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Managing diversity in healthcare

Summary

One of the preventive management tools that ensure the reliable functioning of the organization in any situation is diversity management. Global demographic trends and the increasing diversity of the workforce in terms of various criteria underline the importance of adapting diversity management tools in all organizations. Recognized dimensions of diversity such as gender, nationality, disability, age are extended by others (experience, personality, priorities, attitudes, communication styles, work approaches and ways of communication), while modern management theory appeals to the need for their effective grasp by managers in order to benefit the whole organization and individuals. A diverse workforce is a source of cognitive diversity. Many studies have confirmed the positive effect of cognitive diversity in the context of an organization's ability to improve team processes, develop creativity and create new innovative solutions. Therefore, through diversity management, healthcare facilities can significantly influence their own innovative capacity, which can be a source of their competitiveness and business sustainability. The article contains topics: Defining the diversity and its specifics in healthcare, Diversity management, Reasons for diversity management, Benefits and negatives of diversity management.

Key words: diversity, management, healthcare.

The provision of quality health services is a concept that, in the context of global environment trends, is increasingly present in the visions and long-term goals of many organizations in the for-profit and non-profit sectors. The basis for achieving the set goals of these organizations and their sustainable development is the management and its ability to proactively respond to threats and opportunities of the external and internal environment through effective management tools. Healthcare is

a sector that is very sensitively perceived by the social environment, because the issue of individual health and public health is at the forefront of any activities. Currently, during the Covid-19 pandemic, we are witnessing a situation where the protection of human health comes first and at the same time we all perceive that only viable medical facilities managed by a quality management team can support an emergency and subsequently a quality health service provider, in the post-pandemic period.

One of the preventive management tools that ensure the reliable functioning of the organization in any situation is diversity management. Global demographic trends and the increasing diversity of the workforce in terms of various criteria underline the importance of adapting diversity management tools in all organizations. Recognized dimensions of diversity such as gender, nationality, disability, age are extended by others (experience, personality, priorities, attitudes, communication styles, work approaches and ways of communication), while modern management theory appeals to the need for their effective grasp by managers in order to benefit the whole organization and individuals. A diverse workforce is a source of cognitive diversity. Many studies have confirmed the positive effect of cognitive diversity in the context of an organization's ability to improve team processes, develop creativity and create new innovative solutions (Aggarwal and Woolley, 2013; Mitchell et al., 2017; Wang et al., 2016). Therefore, through diversity management, healthcare facilities can significantly influence their own innovative capacity, which can be a source of their competitiveness and business sustainability.

For successful diversity management, it is necessary to define its content, benefits, but also negatives with attention to healthcare.

1. DEFINING THE DIVERSITY AND ITS SPECIFICS IN HEALTHCARE

Diversity is not only a trend of modern society, but also a necessity forced by changes in society, the globalization of the labor market and demographic development. In general, the term diversity can be explained as the recognition, acceptance, and appreciation of differences between people with regard to age, gender, physical ability, social status, ethnicity, religion, experience, etc. It gives individuals the opportunity to enrich work teams, for example, with their different nature, different experiences, creativity, social contacts, etc. However, diversity in the workplace is not limited to respecting and appreciating human diversity; it is above all a matter of making the most of this diversity in a way that benefits both the organization and the employees. At the same time, it helps to remove barriers that exist due to prejudice and consequently, to place disadvantage individuals on the labor market.

The concept of diversity was originally established in the USA in the late 1980s (Meena and Vanka, 2013). In the following period, it spreads all over the world and is used at the transnational, national and organizational level. There are several reasons why diversity is becoming such an urgent issue today as globalization, the changing labor market, the strategy of teamwork, the transition from manufacturing to the service economy, mergers, and alliances and so on. Diversity initiatives increase creativity, innovation, global understanding, flexibility, and productivity in the organization

and create a competitive advantage (Wambui et al., 2013). Procter & Gamble, Avon, Xerox, FedEx are some examples of companies embracing diversity as an asset (Gomez-Mejia, 2010) to increase their organizational efficiency and performance.

Caring for a diverse workforce is not only an ethical or social approach, but also points to a good strategically oriented „business“ approach. In view of current changes around the world, diversity management has proven to be a tool to increase organizational efficiency and effectiveness (Ogbo and Ukpere, 2014). At the organizational level, diversity has become an increasingly relevant topic, going beyond equal employment opportunities and laws on positive legal action or positive discrimination. In general, diversity refers to the whole spectrum of human characteristics that make people different from each other (Gomez-Mejia, 2010). However, a narrow view defines diversity as the diversity of demographic characteristics that characterize a workforce, especially in terms of race, gender, culture, national origin, disability, age, and religion (Dessler, 2011). The diversity of the workforce recognizes the fact that people differ in many visible and invisible ways (Shen et al., 2009), including national origin, age, gender, race, color, marital status, social status, disability, education, language, sexual orientation, religion, physical expression, ethnicity, and culture. Thus, diversity means a heterogeneous set of individuals who recognize, understand, respect each other, and respect each other's demographic physical, biological, social and psychological differences (Wambui et al., 2013).

The authors examine both different types of diversity and the management of diversity according to individual organizational levels. In addition to classical and commonly implemented types of diversity such as racial, gender, ethnic, age, etc. and their contributions to various key variables of organizations such as increasing the rate of innovation, increasing competitiveness, improving the working climate and employee satisfaction, increasing engagement (Schaffer, 2019; Díaz-García et al., 2013; Guillaume et al., 2017; Andrevski et al., 2011) other types of diversity are also examined. Specifically, cognitive diversity is involved (Mitchell et al., 2017). Research has shown a positive relationship between cognitive diversity and innovation management to improve processes (Mitchell et al., 2017) as well as greater social interaction in the diversity team and its greater creativity (Schaffer, 2019). The diversity of political, intellectual, and psychological characteristics from which different social environments with their unique attributes stem are also presented. Their effective grasping and acceptance of an organizational culture containing standards of acceptance of differences is becoming a recognized requirement of lasting competitive advantage (Schaffer, 2019). The author states that self-improvement processes through membership in heterogeneous teams can, in addition, strengthen the identity of individuals with their groups as well as the identity of members with each other. However, he points out that over-focusing on diversity and perceiving differences from others can also have many negative consequences in terms of negative attitudes and behavior of employees. Genkova and Schuster (2014) point out disadvantages, e.g., feelings of threat and vulnerability, long decision-making processes and low cohesion, a negative working atmosphere and inefficient work performance. Many other studies (Moon and Christensen, 2019) also point out the differences between different types of diversity and their relationship to organizational performance. Racial and ownership diversity has positive relationships to organizational performance, while functional diversity

has a negative relationship. Their further analysis reveals that a diversity climate positively mitigates the relationships between racial diversity, functional diversity, ownership diversity and organizational performance.

The diversity of attitudes, values, and personalities (Liao et al., 2008) is important in the management of the working group and is reflected in work results, overall work attitude or employee turnover. In their research, Hafsi and Turgut (2012) demonstrated a significant relationship between the diversity of a company's board of directors, measured by two variables, the „for the diversity of boards“ index (board size, leadership duality, director independence, experience) and the „for the diversity in boards“ (gender, age, ethnicity, term of office) and social performance. This was quantified using forty-three different social performance indicators, selected from seven categories – community, corporate governance, diversity, employee relations, the environment, human rights, and social issues related to products.

Diversity management is the management of human resources, so we consider it necessary to define the specifics of their management in the context of healthcare. Human resources are an essential part of every facility, every organization and given the nature of work in healthcare, there is no doubt about their necessity. The specifics of their management in healthcare can include:

- lack of medical and other medical staff,
- dependence on the business cycle,
- a specific legislative framework,
- application of the Labor Code,
- highly qualified staff, mostly university-educated staff,
- the increasing proportion of Generation Y, i.e., employees under the age of 35 who are not primarily motivated by financial evaluation,
- The workplace and the department are led by small teams of specialists, whereby the departure of one or two certified doctors is enough and the department may cease to exist,
- feminization of healthcare,
- departure of doctors and nurses abroad,
- the need for shift work because of ensuring continuous operation.

