being collectivist, the perspective remains liberal. However, the primacy of the individual perspective does not spring from the idea of an isolated individual true to her own volitions. It follows from the right perception of responsibility of a person engaged in different kinds of relationships.

I will return to the concept of relational autonomy. But let me point first to an additional important feature of autonomy that the standard approach fails to address properly. I believe that the concept of autonomy has to account for the substantive distinctions between right and wrong, and good and bad. It also has to explain the relationship between right and good. Finally, it has to explain the distinction between right and good, on the one hand, and one's preferences, on the other hand. Following this, we can distinguish among personal, ethical, and moral autonomy. Personal autonomy refers to individuals as the authors of their own lives, which includes both following one's preferences, and choosing which preferences to follow (or not to follow). The focus of personal autonomy is not on morality (Waldron 2005: 308). It simply assumes that a person is an independent judge of what she desires, or what she sees as advantageous for her. Ethical autonomy focuses on the shared conception of the good of an identifiable group. Moral autonomy points to moral obligation: a morally autonomous person reflects on universalizable principles of the right, to infer if her preferences and actions are admissible in the perspective she shares with her moral peers. Priority of the right over the good reads as the primacy of moral autonomy over personal and ethical autonomies. Put differently, universalizable responsibility that we have as moral agents takes primacy over our group-specific commitments and personal freedom of will. Of course, this is a big topic in moral philosophy, the analysis of which I cannot entertain here. Suffice to say that it can be read in widely different ways. Internalists can argue that they can still accommodate the claim, provided that the demand of primacy of morality is shaped as the procedural rule of fairness, which allows a person to freely follow her desires as long as she does not prevent others in the same pursuit. Joseph Raz would go in the opposite direction, to argue that even personal autonomy is not a matter of a person's free choice. Conditions of autonomy –mental ability, adequacy of options to choose from, and independence – should be directed at making it possible for a person to freely pursue the good (Raz 1986: 373). 'Free pursuit' refers to plurality of the conceptions of the good that autonomy requires. But, for autonomy to be worthy, the object of an autonomous thought and action has to be *the good*: "Autonomy is valuable only if exercised in the pursuit of the good" (Raz 1986: 381). Somebody who in freely choosing the direction of her life decides to become a killer, and proceeds to kill another person, is still an autonomous person, but his autonomy is not valuable, because he has opted for evil at the expense of plurality of the available choices of the good.[5] So, for Raz, two features of autonomy

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5   Note that there is still not much perfectionist is Raz's reasoning here. Perfectionism enters only later, when Raz proceeds to argue that – given that autonomy is valuable only if people choose valuable goals – autonomy principle "permits or even requires governments to create morally valuable opportunities, and to eliminate repugnant ones ." Raz 1986: 417.

stand out. First, it is a substantive concept that makes sense only as an engagement with the good. Second, and following from the first, his outline of valuable personal autonomy points to its moral core: "Raz believes that a sense of justice is part of personal autonomy in the sense that a person who is personally autonomous would want to avoid doing things that are unjust" (Johnston 1994: 78; quoted after Waldron 2005: 322).

One classical objection against the substantive account says that making certain values the conceptual features of autonomy leads to excluding from the body of autonomous persons all those who reject those values (Christman 2015, internet). Additionally, once autonomy is presented as the basis of political liberalism, the critique extends to the claim that the substantive account violates the principle of state neutrality. While I will not engage with these arguments in any detail, I would like to reiterate that the internalist procedural approach wrongly assumes that substantive value commitments necessarily favor those who already accept those values, hence creating inequality, both among the persons, and in relations between persons and political authority. Also, making certain values the basis of autonomy does not necessarily violate political neutrality. We need to ask about the character of values and about their exact placement in the interplay among individuals, society, and politics in a liberal context. Which rules a person has to follow, and which attitudes and modes of behavior she ought to choose, to be autonomous? The response of the substantive approach does not require that values are included into the concept of autonomy as its internal features. It does not require that a person in the process of self-reflection discovers those values as the features of her own moral personhood, nor does it require that she accepts their authority on the basis of thus understood authenticity.[6] It is possible to understand values as antecedent and external reasons that any autonomous person has to consider when forming her preferences and acting. In other words, self-rule would consist in identifying and accepting reasons that are objectively authoritative. In this reading, the focus of autonomy is on recognizing and acknowledging reasons for action, rather than on a person freely creating such reasons:

> Self-legislation, when it does occur, is an activity that takes place in the light of reasons that we must antecedently recognize, and whose own authority we therefore do not institute but rather find ourselves called upon to acknowledge. (Larmore 2008: 44)

To argue that autonomy consists in responsiveness to reasons implies that "any standards that reason is in a position to 'determine' – that is, to make

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6   Of course, this implies rejecting Kantian approach to autonomy. I leave this insight to one side. Engaging in a detailed analysis of Kant's reading of autonomy would go beyond both the ability of this author and the scope of this paper.

authoritative – are ones that there must appear to be good reasons to in-stitute" (Larmore 2008: 46). Morality precedes autonomy. We become au-tonomous by identifying with, and accepting objective moral laws, and by thinking and acting in accordance with them. We do not become autono-mous by establishing their moral authority in the process of our individual reasoning. In a situation that raises moral questions, my self-rule does not consist in me creating laws for myself, but in my identifying and choosing to follow what is morally right. Our moral personhood identifies us as au-tonomous agents who have the ability to judge right from wrong, and who are duty-bound to choose what is right.