These factors are also reflected in human resource management, diversity management and the creation of an organizational culture.

2. DIVERSITY MANAGEMENT

The diversity of the workforce does not mean that behavior and approaches to it are a matter of course. On the contrary, diversity management is becoming an important management tool and is even said to be a managerial skill due to the manager's ability to use the strengths of diverse employees to achieve the goals of his organization.

In today's world, diversity management is an evolving concept. It represents a proactive approach aimed at managing a heterogeneous workforce in such a way as to maximize the potential benefits of diversity while minimizing its potential disadvantages. This means enabling a diverse workforce to reach its full potential in a fair work environment, where their individual differences are deeply valued, in order to build an organization based on the principles of efficiency and effectiveness (Ashikali et al., 2015). Therefore, in order to manage diversity effectively and efficiently, we should not only accept and adapt to individual differences, but also support, develop and use them for the benefit of organizations. In order to learn and recognize these differences, it is essential to share an understanding between top management and HR managers. Diversity appreciation and cultural development to support diversity initiatives are key drivers of effective diversity management (Shen et al., 2009).

In order for diversity management to become known and start to be implemented in the organization, it is necessary to be aware of its need on the part of management, convinced that it will bring benefits (Ashikali et al., 2020). The internal motives of the management are therefore very important, because they avoid only formal documents and turn into real steps. Diversity leadership is related to this, so we are already talking about the skills of a manager, not only about management tools (Ashikali et al., 2020). The diversity leader is basically a transformational leader, but in the implementation of the four basic components of transformational leadership – idealized influence, inspiring motivation, intellectual stimulation, individual approach, it also implements diversity leadership (Franco, Matos, 2013). Thanks to all these characteristics, transformational leaders are able to motivate their diverse subordinates to exceed their own expectations and exceed their own interests for the good of the organization. The transformation leader thus „transforms“ subordinates by changing their values (Edwards et al., 2012). This can then be reflected in the functioning of organizations, improving performance and quality, innovation and job satisfaction. There is a lot of positive experience in business about managing diversity and its benefits, while creating separate positions for diversity managers to understand the importance of this tool (Boerner et al., 2011).

Dreachslin et al. (2017) list five competencies in the field of strategic diversity management, namely diversity leadership, strategic human resource management, organizational culture, diversity culture and the cultural competence of patients. Weech-Maldonado et al. (2012) complement them with care delivery mechanisms and community involvement. These competencies are also considered important by Choi (2013), Opstrup and Villadsen (2015), Johansen & Zhu (2017), who consider a diversity culture to be a stage of development in which the organization is committed to diversity-friendly management practices. These are, for example, procedures in human resource management (recruitment, training, mentoring), in the field of leadership in order to appreciate all demographic groups. Recruiting a diverse workforce is one of the main ways to help jobseekers see an organization as a positive place to work (Pitts et al., 2010). Diversity training programs are often designed to alleviate conflicts between members of an organization, to understand each other and to improve the performance of teams and the organization as a whole (Groeneveld, Verbeek, 2012).

The main principle is that diversity management is a systematic approach and becomes an advantage for all members of the organization when it is systematically activated in the organization and receives positive attention (Rühl, 2016). The existing literature defines diversity management as a multifaceted concept, encompassing managerial activities that promote workforce diversity, recognize diversity as an important organization goal, build cultural awareness and ultimately adopt and implement formal diversity programs (Sabharwal et al., 2016). Most existing research analyzes the way in which diversity management affects work group and organizational performance, job satisfaction, employee engagement, workforce stability, organizational performance, innovation, competitiveness, work climate (Horwitz and Horwitz, 2007; Andrevski et al., 2011; Díaz-García et al., 2013; Guillaume et al., 2017; Ashikali and Groeneveld, 2015; Ritz and Alfes, 2018; Schaffer, 2019).

Dreachslin et al. (2017) identify three key areas related to the definition of diversity management. According to them, diversity must be recognized, at the same time it must be managed and reducing disparities can improve organizational performance. The importance of diversity management in healthcare is highlighted by Horwitz and Horwitz (2007), who based on an analysis of 35 team diversity studies, concluded that diversity of functional areas (e.g., finance, marketing, information technology) and educational diversity have a positive impact on team performance while biodemographic diversity (such as racial, ethnic or gender diversity) does not have this effect. Their research, as well as that of other authors (Weech-Maldonado et al., 2016), emphasize that demographic diversity can be an advantage if managed effectively. Galbraith (2017) states that for the successful implementation of diversity management, it is necessary to create diversity leadership groups in hospitals that coordinate activities locally and support a systematic view in respecting and accepting local culture. The involvement of all levels in diversity training is therefore emphasized.

Healthcare systems distinguish between two concepts – diversity management and cultural competency. Dreachslin et al. (2017), Watters, Bergstrom, Sandefer (2016), Weech-Maldonado et al., (2016) see this difference in the fact that diversity management is generally concerned with human resource management and other related practices for recruitment and maintaining a workforce, while cultural competence in healthcare concerns the ability of systems, organizations, and staff to meet the needs of diverse patients, families and communities. In other industries, both concepts are combined into one system in the focus on internal customers, i.e., employees, but also on external customers (Gonzalez, 2012).

3. REASONS FOR DIVERSITY MANAGEMENT

The reasons for dealing with diversity can be divided into two basic groups, namely economic and social (Roberge, Van Dick, 2010).

- a, **Economic arguments** include responses to market globalization, restructuring and globalization of the workforce, efforts to increase the competitiveness and use of the skills of all employees, the need to understand and approach customers, clients and their needs, increasing the innovative potential and

creativity of teams and diversity as added value or a competitive advantage, e.g. in the form of receiving a certain award for working with diversity, which can then attract new clients and employees and employees.

- b, **Social arguments** are based on the theory of social justice, non-discrimination, and equal opportunities policy, and more recently on the issue of social inclusion. Indeed, diversity can have positive effects on social cohesion and solidarity, employment and social employment, non-discrimination, and the integration of diverse groups into the labor market and on increasing the motivation of employment satisfaction.

Diversity management processes respond to many of the changes that began to take place in Western-type societies in the second half of the last century. These are important demographic changes that affect the composition of the population in individual countries, as well as the effects of globalization and legislation, which are newly shaping the conditions and opportunities for individuals to apply in local labor markets.

For these reasons, managers of organizations can no longer work with people according to established management patterns and must adopt a new style of work that takes into account the individual differences of employees, which can be used in business and non-business environment to create advantage and competitive advantage.

4. BENEFITS AND NEGATIVES OF DIVERSITY MANAGEMENT

Many studies point to a positive correlation between different types of diversity (eg gender, age, etc.), competitiveness, economic performance of organizations and employee satisfaction. However, diversity can mediate much more than just an increase in economic profit, resp. it can also mediate “profit” in other areas.

According to a European Commission study (2012), companies that have measures in place to promote diversity list the following five most important benefits:

- strengthening cultural values within the organization,
- improving the company’s reputation and social prestige,
- a better position in recruiting human resources, i.e., j. better opportunities to attract and retain highly talented people,
- improving the motivation of employees and the efficiency and effectiveness of work,
- improving the level of innovation and creativity among employees.

The followings relate to the targeted diversity management process (Gavlasová et al., 2012):

- Cultural change and increase in organizational capital: raising awareness of diversity, non-discrimination, inclusion, respect, reducing turnover, absenteeism; strengthening cooperation, improving the quality of management.

- Benefits of human capital: selection from a larger number of potential workers, talents, skills, where everyone can reach their full potential and when the competencies of workers increase. The result can also be access to new types of customers and clients, improved customer service, etc.
- Increasing market opportunities: better market access and customer satisfaction, expansion of services and products.
- Improving the prestige (external recognition) and image of the employer organization.
- Mediators of a positive result due to diversity.