2. Relational autonomy after moral fall

2.1. The setting: moral import of historic injustice

I claimed that autonomy is relational and dependent on certain objective moral reasons. I opened defense of relational autonomy by arguing that hu-man relations matter. Their interconnectedness can be of different kinds, and it can be conceptualized in different ways. In this reading, moral au-tonomy consists in developing and sustaining inter-personal relationships in accordance with the principles of the right. No single individual can be the creator or judge of those principles, neither in her self-reflection, nor in her relationships with other people. The principles precede concrete re-lationships, and we can perhaps think of them as moral standards. Moral standards are universally valid and context-independent guidelines we use to distinguish between right and wrong when founding and evaluating be-liefs, attitudes, preferences, intentions, and actions. We all ought to be able to recognize such standards as valid, regardless of where we belong, what we prefer, or what constraints a particular context of choice imposes on us.[7] This is the core of moral autonomy.

But how does the claim of relational autonomy fit? One would expect relation-al autonomy to be context-sensitive, while the offered universalist account

[7]   Introducing this category leads to additional questions. How do moral standards emerge, or what is their source? Why do people typically respect them, or what makes them authoritative? How do we know that moral standards themselves are right, or how are they justified as valid points of orientation for our behavior? There are two broad approaches to this set of questions. The first is supplied by moral relativism, which es-sentially denies any independence, or objective validity of universal moral reasons, putting a context-specific ethical good in their place. Second answer is provided by moral uni-versalism. It argues that every mentally capable person – anytime, anywhere, and irre-spective of a particular context of choice – ought to distinguish morally right from morally wrong. This identification of moral wrong is not founded on a group's particular conventions, its distinct cultural identity, or the special duties and social roles individuals may have. I engaged with these two approaches in some detail in Dimitrijevic 2010: 134.

insists apparently on dependence on the universalizable reasons only. My introductory response is that the context has to be interpreted in the light of universalizable reasons. It is only seemingly paradoxical that the focus on universal morality is heavily context-dependent. To begin with, morality is intertwined with social relations (Walker 2007: 9). We act in a morally right or wrong way in real-life situations. The purpose of the moral standards is to orient us in the individual and relational contexts that involve moral questions. In this sense, moral standards are never merely abstract: they are social standards of meaning. They also stand in a relationship to the group-specific ethical standards. For the purpose of this paper, 'ethics' denotes the group-specific standards of the good life. 'Morality' denotes universal normative standards of right (Habermas: 1996: 95-100). The congruence between morality and ethics, shaped by the primacy of morality, is a mark of decent society.

However, this general claim does not suffice. Both society and individual identity are historical projects. While the meaning of historicity of identity clearly differs at individual and collective levels, both have to account for dynamics and changeability through time. How can a society become, remain, or recover the status of a decent society in face of many challenges? Also, how can an individual become, remain, or recover her status of an autonomous person, in face of possible challenges? Assume that to some of those challenges society and some of its members have not reacted in a morally required manner. The situation that interests me here is that of a society and its individual members confronted with historic injustice committed in the name of society, its underlying collective identity, and in the name of all its members, past, present, and future. 'Historic injustice' points to the past misdeeds committed against others: those who are not members, or those who are members of a discriminated group in society. The adjective 'historic' does not imply temporal long distance – it merely says that atrocities have stopped. Specifically, I am interested in the possibility of individual autonomy after historical injustice that can be identified as a collective crime. Collective crime is an action envisioned, organized, and performed by some members of a group, in the name of all members of that group, with the support of a significant number of the group members, and against individuals targeted on the basis of their belonging to a different group (Dimitrijevic 2011: 25).

The hard facts about this past cannot be changed. The dead cannot be brought back to life; harm cannot be undone. Still, this does not, or ought not to, translate into the claim that the recent tragic period is a simple given that remains fully beyond our reach. Mass crime is not a discreet historical practice that could be left isolated in the time that is no more, as a 'past that has passed'. We live among the legacies of the past. They affect our individual identities, culture, and the way we perceive of our future political constitution. The unjustifiable absence of those killed confronts the living with

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many questions. What really happened, why did it happen, who did it and how, was it right or wrong, good or bad, just or unjust? Such analytical and normative questions tend to outlive the events that caused them.