Creativity and innovation

In organizations with diversity of employees, arises space for creativity, while stereotypes, routine in organizational processes, communication and in the performance of work tasks are disrupted. Diversity pays off because businesses that rely on more diverse talent are more successful. By allowing a company or organization to work with groups that were previously excluded from this environment, their creativity and performance increase. However, it is possible that the competitiveness of some businesses is related to the fact that organizations / firms that promote diversity are simply “different” in themselves - and more successful as a result. Greater innovation of a given employer is related, for example, to greater multiculturalism or, for example, a more equal representation of women and men in the company at different levels of management, etc.

Promoting the reconciliation of work and private life

Existing studies on diversity show that the promotion of diversity must be accompanied by the promotion of work-life balance to produce the desired socio-economic results.

Social justice, equal opportunities, and corporate social responsibility

Recently, we have seen a shift from arguments of purely economic gain to alternative organizational or social goals, such as learning, human and social development, and so on. Such goals attract attention, and the workplace can become very attractive to potential top professionals and employees.

Business case - economic benefit

Diversity affects the image of the workplace (company) on the outside and has a positive effect on the brand image. Diversity programs have a positive impact on employee motivation and employee and customer satisfaction.

Possible negatives associated with diversity management

The targeted process of achieving the diversity of workers (within individual work teams) in terms of the selected trait or group of traits or in terms of certain disadvantages is a complex process. The more characters are selected, the more complex this process is, but also more complicated, because this working person can be classified according to several selected criteria, which in practice can cause certain complications.

It turns out that diversity management can also be associated with some negative impacts. Successfully managing a diverse workforce is a much more demanding process than managing a relatively homogeneous workforce. If the diversity management process is not implemented with sufficient quality and sensitivity, a new stressor called stress from diversity may appear. It occurs when people from (very) different social and cultural backgrounds come into contact and their different ways of communication and work styles, etc. they result in feelings of insecurity and dissatisfaction when they find that they do not have (sufficient) skills, abilities, knowledge, and social support to cope with diversity in each work environment. This phenomenon occurs when most people grow up in a homogeneous social and cultural environment and do not have the necessary experience, nor are they sufficiently trained to deal with someone different.

Diversity stress can be relatively mild and short-lived, or intense and lasting, and can affect many people in an employer's organization. This stress can then lead to an increase in absenteeism, conflicts, and a reduction in the performance of workers, and can eventually be a reason to leave work.

An overview study from the USA (Maříková et al., 2015), including findings from more than 600 companies and organizations from the private and public spheres, points to the key success factors in implementing diversity in the workplace:

- a positive attitude of leadership and management towards diversity and a commitment to its promotion;
- involvement of ordinary workers;
- strategic diversity planning;
- continuous investment in this process;
- determination of diversity indicators;
- measurability and evaluation;
- connection to the intentions and goals of the organization.

Success in the implementation of diversity is thus closely related to the importance and significance of diversity for a given company and organization, the attitude of management to the process of its implementation and development, how well the diversity management process is prepared and how sensitively it is implemented and evaluated. Although diversity management may not necessarily yield immediate results, top management should support efforts to make this process long-term, along with disseminating (promoting) the importance of implementing diversity in the organization.

The following Figure 1 shows the benefits of managing diversity by area, objectives, and measures.

Figure 1 Areas, objectives, and measures of diversity management

Areas	The goal	Indicator / Gauge
<i>Finance</i>	profitability	return on equity, sales, total invested funds
	activity	turnover of assets, sales per employee
<i>Clients / patients</i>	increase in sales	number of customers / number of employees, number of concluded contracts, number of new customers
	Loyalty of customer / patients	number of regular clients / patients, average retention time, number of lost clients / patients
	relationships with clients / patients, image	value for clients / patients, customer / patient satisfaction, complaint costs, marketing costs
<i>Processes</i>	employee productivity	work productivity
	reduction of fluctuation costs	costs for recruitment, selection, adaptation of employees
	increasing the rate of innovation	number of new products, average age of assortment, research and development costs
<i>Potential</i>	employee loyalty	employee turnover, employee satisfaction
	education and development	the share of trained employees in the total number
	diversity of employees	the share of „minority groups” in the total number of employees

Source: Adapted according to Maříková et al. (2015).

5. CONCLUSION

Today's organizations face many challenges in developing organizational diversity. The commitment of top management combined with the efforts, skills and knowledge of an HR manager is crucial for combating these challenges and meeting the goals of diversity. Diversity requires a certain type of organizational culture in which each employee is encouraged to grow and succeed without being limited by age, gender, race, nationality, religion, disability, or other non-performance factors. Effective diversity management requires human resource managers to develop a culture that values and promotes diversity throughout the organization. Human resource management must consciously develop a culture that unites different employees within common values and thus helps to embrace diversity as a tool to increase organizational efficiency

and performance. In addition, human resource managers should strive to promote a work environment that increases the motivation, satisfaction, and commitment of different people. However, it is often argued that the effects of diversity can be positive, negative, or neutral depending on how well they are managed by HR managers. A successful diversity management strategy must therefore address changes in organizational culture in order to create an environment in which diversity is valued and developed.

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Estetica e etica segundo Kant / according to Kant aesthetics and ethics

Summary

According to Kant, the Beautiful is the lust object without interest, and refers the universal complacency by the non concept that the beautiful is the universality, without concept, and the sublime will be the aesthetic sense, that comes from aesthetic judgment. However, according to St. Thomas Aquinas, the beautiful is *quod visa placent*. The Kantian language accept the beautiful is aesthetic from the subject in the objectivity.

Key words: Kant, St.Thomas, sublime, art, conditions, finality, understanding and reason.

INTRODUÇÃO

O Belo, segundo o idealismo transcendental, não pode ser uma propriedade objectiva das coisas (o belo ontológico), mas nasce da relação entre o objeto e o sujeito, não estando também o sublime nas coisas, mas no homem.

Segundo S. Tomás de Aquino, o belo é uma propriedade ou qualidade real das coisas. Na verdade, a beleza repousa num aspeto dos seres existentes, capazes de fundamentar uma determinada relação às potências cognoscitivas. Por isso é que o *Doctor Angelicus* descreve o Belo como *pulchra dicuntur quae visa placent*. Mesmo que, por absurdo, não houvesse entendimento capaz de as contemplar, assim seriam belas se integrassem a perfeição ontológica, capaz de acordar um deleite, em quem primeiro as conhecesse.

Entre as duas leituras, sobre o Belo e o Sublime, encontramos *naturaliter* uma terceira interpretação, elaborada por nós, onde estas duas entidades são axiológicas. Quer uma quer outra são o esplendor da dignidade quer do sujeito, quer do objeto. O Belo será a estupearção da relação dual e fundamental da axiologia.

A noção de Beleza e de Sublime não se restringe a nenhum atributo de ordem, de proporção, de integridade, de fulgor ou de brilho, que a colocariam em aceções particulares, como seriam os arquétipos platônicos de harmonia de formas.

Assim cabe na definição, não só o chamado “belo horrível”, que me dá uma impressão de grandeza no horror, mas mesmo o feio, enquanto feio parcelar, através do qual se revelam aspetos positivos ou a abundância do *esse*. A Beleza e o seu conhecimento são, pois, uma espécie de renovação dos seres, que vemos habitualmente à maneira de esquemas utilitários. Sempre que as coisas se nos apresentam na sua gratuidade esplendorosa são belas.

Reagindo a este aspecto, Kant refere a Beleza como a forma final de um objeto, enquanto percebida sem representação do fim¹ ou aquilo que agrada universalmente sem conceito. A emoção estética seria naturalmente a perfeita harmonia das faculdades congoscitivas consigo mesmas.

Se definirmos a Beleza em função do “ser”, então será a Beleza incluída no âmbito dos transcendentais, e muitos filósofos apresentam-na como interferência mútua do *verum* e do *bonum*, isto é, como verdadeiro, enquanto nos aparece na sua bondade ou ao invés.