The answers to these and related questions depend first on the character of the crime and its legacies. Second, the answers depend on who 'we' are. Different agents stand in different relationships to the crime and its legacies. Certain people are identified as victims, direct or indirect. Some other people are identified as wrongdoers, or as persons who are in important ways connected with wrongdoers. On both sides – victims' and wrongdoers' – we find shared identities. The identities are crime-specific. The persons who are ethnic Bosniaks or Serbs sometimes reflect on Srebrenica not simply as discrete individuals, but as members of these nations. If they say "We remember the genocide in Srebrenica," the use of the first-person plural does not work as a simple point of ethnic identification; it tells about the context-specific relevance of the shared identity. Put differently, mass crime creates new identities by establishing at least three distinct communities: we who were the targets of the mass crime; we in whose name the mass crime was committed; we who belong to the human commonwealth.

This introductory reference to the we-perspective does not suggest a communitarian stance. In the first step, it indicates only the relevance of certain empirical insights: killers acted as group members; victims were targeted as group members. The normative perspective I will try to defend is not communitarian either. It is liberal, in the basic sense that it remains focused on respect for autonomy and humanity of each person. It however assumes that the way of asking moral questions in the wake of mass atrocity has to rest on a particular interplay of personal and group perspectives: my personal attitude to wrongdoing ought to derive from the fact that wrongdoing was a collective practice, where the collective feature connects to my personhood in a non-trivial way. The legacies of mass crime create distinct moral entitlements and duties. Those who belong to the community of victims have the right to demand justice. Those who belong to the human commonwealth have a duty to remember what happened to the innocent persons, because the victims were as human as they are. The focus of this text is on the special duties of the members of the third community, composed of "us in the land of perpetrators." [8]

2.2. The condition of heteronomy

The background thesis is straightforward. Crime is a moral fact, independent of the first-person (both singular and plural) points of view, which

8   "Wir im Lande der Tatër…" – I borrow this expression from Jürgen Habermas (Habermas 1997, internet).

"transcend[s] both the merely social and the merely personal" (Nagel 1997: 10). Killing, torturing, humiliating, or otherwise harming innocent persons is objectively morally wrong, irrespective of any particular reason that may be advanced towards an explanation of what happened, or why and how it happened. The crime is the breach of the moral law that binds all human beings. It violates moral norms that govern human commonality by denying to some people moral recognition everyone is entitled to. Its core moral feature is the suspension of the elementary distinction between right and wrong.

After the fact, at stake is the moral repair, understood as the re-establishment of the morally right relationships (Walker 2006: 23). The question assumes two related forms: first is the connection between historic injustice and legitimacy of today's post-criminal political regime; second is the connection between historic injustice and personal, ethical and moral autonomy. While recognizing the interconnectedness of these two issues, I leave aside the problem of political legitimacy and related questions of transitional justice. Focusing on individual autonomy in the wake of atrocity, let me reiterate that it is a relational category in a special sense. At stake are individual autonomies of two types of actors, whose group-specific identities have been created by crime: the ethical community of those who share collective identity with victims, and the ethical community of those who share collective identity with perpetrators. After the crime, their relationships are shaped by moral inequality and all-pervasive heteronomy.

Starting from the latter, recall that heteronomy denotes the human condition opposite of autonomy, the state of alienation and inauthenticity, in which a person is governed by forces she does not consider her own. The practical meaning of being in the heteronomous condition is different for the members of the two groups identified above. First, the condition of the members of the community of victims is shaped by prolonged vulnerability. People were killed, harmed, humiliated, denied recognition, and exposed to fear. The multitude of the forms of abuse amounted to a systematic process of the destruction of human and moral personhood.[9] In this regard, wrongdoing is

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9   "Once the moral person has been killed, the one thing that still prevents men from being made into living corpses is the differentiation of the individual, his unique identity… The methods of dealing with this uniqueness […] begin with the monstrous conditions in the transports to the camps, when hundreds of human beings are packed into the cattle- car stark naked, glued to each other, and shunted back and forth over the countryside for days on end; they continue upon arrival at the camp, the well-organized shock of the first hours, the shaving of the head, the grotesque camp clothing; and they end in the utterly unimaginable tortures so gauged as not to kill the body, at any event not quickly. The aim of all these methods, in any case, is to manipulate the human body—with infinite possibilities of suffering—in such a way as to make it destroy the human person as inexorably as do certain diseases of organic origin." – Arendt 1973: 453.

about denial of human worth of the targeted people: moral injuries are in-
flicted in a perverted one-sided communicative process that sends the mes-
sage of the irrelevance of victims (Murphy 1988: 25). After the crime, the
legacy of this humiliation continues to shape the survivors' existence. They
are exposed to prolonged suffering today, in consequence of the wrongdoing
they experienced yesterday. This transpires as the post-traumatic suffering,
and it includes negative emotions that range from anger and contempt, to
fear. In further consequence, the victims have a wide range of specific needs,
which can be both material and moral.[10]

Second, on the side of perpetrators we also find a continuity of heteronomy.
Rich experience of different forms of denial in many post-conflict societ-
ies witnesses of the reluctance to face the truth about the past and its moral
weight (Orentlicher 2008: 60; Dubil 2002: 31; Frei 2002: 27; Cohen 2001:
117; Moody-Adams 1994: 298). In the practice I call 'collective crime', the
most drastic violations of human rights were made possible through broad
endorsement of a perverted value system, and through the complicity, col-
laboration, or 'passive support' of many, ranging from those at the top of
power to 'ordinary men' (Dyzenhaus, 2000: 473). The regime change does
not turn the individuals who until yesterday voluntarily supported killing
into decent persons. After the change, most of the bystanders remain caught
in the same malady that defined them during the crime. This heteronomy
can be referred to as the continuity of moral indifference, or the lost sense
of justice (Allen 1999: 337). 'Lost sense of justice' is a descriptive category
that refers to the widespread moral corruption, which is explicated through
different patterns of tolerance and support for the crime, and which after the
regime change transforms into different types of denial of one's knowledge
and involvement. Yesterday's denial leaves as its most troublesome legacy a
political culture in which there are too many people who remain incapable of
distinguishing between right and wrong, just and unjust, and good and bad.

It follows that the relationship between two groups and their members is the
one of inequality. Moral personhood of all members of the victimized group
was denied in the cruelest possible way on behalf of the new understanding
of the ethical position of all members of the perpetrators' group. Recall also
that after the crime victims and members of their community know more
about our group than about any other group; one core feature of their new
identity is the knowledge of the fact that they were targeted on our behalf.
Addressing this inequality in a morally appropriate way requires establish-
ing harm-specific entitlements and duties. These duties are asymmetrical,
pointing to the differing positions of the members of the victims' group, on

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10   For the distinction between material and moral needs of victims, see Elster 2004:
166. For a philosophical analysis of victims' moral needs, see e.g. Walker 2006: 6.

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the one hand, and the perpetrators' group, on the other hand. Victims and their community do not have any special duties to perpetrators and their community. But they do have an entitlement, or right to demand a proper reaction from those associated with the criminal agency. On the other hand, the perpetrators and members of their group have harm-specific duties. Their moral condition urges appropriate responses from each of them. What is an appropriate response will depend on one's relation to the crime –whether one did wrong or not – but the core claim is that by changing the group-specific ethics, the crime compromises each member's moral integrity.

2.3. Special duties: why ethical considerations come first

Recognizing moral stakes in the post-criminal condition is the first step towards rebuilding moral equality. Heteronomous actors can reestablish their autonomies only if they identify – and accept as legitimate – entitlements and duties that transpire from the character of inequality and that aim to transform the current state of ethical relations in accordance with the demands of universal morality. We have to take stock of who we are as ethical and moral persons, and we have to identify ethical and moral contours that shape our society and polity. We are confronted with the questions. How should we live after such events? What should we think and how shall we feel about what happened? How should we perceive our place in the world? What should we believe? What should we do? How should we treat other people? These are the core questions for a theory of autonomy after the moral fall.

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> The best theory will begin by explaining how it is that descendants of perpetrator groups possess special moral duties and will end by showing that it is by failing to meet these duties that descendants may compromise themselves. (Kovach 2010: 620)

The responses to such questions require revisiting the distinction between ethics and morality. My claim is that the condition after collective crime demands the primacy of ethics. In a nutshell, it means that we who share collective identity with wrongdoers have special duties. The special character of these duties derives from the moral fact of crime and the character of its legacies. To say that duties are special means also that they are exclusive to us, and that we owe them to clearly identifiable groups or persons:

> In contrast to the universality of the general moral law, some people have special duties that other people do not. In contrast to the impartiality of the general moral law, we all have special duties to some people that we do not have to others. (Goodin 1998: 665)

For 'us in the land of perpetrators', to live well means to respond – as discreet persons and as a community – to the challenge that is only ours. We ought to

address the community of victims. If it were not for a certain ethical reading of our personal and group-specific identities, the dead would still be alive, and the survivors would not suffer today. We are indebted to them. This debt provides for the essence of the ethical relationship that is exclusive to the two groups and their members. Call this the argument of disrupted relationships (Stump 2004: 43). This is the first argument for the ethical duty to respond. Crime destroyed the moral community, and it created two ethical communities, whose relationship is shaped by exclusive legacies of what members of one group endured, and what members of another group did or failed to do. We stand in a thick ethical relationship with victims.