Como remate, diremos que S. Alberto Magno e S. Tomás de Aquino dão-nos a fórmula que melhor parece sintetizar os aspetos precedentes, quando nos dizem que a Beleza é *formae splendor*, entendendo por forma, segundo a filosofia perene, o princípio interior que determina e dá essência e valor ao ser. O conceito de Belo, segundo S. Tomás de Aquino, refere-se como *pulchra dicuntur quae visa placent*. O Belo apresenta-se como propriedade ou aspeto real das coisas. Se não houvessem entendimentos capazes de as contemplar, então o entendimento criador será condição do *esse* das coisas e estas surgiriam belas se incluíssem a realização ontológica, capaz de determinar um deleite nas pessoas que as conhecessem.

S. Tomás coloca o belo na possibilidade que os entes têm de nos oferecerem o gozo, ao conhecê-los, na sua riqueza, sendo capazes de *quod nos*, despertarem o gozo da sua contemplação. Assim, a definição de S. Tomás é etiológica, muito embora apareça orientada para o efeito. Dá-nos a noção de belo no seu fundamento ontológico e não como “realidade poética”. Para S. Tomás, o belo surge na riqueza ontológica do *esse*, capaz de causar gozo ao ser contemplado. Mas, segundo o *Doctor Angelicus*, o “belo” (*pulcher*) implica o “gozo”, como o definira S. Tomás: *pulchra dicuntur quae visa placent*.

A inteligência procura o verdadeiro, como o apetite e o Bem. O verdadeiro é determinado, não como um reflexo dirigido de fora sobre a inteligência, mas como um fim determinado, isto é, como um Bem, tal como refere S. Tomás de Aquino: *verum nominat id in quod tendit intellectus*. Com efeito, aquilo que é verdadeiro será o bem, como se refere: *ipsum verum in quantum est finis intellectualis operationis continetur sub bono ut quoddam particulare bonum*.²

1 “Schoenheit ist Form der Zweckmaessigkeit eines Zwecks an ihm Wahrgenommen wird.” (Immanuel KANT, *Kritik der Urteilskraft*, vierte Auflage, herausgegeben von K. Vorlaender, Leipzig: Felix Meiner Verlag., 1913, § 17, 77).

2 SANCTI THOMAE AQUINATIS, *Opera Omnia, IV, De Malo*, Stuttgart : Frommann Verlag, 1980, 6, art I.

A inteligência encaminha-se para a verdade, como se encaminha para um Bem e, na sua verdade, toda a tendência goza-se na realização de um fim, como sendo o próprio Bem, teremos que a *intellectus* atinge um *finis* na apreensão dos seres (*esse*) ou da verdade (*veritas*), permitindo que se gozem neles. Segundo o belo, os seres podem deleitar as “faculdades cognoscitivas”, uma vez que finalizam a tendência para o Bem, porque são o seu Bem. Enquanto a posição kantiana sobre o Belo se referencia como uma concepção gnoseológica, segundo S. Tomás a perspetiva será de âmbito ontológico.

Segundo S. Tomás, visto que o bem seja aquilo que “apetecem todas as coisas”, mas pertence à razão do Bem, que repousa no apetite pelo seu aspeto ou cognição. (...) Assim, é evidente que o belo acrescenta uma certa ordem ao bem, por meio da força cognoscitiva, de tal forma que o bem se diz ser aquilo que simplesmente compraz pelo apetite, porém o belo diz-se aquilo do qual a própria apreensão compraz.³

Será, naturalmente, o prazer da visão da coisa, não seja simplesmente enquanto boa, mas boa pela sua visão ou pelo conhecimento: *pulchra dicuntur quae visa placent*. Como bem considera Fernando Leite, se a inteligência estivesse completamente atualizada, preenchida pelo seu fim, já não mostraria à vontade novos bens para conquistar, e, por conseguinte, esta cessaria, no seu fluir, na demanda do bem e o gozo seria naturalmente perfeito.⁴

Seguindo o pensamento da filosofia perene, poderemos asseverar que a emoção estética será uma espécie de regozijo, pela vontade do *esse*, que sacia a fome do *intellectus*. S. Tomás assevera que este gozo não é da ordem da causalidade final, mas antes da formal, ao dizer: *pulchrum proprie ad causae formalis rationem pertinet*.⁵

Entre o Belo, como finalidade sem fim, na conceção do filósofo de Königsberg, e o belo, segundo S. Tomás de Aquino, como *pulchra quae visa placent*, esta será a nossa posição: *contemplativae actionis splendor*. O belo, segundo a nossa perspetiva, será o “esplendor da acção contemplativa”, numa busca de síntese entre a filosofia transcendental (Kant) e a filosofia perene (S. Tomás de Aquino). Ao falar-se do Belo como *contemplativae actionis splendor* englobamos o esplendor do sujeito no objeto e do objeto no sujeito.

O sentido do belo, na perspetiva de S. Agostinho, como *ordinis splendor*, que se poderá entender como uma perspetiva psicológica, além da ordem ontológica. O ser, com este esplendor da medida certa, poderá determinar em nós a emoção estética. Este esplendor aparece, para S. Tomás, nos predicados seguintes: proporção, integridade e brilho ontológico.⁶

3 *Cum enim bonum sit quod omnia appetunt, de ratione bene est, quod in eo quietur appetitus[...] sed ad rationem pulchri pertinet quod in eius aspectu seu cognitione quietetur appetitus [...] Et sic patet quod pulchrum addit supra bonum quemdam ordinem ad vim cognoscitivam: ita quod bonum dicatur id quod simpliciter complacent appetitu; pulchrum autem dicatur id cuius ipsa apprehensio complacet.* [SANCTI THOMAE AQUINATIS, *Summa Theologiae*, I-II, art. 27, 1, ad 3].

4 Cf. Fernando LEITE. F. “Filosofia do Belo”: *Revista Portuguesa de Filosofia*, II, 1, (1946), 64.

5 SANCTI THOMAE AQUINATIS. *Opera Omnia*, IV, *Summa Theologiae*, I, 5,4, ad 1. *In sententiam*, d. 31, 9,2, 4, diz: *pulchritudo non habet rationem appetibilis nisi in quantum induit rationem boni*.

6 “*Ad pulchritudinem tria requiruntur: primo quidem integritas sive perfectio; quae enim diminuta sunt, hoc ipso turpia sunt; et debita proportio sive consomatia, et iterum claritas*” (SANCTI THOMAE AQUINATIS, *Opera Omnia*, IV, *Summa Theologiae*, I, art. 39, 8, c).

Se a integridade não existir, então não haverá uma perfeição finalizada ou o acabamento. Mas, o belo requer uma proporção devida ou uma ordem entre as partes. A integridade e a claridade, bem como a proporção, são elementos essenciais ao belo. Todos estes predicados costumam sintetizar-se no *ordinis splendor*. O ser, enriquecido com tais qualidades, possui todos os elementos, para despertar o espírito do homem para a emoção do belo.

A Beleza, situada no domínio da universalidade, refere-se numa ordem e harmonia, que assume frequentemente num plano metafórico e configuração de uma polifonia, de um cântico infinito de louvor a Deus. Entre os muitos autores, que se serviram desta imagem, não poderemos deixar de salientar o pensamento de Guilherme d’Auverne: “quando observamos a elegância e a magnificência do Universo (...) encontramos que (...) este mesmo Universo se assemelha a um belíssimo cântico e as criaturas que, graças à sua variedade, concordam entre si numa estupenda harmonia, constituem um concerto de maravilhoso júbilo”.⁷ A beleza, na sua estrutura profunda, não se define pelas suas condições de materialidade. Realiza-se, ao mais elevado grau, no mundo das ideias invisíveis, organizadas na simplicidade de Deus e das coisas, sendo a beleza a harmonia plena. Esta aparece pela redução do múltiplo ao Uno do desigual no igual e do diverso no homogêneo, mediante a consonância.⁸

O pensamento medieval, inspirado na filosofia grega, foi caracterizando as modalidades de articulação entre o belo sensível e o belo inteligível. Naturalmente, emanação, participação, exemplarismo e analogia serão talvez os modelos mais representativos deste esforço de ligar o visível ao invisível. O belo fora, no percurso medieval, visto como a harmonia ontológica do ser, entre o emanatismo de Plotino e as formas de criacionismo cristão influenciada pelo neoplatonismo.

Hugo de S. Vitor traduz o sentido metafísico do Belo pelas seguintes palavras: “as significações dos objetos visíveis são-nos propostas pelo significado dos objetos invisíveis, que nos ensinam através da vista de modo simbólico, ou seja, figurativo (...), dado que a beleza das coisas visíveis, que consiste na forma e na beleza visível, é a imagem da beleza invisível”.⁹

Algo é comum no âmbito da estética medieval, visto que os elementos do belo e do sublime estão ligados à “emoção estética”, que proporcionam a ideia de uma unidade universal, que se amplia a toda a criação, fundando-se em critérios e domínios de transcendência, assentes num complexo sistema de correspondências, cuja infinitude e abertura de significado ontológico se manifestam no mistério e no horizonte do sentido.

Somente quando gozarmos no ser *per se*, no verdadeiro enquanto bem, começaremos a ultrapassar os portais da mundividência da beleza. Naturalmente, no belo entra sempre o elemento intelectual. No ser humano, os sentidos não são sede de apetites ou de conhecimentos para prover à materialidade do nosso agir contemplativo. E enquanto sujeitos à razão, podem constituir a base de apreensões desinteressadas,

7 José Augusto AGUIAR DE CASTRO, J. A. *O sentido do Belo no séc. XII e outros estudos*. Lisboa: Imprensa Nacional Casa da Moeda, 2006, 15.

8 *Ibidem*, 15.

9 Cf. Hugo de SÃO VICTOR, *Expositio Orbium Celestium*, P.Migne, *Patrologia Latina*, Typographi Brepols Editores Pontificii, Turnholti. 1953, Col. 978, 175.

tal como nos referencia S. Tomás.¹⁰ Sempre que os sentidos servem à “Vernunft” são faculdades do belo, uma vez que só então poderão contemplar.

O belo, tal como encontramos analisado por S. Tomás de Aquino, não é no aspeto abstrato, mas antes na perspectiva concreta. O belo, assim decifrado, tem de ornar, em nós, um resplendor de verdade *veritatis splendor*, capaz de arrancar ao ser humano um entusiasmo estético.

Para a beleza sensível, exige-se uma forma plena de esplendor, uma forma vibrante de harmonia e de melodia, pois nela o objecto da contemplação não é a substância abstracta, mas antes realizada na matéria. Será, pois, o gozo no verdadeiro sentido ontológico, uma vez que essas imagens são verdadeiras, enquanto cognoscíveis ou adaptáveis às nossas capacidades cognoscitivas.

Se belas são as coisas envistas ou conhecidas, segundo Fernando Leite, nos deleitam, as artes para produzirem beleza devem realizar obras que, conhecidas ou contempladas, nos emocionem, que produzam *ab imo cordis* no ser humano um sentimento de quietação e verdadeira paz.¹¹ Naturalmente, irão conseguir uma vez que corporizam numa dada obra o sentido do esplendor e da integridade, dadas pela proporção e pelo esplendor, isto é, numa tal forma que ao ser apreendida, quer pela poesia, quer pela música, escultura ou pintura, coloque em vibração todo o nosso espírito, dirigindo-se a este e à sensibilidade. O belo implica sempre a relação diádica do sujeito e do objeto, dados pela e na contemplação. O belo e a beleza tornam-nos *contemplativi in actione*.

O belo, no seu exercício, refere-se como *contemplativus in actione*. Na beleza, de forma complementar, há uma correlação sempre presente entre a *contemplatio* e a *actio*. O sujeito informa o objeto pela contemplação e o objeto leva o sujeito à “ação estética”. A contemplação e a ação estéticas levam-nos ao sentido do belo, como forma de ser algo que “apraz universalmente sem conceito”. Mas, o belo não será só o *quae visa placent*. Assim, dá-se o sentido fenomenológico ao belo necessariamente pelo *actionis contemplativae splendor*.

O sublime em Kant : pela faculdade do vulgar

Com raízes neoplatónicas, o conceito de Sublime define valores poéticos, que escapam à razão e às regras, desde a a infalibilidade e o “não-sei-que”, como suas conotações obrigatórias, com tendência para o extraordinário ou para a excelência do ser, do agir e do fazer. Kant, na *Kritik der Urteilskraft*, insiste no carácter desinteressado e sem finalidade do sublime, ao modo de uma verdadeira experiência estética em situação de jogo gratuito.

Kant dedica uma *Analítica do Sublime*, com a mesma relevância no domínio da obra analítica do juízo reflexivo do belo, consoante a fundamentação da estética.

Segundo Adorno, o sublime, que Kant reserva à natureza, afigura-se depois dele como constituinte histórico da própria arte. O sublime determina, em Kant, a linha de demarcação em relação àquilo que mais tarde se chamou “artesanato”.

¹⁰ *quia sensus sunt dati homini non solum ad vitae necessaria procuranda, sicut aliis animatibus, sed etiam ad cognoscendum, unde cum caetera animalia non delectentur in sensibilibus, nisi per ordinem ad cibos et venerea, solus homo delectatur in pulchritudine sensibilibus secundum seipsam.* [SANCTI THOMAE AQUINATIS, *Opera Omnia*, I, 91, 3 d 1.].

¹¹ Cf. Fernando LEITE “Filosofia do Belo”: *Revista Portuguesa de Filosofia*, II/1 (1946) 79–80.

O conceito de uma “conformidade a fins” sem fim (*Zweckmaessigkeit ohne Zweck*) que, para Kant, singulariza o estético, poderá implicar já por si essa referência a um agora, que possui o seu acontecer no *telos*. Todavia, não parece certo que o “sublime” irrompa como potência ameaçadora e no limite destrutiva do sujeito, também será verdade que na globalidade da experiência estética o que é irredutível será a consciência, que se está normalmente a fazer a uma determinação com a imaginação. O Sublime, no sentido da terceira crítica, não deverá certamente deixar de ser valorizado como categoria estética, que marca o imaginário artístico.

A estética do sublime, em Kant, vai abrir pela primeira vez, no pensamento ocidental, a possibilidade de conceber uma outra relação com a referida materialidade, fundamentada na ruptura e na estranheza. Atendendo ao lugar da *Analítica do Sublime*, no âmbito da globalidade da *Kritik der UrteilsKraft*, que se enquadra nos elementos decisivos para a compreensão do mundo estético:

- abertura ao ficcional como materiais preponderantes de uma estética, que, em grande parte, abandona o desejo da *mimesis*, em ordem a explorar os aspetos do acontecimento sem referência objetivante;
- introdução à representabilidade da ausência de forma, quer através do simbólico, quer pela persistência no elemento de ausência de forma;
- a abertura ao belo, como familiaridade e pertença, assim ao sublime como estranho, aquilo que, em grande parte, corresponde ao conceito freudiano de *Unheimlich*.

Kant, ao falar na *Analítica do Sublime*, começa por dizer que o belo se configura com o sublime pelo facto de que ambos se comprazem *per se*. O filósofo de Koenigsberg comenta: “Entretando, saltam também aos olhos consideráveis diferenças entre ambos. O belo da natureza concerne à forma do objeto, que consiste na limitação; o sublime, contrariamente, pode também ser encontrado num objeto sem forma, na medida em que seja representada nele uma ilimitação ou por ocasião, desta e pensada além disso na sua totalidade, de modo que o belo parece ser considerado como apresentação de um conceito indeterminado da “Verstand”, enquanto o sublime como apresentação de um conceito semelhante da “Vernunft”.¹²

Kant considera o sentimento do sublime como um prazer que surge só indiretamente, ou seja, ele será produzido pelo sentimento de uma momentânea inibição das forças vitais e pela efusão consecutiva. O ânimo não é simplesmente atraído pelo objeto, mas alternadamente também repellido de novo por ele o comprazimento no sublime contém não tanto prazer positivo, mas muito mais admiração ou respeito, que poderá ser chamado prazer negativo.¹³

Segundo Kant, se é justo considerar-se somente o sublime em objetos da natureza, a beleza da natureza inclui uma conformidade a fins na sua forma, pela qual o objeto parece predeterminado para a nossa faculdade do juízo e, assim, constitui *per se* um objeto de comprazimento, pelo contrário aquilo que, sem qualquer raciocínio, produz em nós, pela apreensão, o sentimento do sublime, na verdade pode quanto à forma aparecer contrário a fins, para a nossa faculdade do juízo, inadequado à nossa faculdade de apresentação e, por assim dizer, violento para a faculdade

¹² Immanuel KANT, *Kritik der UrteilsKraft*, 1913, § 23, 87.