Of course, this reference to the primacy of exclusive ethical duties does not mean that universal moral standards cease to be relevant for us. It is rather that responding appropriately to the crime-specific ethical duties remains the only avenue open for us to address the moral wrong committed on our behalf. Also, responding to ethical duties is the only way for us to become morally autonomous persons again. The situation is not standard. Assume I am an ethnic Serbian. Assume also that I have done nothing wrong during or after the Bosnian war: my attitudes, intentions, and actions have never been supportive of crime. Still, in light of the suffering some people suffered from Serbs only because they were Bosniaks, it would be inappropriate to argue that I should be exempted from the harmed people's negative evaluation. While I may feel as an autonomous person, I remain alienated and inauthentic, even if the standard features and conditions of autonomy are fulfilled. The one who refuses to take stock of wrongdoing committed in her name fails in autonomy. She fails to exercise control over her life. The point is that our lives are intrinsically linked to deaths of those killed and to lives of those who survived.

2.4. Self-reflection as re-creation of identities

Second argument for the primacy of ethics is the duty of self-reflection of the members of the perpetrators' group. It principally originates from the group's failure to meet the general duty of sustaining universal moral standards. We depart from the insight that our belonging to an intergenerational social group – with all its historically induced contingencies, identity patterns and legacies – is not a matter of choice. But, when confronted with the legacy of the crime committed in the name of our shared identity, we have to address the question 'Who are we now?' The question is not simply what we as members of a post-criminal society have in common. The question reads: what we *ought to* have in common, or which values should we choose as the legitimate communal ties? The criminal past requires a clear, radically new moral foundation of the community – call this the requirement of

transformative justice (Allen 1999: 337). The object of transformation are patterns of beliefs, attitudes, and values that made the acceptance of the criminal ideology and practice possible. Following this moral fall, the objective of transformative justice would be to bring to everyone's attention a sense of the recent condition in which basic moral values were suddenly made irrelevant (Waldron 1992: 5). In positive terms, the aim of this reflection would be to reach a "change of mentality... which would reject yesterday's dominant self-perceptions as if they were useless ruins" (Habermas 1990: 17) Thus conceived, self-reflection is a strategy of ethical discontinuity based on the critical appropriation of the past.

Habermas' demand for the 'critical appropriation' of our moral failure may look moralistic, or too demanding. However, skeptical 'realism' has to confront the reality of atrocity. Once the unthinkable – ethically justified systematic mass killing of the innocent people – happened, the parameters of reality and of demandingness have changed for good: "What we ought to be seeking is an appropriately demanding morality" (Goodin 2009: 1). The burden of injustice done in our name provides us with a new identity. The bad past shapes three broadly understood levels of identity: personal, societal and communal-political. The latter two presuppose the intergenerational dimension, which is not merely temporal; it is also ethical and moral. The concept of identity refers to the sense of consistency of a person, group or community across time and through different changes (Norval 1998: 259). Still, while it is easy to agree that identity refers to selfhood rather than sameness, it is not immediately clear what 'consistency' means. Each of us is the author of his or her world; at the same time, each of us is situated into the world and into a particular society: historical, practical-political, ethical, and moral dimensions importantly feature in our personal autonomies. Dynamics of identity in the context of the life together leads to interpretative disagreements about our shared past, where the past is recognized as an important source of our present and future constitution. However, this interpretative openness should not be understood as a license for the relativist 'anything goes' claims. Rather than pointing to the free construction of the past and shared identities, interpretative openness denotes the duty of their right appropriation: "We give voice to the past, dispute it, forget it as something not made by us but that rather calls us, seeks to impose a duty to us" (Booth 2006: 69). It is true that, in identity terms, I was yesterday and that I am today, and that same holds for my intergenerational non-voluntary group, society, and political community. Still, when we find ourselves connected to especially disturbing past misdeeds that caused enormous suffering to a great number of people, the chronological concept of identity does not seem to suffice anymore. Identity always functions as "an ownership of the past, something that makes us co-responsible for it, and expectant to look

toward a future that we also see as ours" (Booth 2006: 16). Now, in the wake of atrocity, we have to consciously re-appropriate its responsibility feature.

2.5. Duty of memory

Ethical responsibility to appropriate our bad past works through the medium of memory. Memory is a particular type of knowledge, which preserves and (re-)evaluates the past, and which is focused on the integration of thus mediated past into the present. Typically, the knowledge appropriated serves to explain and justify the whole of our lives, and to help us make decisions and undertake actions the relevance of which extends into our future (Sutton 2012, internet). Personal and shared memories work in interplay. Each of us remembers more than she has experienced. On the other hand, the things one person has experienced are rarely a matter of his or her personal memory only. Memory is relational: the perception of the past is a matter of social communication (Assmann 2006: 211).

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My questions read: What shall we remember, and how? How should the memory of wrongdoing be created and preserved? Can we identify a set of the right attitudes to wrongdoings and a right course of remembrance? What, if anything, can we expect of a practice of memory: healing, catharsis, atonement, reconciliation, forgiveness? For the beginning, we have to keep the accounts straight: the past in which the innocent people are killed in our name is *our past*. Memories of it are "*our* collective memories, and so not substitutable; *our* obligations, past and future: these give the past and our memory of it their characteristic particularity" (Booth 2006: 69).