¹³ *Ibidem*, § 23, 88.

da imaginação, mas apesar disso e só por isso será julgado ser tanto mais sublime. (...) Assim, o extenso oceano, dominado pela tempestade, não pode denominar-se sublime. A sua contemplação é horrível e já se se tem que ter preenchido o ânimo com muitas ideias se através de uma tal intuição, nos podemos dispor a um sentimento, o qual é ele mesmo sublime, enquanto que o ânimo será motivado a abandonar a sensibilidade e a ocupar-se com ideias, que mostram de acordo a fins superiores.¹⁴

Na perspetiva da filosofia transcendental, tal como costumamos denominar “sublime” não será absolutamente nada, que conduza a princípios objetivos especiais e a formas da natureza em conformidade com estas, de tal modo que a Natureza, antes, pelo contrário, no seu caos ou na sua desordem e devastação mais inadequada e desregrada, poderá originar as ideias de sublime. Naturalmente, o conceito de sublime da natureza não é de longe tão importante em consequências como o conceito de belo, na mesma, *in genere*, não determine nada que seja conforme a fins na própria natureza, mas somente no uso possível das suas intuições, para suscitar *quoad nos* o sentimento de conformidade a fins totalmente independente da natureza.¹⁵

Em Kant, como resposta à pergunta pelo sentido do sublime, o belo procura o seu fundamento fora de nós. Para o sublime, porém, simplesmente em nós e na maneira de pensar, que introduz sublimidade. Assim se separa uma ideia do sublime de uma conformidade a fins da natureza e faz com que a teoria seja um simples complemento do julgamento estético da conformidade a fins da natureza, dado que assim não será representada nenhuma forma particular na natureza, mas como será desenvolvido um uso conforme a fins, que a imaginação abra pela sua representação.¹⁶

Kant, de forma sucinta e clara, define o sublime como sendo “o que é absolutamente grande”. Como refere, dizer-se simplesmente que alguma realidade é grande, será totalmente diverso de dizer que ele seja absolutamente grande. Assim, alguma coisa, segundo o filósofo de Königsberg, será grande ou pequeno não se apresenta como um conceito puro da “Verstand”, tal como é denotado através disso, sendo ainda, menos uma intuição dos sentidos e tão pouco será um conceito da “Vernunft”, visto que não implicará nenhum princípio do conhecimento. Na verdade, tratar-se-á de um conceito da *Urteilkraft*, ou derivar de um tal conceito e pôr como fundamento uma adequação a fins, sendo subjetiva da representação relativamente à *Urteilkraft*.

Segundo Kant, no julgamento da grandeza não se trata simplesmente da pluralidade, mas também da grandeza da unidade e a grandeza desta última necessita de alguma coisa diferente como medida, pela qual se poderá comparar. Naturalmente, a determinação da grandeza dos fenómenos não pode fornecer nenhum conceito absoluto daquela grandeza, mas como conceito de comparação. Para Kant, como o padrão de medida da comparação será meramente subjetivo, e o juízo, nem por isso reclama assentimento universal, uma vez que os juízos não se restringem ao sujeito que julga, mas reivindicam, como os juízos teóricos, o assentimento de qualquer um.¹⁷

14 Cf. Immanuel KANT, *Crítica da Faculdade do Juízo*, introdução de António Marques, Tradução e notas de António Marques e Valério Rohden, Série Universitária, Clássicos de Filosofia. Lisboa: Imprensa Nacional Casa da Moeda, 1998, § 23, 139.

15 Cf. *Ibidem*, § 23, 140.

16 Immanuel KANT, *Kritik der Urteilkraft*, 1913, § 23, 90.

17 *Ibidem*, § 25, 92.

Um juízo que determine que algo surja simplesmente como “grande”, não se querera dizer que o objeto terá uma grandeza e esta será predicada para muitas outras, sem, contudo, determinar uma tal preferência, sendo colocada no fundamento da mesma, um padrão de medida, que pressupõe poder admitir o mesmo para qualquer um, que não será utilizável para nenhum julgamento formal, que seja determinado matematicamente, mas somente estético, devido à grandeza, porque será um padrão da medida, que se fundamenta subjetivamente no juízo reflexivo sobre a grandeza.

Segundo Kant, até quando o juízo da grandeza é observado como não tendo forma, pode comportar um comprazimento, que é comunicável universalmente e, por conseguinte, contenha consciência de uma “conformidade a fins”, de ordem subjetiva, no uso da nossa faculdade da *Verstand*. Não surge um comprazimento no objeto, como no belo, uma vez que a faculdade do juízo reflexiva se encontra disposta conformemente a fins por relação ao conhecimento, em geral, mas antes na determinação da faculdade da imaginação *per se*.¹⁸

Mas, como referir o sublime como uma medida? Kant responde: “se, porém, denominamos algo não somente grande, mas simplesmente, absolutamente e, por todos os sentidos, grande, isto é, sublime, então compreende-se imediatamente, que não permitimos procurar para isso mesmo nenhum padrão de medida, que lhe seja adequado fora dele, mas absolutamente nele. Trata-se, pois, de uma grandeza, que é igual simplesmente a si mesma. Daí se segue, por tanto, que o sublime não deve ser procurado nas coisas da natureza, mas unicamente nas nossas ideias, em quais delas, porém, ele se situa é algo, que tem de ser reservado para a dedução.”¹⁹ Assim, segundo Kant, a definição de sublime encontra-se naquilo que é em comparação com o qual tudo o mais é pequeno.

Naturalmente, uma inadequação, segundo Kant, entre a nossa faculdade de avaliação da grandeza das coisas do mundo dos sentidos a esta ideia, desperta o sentimento de uma faculdade supra-sensível. Será curioso considerar que aquilo que é grande não é o objeto dos sentidos, mas o uso que a faculdade do juízo fará naturalmente de certos objetos, para o fim do sentimento, por respeito ao qual todo e qualquer outro uso será pequeno. Aquilo que deve denominar-se sublime não é o objeto, mas antes a disposição do espírito por meio de certa representação, que ocupa a faculdade do juízo reflexiva. Kant resume o sentido do sublime ao dizer, na *Kritik der Urteilskraft*, “que é o que somente se diz pelo facto de poder pensá-lo, prova uma faculdade de ânimo, que ultrapassa todo o padrão de medida dos sentidos”.²⁰

Segundo Kant, a grandeza da medida tem de ser admitida como conhecida, logo esta terá que ser avaliada somente por números, cuja unidade teria que ser uma outra medida, isto é, seria avaliada matematicamente, jamais poderia possuir uma medida primeira ou fundamental, isto será um conceito determinado de uma grandeza dada. Naturalmente, a determinação da grandeza da medida fundamental tem que consistir simplesmente no facto de poder captá-la numa intuição e usá-la pela faculdade da imaginação para apresentação dos conceitos numéricos, ou seja, a avaliação das grandezas dos objetos da natureza, que, por fim, será estática e não dinâmica.

18 *Ibidem*, § 25, 94.

19 Immanuel KANT, I. *Critica da Faculdade do Juízo*, 1998, § 11, 144.

20 *Ibidem*, § 25, 94.

Segundo a perspectiva kantiana, a apreensão atingiu um ponto alto, a ponto de as representações parciais da intuição dos sentidos primeiramente apreendidas na potência operativa da imaginação já começaram a extinguir-se, enquanto esta avança para a apreensão de várias, então perde de um lado tanto quanto ganha do outro e na compreensão existe um máximo que ela não poderá ultrapassar.

Contudo, Kant irá afirmar que se o juízo estético deva ser puro, não misturado com nenhum juízo teleológico como juízo da *Vernunft*, disso deverá ser dado um exemplo inteiramente à crítica da faculdade do juízo estético, não se terá que apresentar o sublime em produtos da arte onde um fim humano determina tanto a forma como a grandeza, nem em coisas da natureza, cujo conceito conleva um determinado fim, segundo esta espécie de representação, a natureza não contém nada que fosse monstruoso, logo a grandeza, que é apreendida, pode crescer, tanto quanto se queira, desde que possa ser compreendida pela imaginação como num todo.

Naturalmente, a composição que se requer para a representação da grandeza, a faculdade da imaginação avança por si mesma, no infinito, sem qualquer entrave. Assim, segundo Kant, a *Verstand* orienta-a por meio dos números, para os quais ela terá de oferecer o esquema.²¹ Na conformidade com os fins, de ordem intencional, pouca coisa forçará a impulsionar a grandeza da medida, por conseguinte a compreensão do muito “des Vielen”, numa intuição até ao limite da faculdade da imaginação e tão longe quanto esta sempre possa alcançar.

O sublime, em Kant, parece depender do conceito de número e estar dependente da filosofia transcendental da Aritmética. O sublime parece requerer o formalismo último da intuição *a priori* pela grandeza dos fenómenos, tal como se salienta pela *Analítica do Sublime*. Este não é aritmético, pelo seu esquematismo do “fenómeno estético” compreenderá, de facto, o sentido da aritmética.

Kant diz que pela determinação matemática da grandeza, a “Verstand” é igualmente bem servida, sempre que a faculdade da imaginação escolha, para a unidade, uma grandeza, que se pode captar de uma olhada, cuja apreensão é possível, mas não a sua compreensão numa intuição da faculdade da imaginação. Para qualquer caso, a avaliação formal da grandeza poderá ir até ao infinito.

O infinito será absolutamente grande e, pensá-lo como uma totalidade, define uma faculdade do ânimo, que excede todo o padrão de medida. Entretanto, para se poder pensar, *non sub eodem aspectu*, o infinito requer naturalmente uma faculdade, que seja transcendental. Somente por meio desta e pelo conceito de número será compreendido sob um conceito na pura avaliação da grandeza, o infinito do mundo dos sentidos, enquanto que na determinação aritmética através dos conceitos numéricos, jamais poderá ser pensado totalmente.²²

Poderemos dizer que o sublime, segundo Kant, implicará uma faculdade para poder pensar o infinito da intuição supra-sensível, como um dado, ao exceder todo o padrão de medida da sensibilidade, que é grande, e que está acima de toda a comparação, mesmo com a faculdade da avaliação aritmética, certamente como ampliação do ânimo, sentindo-se apto para ultrapassar as barreiras da sensibilidade.

21 Immanuel KANT, *Crítica da Faculdade do Juízo*, 1998, § 26, 149.

22 R.GUYER, *Kant and the Claim of Taste*, Harvard: University Press, 1979, 18–160.

Mas, sendo imaginação capaz de avaliar matematicamente a grandeza de cada objecto, como poderemos chegar ao sentido transcendental do sublime?

Kant responde da seguinte forma: “terá que ser na avaliação estética da grandeza que o esforço da compreensão que ultrapassa a faculdade da imaginação de conceber a apreensão progressiva num todo das intuições é sentido e onde, ao mesmo tempo, é percebida a inadequação desta faculdade, ilimitada no progredir, para com o mínimo esforço da *Verstand* ao captar uma medida fundamental apta à avaliação da grandeza e usá-la para esta avaliação. Ora, a verdadeira e invariável medida fundamental da natureza é o todo absoluto da mesma, o qual é nela, como fenómeno, infinitude compreendida. Visto que esta medida fundamental é um conceito que se contradiz a si próprio (...), assim aquela grandeza de um objeto da natureza, na qual a faculdade da imaginação aplica infrutiferamente a sua inteira faculdade de compreensão, tem que conduzir o conceito da natureza a um substrato suprassensível (...), o qual é grande acima de todo o padrão da medida dos sentidos e, por isso, permite ajuizar como sublime, não tanto o objeto, mas muito mais a disposição do ânimo na avaliação do mesmo.”²³

Para Kant, o “sublime” aparece como sendo uma forma da intuição suprassensível iluminar o objeto esplendoroso e dar como uma forma pura *a priori* do ânimo estético, dado pela faculdade da imaginação. O mesmo Kant considera como a faculdade do juízo estético ao julgar o belo refere a faculdade da imaginação à *Verstand*, para concordar com os seus conceitos, *in genere*, no julgamento de uma coisa como sendo “sublime”, sendo a mesma faculdade que se refere à *Vernunft*, para concordar subjetivamente com as suas ideias, isto é, para produzir uma disposição do ânimo, que se apresenta em conformidade com aquela que a influência de determinadas ideias práticas, que efectuará sobre o “sentimento”. É o mesmo Kant que diz: “Daí vê-se também que a verdadeira sublimidade tenha que ser procurada só no âmbito daquele que julga e não no objeto da natureza, cujo julgamento permite essa disposição do ânimo”.²⁴

No julgamento estético de um todo tão incomensurável, o sublime situa-se menos na grandeza do número do que no facto de que, progredindo, atingimos a unidade cada vez maiores, para o que contribui a divisão sistemática do Universo, a qual nos representa toda a grandeza da natureza, sempre pequena, que no fundo representa a faculdade da imaginação na sua plena iluminação e com ela a natureza como a dissipar-se contra a *Vernunft*.

Mas além do aspeto quantitativo, a orientação qualitativa do sentimento do sublime consiste em que ela é relativamente à faculdade do julgamento estética, um sentimento do desprazer num objeto e, contudo, representado ao mesmo tempo conforme aos fins, sendo possível pelo facto de a “incapacidade” (*Unvermoegen*) própria descobre a consciência de uma faculdade (*Vermoegen*) ilimitada do mesmo sujeito.²⁵

23 Immanuel KANT, *Kritik der UrteilsKraft*, 1913, § 23, 100.

24 *Ibidem.*, § 23, 101.

25 KANT, I. *Kritik der UrteilsKraft*, 1913, § 27, 103.

CONCLUSÃO

Segundo Kant, quando dizemos que algo é belo, não queremos dizer simplesmente que seja “agradável”. Contudo, esta representação pura do objeto belo é particular e a objetividade do juízo estético não tem conceito ou a sua necessidade e universalidade são subjetivas. A faculdade do sentir, de forma superior, não pode depender do interesse especulativo, tal como não deverá depender do interesse prático. Por esta razão, só o prazer é admitido como universal e necessário no juízo estético. Supomos que o nosso prazer é de direito comunicável ou válido para todos e pressupomos que nem seja um postulado, visto que exclui todo o conceito determinado.²⁶

A imaginação, na *reine Freiheit*, concorda com o entendimento na sua legalidade não determinada. Assim, a imaginação esquematiza sem conceito. Mas, tal esquematismo será sempre o ato de uma imaginação, que já não é livre, que se acha determinada a agir conformemente a um conceito da “Verstand”.

A imaginação faz algo diferente de esquematizar: manifesta a sua liberdade mais profunda refletindo a forma do objeto, ela joga-se de certo modo, na contemplação da figura, torna-se imaginação produtiva e espontânea como causa de formas arbitrárias de intuições possíveis. Daqui surge um acordo livre e indeterminado entre faculdades. Devemos dizer acerca deste acordo que ele define um senso comum propriamente estético.

Poderia crer-se que o senso comum estético completa os dois precedentes; no senso comum lógico e no senso comum moral, ora a *Verstand* ora a *Vernunft* legislam e determinam a função das outras faculdades. A faculdade de sentir não legisla sobre objetos, não há, portanto, nela uma faculdade que seja legisladora.