Memory is never a mere factual knowledge of the things, people and events past. While the past is given, our perceptions, evaluations, and narratives of it are not. When saying "we remember genocide in Srebrenica", we do not reconstruct that particular event "as it really was". We give it a meaning, by evaluating what happened then, and by assessing its relevance today. Not all meanings that we can assign to that event are justifiable. Habermas suggests that memory of crime should be understood as a specific learning process (Habermas 1998: 11). Learning is a practice of acquiring 'critical self-consciousness', which requires that members of the nation "focus the public interest on the darkest chapters of their national history, as a matter of their view of themselves today" (Habermas 1997, internet). Habermas' point is clear: our collective responsibility goes beyond causality and blame for morally wrong attitudes and actions. We are responsible to reach a new ethical self-understanding by searching for a right answer to the question of "Who are we after the moral catastrophe?". While we cannot change the facts about that past, we can give it a meaning different from the one that was used for the justification of crime. This is what Jeffrey Blustein calls "retrospective

construction of meaning" (Blustein 2008: 68). By explicating the moral fact of crime, suffering of victims, moral inequality imposed in the course of crime, new identities created by the criminal practice, and by acknowledging our co-responsibility, we appropriate the past in the ethically appropriate manner. We reject the institutionalized lie of the old regime, and we reject the core legacies of crime stabilized in the culture of silence and denial. In positive terms, such memory reveals a double truth: the truth about unjustifiable denial of human dignity and moral personhood, and the truth about ourselves, during the crime and today.

2.6. Acknowledgment as reappropriation of relational autonomy

Knowledge about crime is present in perpetrators' society, as the facts that only need to be identified, or as the facts that are already known to many of the members of the group. Focusing on the positive normative argument, the question of practical ethics asks what to do with such knowledge. This is where I introduce the concept of public acknowledgment.

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Acknowledgment is not simply knowledge-based. It works against the background of endorsement of the general validity of the basic moral principle of equal moral value and standing of all persons. We first identify this principle; second, we establish, or recognize, its validity; third, we accept it as the motivation for action (Laitinen 2011: 329). But, the post-criminal predicament requires adjustment. In the second section, I argued that we in the land of perpetrators cannot directly endorse moral equality. Linked with crime and its agents, we have to choose the ethical path to re-establishment of our decency. In the first step, we recognize and accept validity of moral universals. In the second step, we look into our human condition, and we identify our special ethical duties; we accept them as valid guidelines for our action. Our ethically appropriate action unfolds as the process of acknowledgment.

One can distinguish between acknowledgment of the fact and normative acknowledgment. Acknowledgment of the fact is a process of responding to crime, whereby we publicly express and recognize our knowledge of the fact that killing and other forms of the most brutal harming of the innocent people happened in the recent past, and that these atrocities were carried out in our name. It is the public statement of the truth, which explicates the following: the crime happened; people were killed, humiliated, or harmed; survivors – direct and indirect victims, and the members of the targeted group – suffer today; we are connected to what happened and to today's suffering; our involvement extends beyond causal participation in crime. Normative acknowledgment follows. At a minimum, it consists of explicating the following statements: the crime was wrong; it should not have happened; no argument can be advanced to justify it; we acted wrongly; the harm we

inflicted and the suffering we caused cannot be excused; wrongdoing and its consequences must not be denied; we commit ourselves to finding ethically and morally appropriate responses to it; our ethical stance to the crime and its legacies should demonstrate our effort to re-establish the authority of moral norms that we recently violated.

First, acknowledgment appears as a relational recognition: it requires communication of a particular quality between the perpetrators' community and the victims' community. In this regard, acknowledgment consists in accepting, explicating, and communicating to the offended our responsibility for the damaged human bonds. Victims need to know that we see crime and its legacies as unjustifiable. In order to regain their own voice, victims need the voice of all of us who are in different ways associated with wrongdoers. The moral norms and values that have been violated should be specified, to signal to the victims that we are ready to work towards reestablishing the authority of those broken norms and values. This comes close to communicating to the victims our feelings of sorrow and our apology. Each of us has a special duty to pay respect to victims, to recognize their suffering, to say that it was wrong, and to try to make lives of survivors better.

Still, acknowledgment is not always relational and consequentialist: it is not only about restoring relationships, rebuilding trust, or reestablishing as much of civilized normalcy as possible. Acknowledgment is not only about apologizing, reconciling, or making amends. When we acknowledge the crime, we do not have the right to expect anything from victims. We reach out to them, we are duty-bound to address them, to apologize to them, but we do not have the right to expect response from them. Victims are entitled not to communicate with us. This is the core of the post-atrocity moral inequality: we have only duties, and victims have only entitlements. Those who accept responsibility cannot expect either forgiveness or an offer of reconciliation. Regardless of whether the victims react or do not react to our acknowledgment, the crime remains our point of orientation. This holds even if we are forgiven, if our apology is sympathetically heard, or if something akin to reconciliation takes place. There is very little about the core fact of crime that we could amend –lives lost without reason cannot be restored or repaired. To repeat, our lives are morally impaired. Non-relational quality of acknowledgment consists in recognizing the moral fact of wrongdoing and the ensuing ethical relevance of my today's status – the way in which "who I am" has changed the world for worse.

Bibliography

Allen, Jonathan (1999), "Balancing Justice and Social Unity: Political Theory and the Idea of a Truth and Reconciliation Commission", *University of Toronto Law Journal,* 49 (3): 315-333.

Arendt, Hannah (1973), *The Origins of Totalitarianism.* New York: Harcourt Brace Jovanovich.

Assmann, Aleida (2006) "Memory, Individual and Collective", in Goodin, Robert and Tilly, Charles (eds.), *The Oxford Handbook of Contextual Political Analysis.* Oxford: Oxford University Press, pp. 210-227.

Blustein, Jeffrey (2008), *The Moral Demands of Memory.* New York: Cambridge University Press.

Booth, W. James (2006), *Communities of Memory. On Witness, Identity, and Justice.* Ithaca and London: Cornell University Press.

Cohen, Stanley (2001), *States of Denial. Knowing about Atrocity and Suffering.* Cambridge: Polity Press.

Christman, John (2015), "Autonomy in Moral and Political Philosophy", *The Stanford Encyclopedia of Philosophy* (Spring 2015 Edition), Zalta, Edward N. (ed.), http://plato.stanford.edu/archives/spr2015/entries/autonomy-moral/ (viewed July 4, 2016)

Christman, John (2009), *The Politics of Persons. Individual Autonomy and Socio-historical Selves.* New York: Cambridge University Press.

Christman, John (2007), "Autonomy, History, and the Subject of Justice", *Social Theory and Practice*, 33 (1): 1-26.

Christman, John and Robertson, Joel (eds.) (2005), *Autonomy and Challenges to Liberalism. New Essays.* New York, Cambridge University Press.

Dimitrijevic, Nenad (2011), *Duty to Respond. Mass Crime, Denial, and Collective Responsibility*. Budapest: Central European University Press.

Dimitrijevic, Nenad (2010), "Moral Knowledge and Mass Crime. A Critical Reading of Moral Relativism", *Philosophy and Social Criticism,* 36 (2): 131-156.

Dubil, Helmut (2002), *Niko nije oslobođen istorije. Nacionalsocijalistička vlast u debatama Budestaga.* Beograd: Samizdat B92.

Dyzenhaus, David (2000), "Justifying the Truth and Reconciliation Commission," *Journal of Political Philosophy,* 8 (4): 470-496.

Dworkin, Gerald (1988), *The Theory and Practice of Autonomy.* Cambridge: Cambridge University Press.

Elster, Jon (2004), *Closing the Books. Transitional Justice in Historical Perspective.* New York: Cambridge University Press.

Feinberg, Joel (1980), "The Idea of a Free Man", in his *Rights, Justice, and the Bounds of Liberty: Essays in Social Philosophy.* Princeton: Princeton University Press, 1980: 3-30.

Fischer, John Martin (2010) "Responsibility and Autonomy", in O'Connor, Timothy and Sanders, Constantine (eds.), *A Companion to the Philosophy of Action.* Chicester: Willey-Blackwell, pp.: 309-316.

Frankfurt, Harry (1971), "Freedom of the Will and the Concept of a Person", *The Journal of Philosophy,* 68 (1): 5-20.

Frei, Norbert (2001), *Adenauer's Germany and the Nazi Past. The Politics of Amnesty and Integration.* New York: Columbia University Press.

Gaus, Gerald and D'Agostino, Fred (eds.) (2013), *The Routledge Companion to Social and Political Philosophy*. New York: Routledge.

Goodin, Robert (2009) "Demandingness as a Virtue", *Journal of Ethics,* 13 (1): 1-13.

Goodin, Robert and Tilly, Charles (eds.), *The Oxford Handbook of Contextual Political Analysis.* Oxford: Oxford University Press.

Goodin, Robert (1998), "What is so Special about Our Fellow Countrymen?", *Ethics,* 98 (4): 663-686.

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Habermas, Jürgen (1998), *A Berlin Republic. Writings on Germany.* Cambridge: Polity Press.

Habermas, Jürgen (1996), *Between Facts and Norms. Contributions to a Discourse Theory of Law and Democracy.* Cambridge, MA: MIT Press.

Habermas, Jürgen (1997), "Warum ein 'Demokratiepreis' für Daniel J. Goldhagen? Eine Laudatio", *Die Zeit,* http://www.zeit.de/1997/12/historie.txt.19970314.xml, (viewed December 29, 2015)

Habermas, Jürgen (1990), *Die nachholende Revolution.* Frankfurt am Main: Suhrkamp.

Johnston, David (1994), *The Idea of Liberal Theory: A Critique and Reconstruction.* Princeton, NJ: Princeton University Press.

Kovach, Karen (2010), "The Moral Legacy of Communal Wrongs: Ethnic Identity Groups and Intergenerational Moral Sentiment", *Metaphilosophy,* 41 (4): 618-638.

Laitinen, Arto (2011), "Recognition, Acknowledgement, and Acceptance", in Ikäheimo, Heikki and Laitinen, Arto (eds.), *Recognition and Social Ontology.* Leiden: Brill.

Larmore, Charles (2008), *Autonomy and Morality.* Cambridge: Cambridge University Press.

Moody-Adams, Michelle (1994), "Culture, Responsibility, and Affected Ignorance", *Ethics*, 104 (2): 291-309.

Murphy, Jeffrie (1988), "Forgiveness and Resentment", in Murphy, Jeffrie and Hampton, Jean, *Forgiveness and Mercy.* New York: Cambridge University Press, 14-35.

Murphy, Jeffrie and Hampton, Jean (eds), *Forgiveness and Mercy.* New York: Cambridge University Press.

Myers, Diana (1989), *Self, Society, and Personal Choice.* New York: Columbia University Press.

Nagel, Thomas (1997), *The Last Word*, New York: Oxford University Press.

Norval, Aletta (1998), "Memory, Identity, and the (Im)possibility of Reconciliation: The Work of the Truth and Reconciliation Commission in South Africa", *Constellations* 5 (2): 250-265.

O'Connor, Timothy and Sanders, Constantine (eds.) (2010), *A Companion to the Philosophy of Action.* Chicester: Willey-Blackwell.

Orentlicher, Diane (2008), *Shrinking the Space for Denial. The Impact of the ICTY in Serbia.* New York: Open Society Institute.

Oshana, Marina (2007), "Autonomy and the Question of Authenticity", *Social Theory and Practice,* 33 (3): 411-429.

Oshana, Marina (1998), "Personal Autonomy and Society", *Journal of Social Philosophy,* 29 (1): 81-102.

Raz, Joseph (1986), *The Morality of Freedom.* Oxford, Clarendon Press.

Spector, Horacio (2013), "Autonomy", in Gaus, Gerald and D'Agostino, Fred (eds.), *The Routledge Companion to Social and Political Philosophy*. New York: Routledge, pp. 573-583.

Stump, Eleonore (2004), "Personal Relations and Moral Residue", *History of the Human Sciences,* 17 (2-3): 33-56.

Sutton, John "Memory", The *Stanford Encyclopedia of Philosophy* (The Winter 2012 Edition), Zalta, Edward N. (ed.),   http://plato.stanford.edu/archives/win2012/entries/memory/ (viewed January 3, 2016)

Waldron, Jeremy, (2005), "Moral Autonomy and Personal Autonomy", in Christman, John and Robertson, Joel (eds.), *Autonomy and Challenges to Liberalism. New Essays.* New York, Cambridge University Press, pp. 307-330.

Waldron, Jeremy (1992) "Superseding Historic Injustice", *Ethics,* 103 (1): 4-28.

Walker, Margaret Urban (2007), *Moral Understandings. A Feminist Study in Ethics.* Oxford: Oxford University Press.

Walker, Margaret Urban (2006), *Moral Repair. Reconstructing Moral Relations after Wrongdoing.* New York: Cambridge University Press.

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Liberalna autonomija u problematičnom kontekstu

Apstrakt

Autonomija, shvaćena kao samovladavina, danas se gotovo rutinski prihvata kao jedan od temeljnih koncepata liberalne političke misli. Međutim, pojam i status autonomije su sadržinski i proceduralno kontroverzni. Prvi deo rada sumira osnovne teorijske sporove o autonomiji, nudi kritiku dominantnog „internalističkog" pristupa, te pokušava da odbrani argumente za prihvatanje „relacionog" razumevanja autonomije. Drugi deo rada analizira jedan konkretan tip situacije. Centralno pitanje tiče se mogućnosti i značenja individualne autonomije u društvu čija je prošlost obeležena masovnim režimskim zločinima, kao i značajnom podrškom „običnih ljudi" takvim zločinačkim praksama. Osnovna hipoteza glasi da masovni zločin ostavlja u nasleđe stanje suprotno autonomiji. Zadatak post-zločinačkog društva sastoji se u ponovnom uspostavljanju autonomije za pripadnike dve grupe čiji grupno-specifični identiteti definisani zločinom: reč je o etičkoj zajednici onih koji dele kolektivni identitet sa žrtvama i etičkoj zajednici onih koji dele kolektivni identitet sa počiniocima. Izazovi personalne autonomije za pripadnike ove dve grupe su različiti.

Ključne reči: autonomija, povreda, moral, etika, posebne dužnoti, sećanje, priznanje.

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