Todavia, o juízo “é belo” é apenas um tipo de juízo estético. Deveremos considerar o outro tipo, que é o sublime. No sublime, a imaginação entrega-se a uma atividade, de todo em todo, diferente da reflexão formal. O sentimento do sublime é experimentado diante do informe ou do disforme.

Tudo se passa então como se a imaginação fosse confrontada com o seu próprio limite, forçada a atingir o seu máximo, sofrendo uma violência que a leva ao extremo do seu poder. De certo que a imaginação não tem limite, enquanto se trata de apreender.

Mas, unicamente a “razão” nos força a reunir num todo a imensidade do mundo sensível. Todo esse que é a Ideia do sensível, tanto quanto este último tem como substrato algo de inteligível ou de suprassensível. Segundo Kant, o sublime coloca-se na presença de uma relação subjetiva direta entre a imaginação e a razão.

O sublime é uma expressão da excelência do esplendor do bem, do uno e do verdadeiro. O sublime exprime-se como uma excelência ontológica e como forma de traduzir a vida ontológica do *esse*. O supremo grau da excelência aparece como sendo uma forma de atingir a “perfeição estética” do objeto. O sublime, segundo a nossa perspectiva, será o *perfectionis splendor*, como forma de unir o sentido estético, entre a filosofia perene (S. Tomás) e a filosofia transcendental (Kant).

²⁶ *Ibidem*, § 28, 106.

A posição da filosofia transcendental é diferente, dado que surge como forma de exprimir a ação do sujeito no objeto. A sublimidade não residirá em nenhuma coisa da natureza, mas só no nosso ânimo, na medida em que podemos ser conscientes de ser superiores à natureza, em nós e através disso, também à natureza que nos é exterior.

Na perspetiva de Kant, tudo o que suscita este novo sentimento, a que pertence o poder da natureza, que desafia as nossas forças, chama-se “sublime” e somente sob a pressuposição desta ideia, em nós e em referência a ela, somos capazes de chegar à ideia da sublimidade daquele ente, que nos provoca íntimo respeito, não simplesmente através do seu poder, que ele demonstra na natureza, mas ainda mais através da faculdade de julgar, que em nós foi colocada, sem receio, por esse poder de pensar o nosso destino como “sublime”.

Pela leitura kantiana, o juízo sobre o sublime da natureza, sendo, muito naturalmente necessitado de cultura, não primeiramente elaborado pela cultura, será introduzido pela convenção da sociedade, apresentando o seu fundamento na natureza humana e, com efeito, naquela que com a adequada “Verstand”, se pode, ao mesmo tempo, imputar a qualquer um, a saber, na disposição para o sentimento para as ideias práticas, isto é, para o “sentimento moral”.²⁷

Segundo Kant, exigimos ambas as qualidades, a cada homem e também as pressupomos nele se é que tem alguma cultura, com a diferença de que exigimos a primeira de qualquer um, porque a “faculdade do juízo” (*Urteilkraft*) aí refere a imaginação, meramente à *Verstand*, como a faculdade dos conceitos, a segunda, porque ela, nesse caso, refere a faculdade da imaginação à “*Vernunft*”, como faculdade das ideias, sendo exigida somente sob uma pressuposição subjetiva, ou seja, o sentimento moral no homem, com isso há uma necessidade para este juízo estético, tal como se observa no sublime.²⁸

Kant salienta que o sublime se exprime pela relação em que o sensível, na representação da natureza, será julgada como sendo apta para possível uso supra-sensível do mesmo. Aquilo que é absolutamente bom, distingue-se principalmente pela modalidade de uma necessidade, que radica nos conceitos *a priori* e que contém *per se* não uma simples pretensão, mas também um mandamento de aprovação, para qualquer um, e, em si mesmo na verdade não pertence à faculdade do juízo intelectual puro.

Assim, Kant faz a distinção entre belo e sublime, ao dizer que o primeiro será o que apraz ao simples julgamento, na ausência da sensação do sentido (*Empfindung des Sinnes*), segundo um conceito da *Verstand*, dado que o belo se compraz sem o interesse, sendo o segundo aquilo que apraz imediatamente pela sua resistência contra o interesse dos sentidos. Certo é que, quer o belo, quer o sublime, são explicitações do juízo estético, que será universalmente válido, fundamentando-se *a priori* nos sentidos, por um lado na sensibilidade externa e interna, dado que favorecem o entendimento contemplativo, por outro, em oposição à sensibilidade para os fins da *Vernunft* e, contudo, unidos no mesmo sujeito, estão em conformidade com os fins, relativamente ao sentimento moral.²⁹

27 Immanuël KANT, *Kritik der Urteilkraft*, 1913, § 29, 112.

28 *Ibidem*, § 29, 112.

29 *Ibidem*, § 29, 114.

Como se opera o comprazimento no sublime? Kant responde com as seguintes palavras: “O comprazimento no sublime será somente negativo, ao contrário do belo que é positivo, ou seja, um sentimento da faculdade da imaginação de privar-se *per se* da *Freiheit*, na medida em que ela será determinada a fins, segundo uma lei, diferente da aplicação empírica. A faculdade da imaginação adquire uma ampliação e um poder mais elevado do que ela sacrifica e cujo fundamento é ocultamento a ela própria; mas, em vez disso, ela sente privação e a causa à qual ela está “submetida”.³⁰

O comprazimento no objeto depende da relação na qual queremos colocar a faculdade da imaginação, desde que ela entretenha por si mesma o ânimo em livre ocupação. Assim, quer seja a sensação dos sentidos ou o conceito da “*Verstand*” determina o juízo, seja ela, na verdade, conforme a leis, mas não o juízo de uma faculdade livre do juízo.

Segundo Kant, observamos que muito embora o comprazimento no belo, bem como no sublime, será distintivo dos demais juízos estéticos, não somente pela comunicabilidade universal, mas também por esta propriedade, que adquire interesse relativamente à sociedade; mas, o isolamento da sociedade será considerado algo de sublime se repousar em ideias, que não constituem interesse sensível.

Em Kant, de cada juízo deve-se provar o gosto do sujeito, que será reclamado que o sujeito deve julgar *per se*, sem ter necessidade de, segundo a experiência, andar às cegas entre os juízos de outros e por meio dela instruir-se sobre o comprazimento deles no mesmo objeto. Daqui se poderá pensar que um juízo estético *a priori* terá de conter um conceito do objeto, para cujo conhecimento ele contém o princípio. Na verdade, o juízo do gosto não se funda absoluta e necessariamente sobre conceitos e não será em caso algum um conhecimento, mas somente um juízo estético.

Entretanto, a própria crítica do gosto é somente subjetiva com respeito à representação, pela qual um objeto nos é dado, ou seja, ela é a arte de uma ciência de submeter a regras a relação recíproca da *Verstand* e da sensibilidade externa e/ ou interna na representação dada, consoante a unanimidade de ambos com respeito às duas condições. A crítica transcendental deverá justificar o princípio subjetivo do gosto como um princípio *a priori* da faculdade do juízo.

Contrariamente, o comprazimento no belo não é um prazer de gozo nem de uma atividade legal, tão pouco da contemplação racionante, segundo ideias, mas apresenta-se como um prazer da simples reflexão. Este prazer estético acompanha a apreensão comum de um objeto pela faculdade da imaginação, enquanto faculdade da intuição pura *a priori*, em relação à “*Verstand*” como faculdade dos conceitos mediante um procedimento da “*Urteilkraft*”, o qual esta tem de exercer também com vista à experiência mais comum.

O interesse refere-se indiretamente ao belo, mediante inclinação à sociedade, e, por conseguinte, empírico não tem contudo aqui para nós, nenhuma importância, a qual, somente vemos naquilo que possa referir-se *a priori*, embora só indiretamente ao juízo do gosto. Contrariamente, porém, afirma-se que tomar um interesse imediato pela beleza da natureza será sempre um sinal de uma alma boa e que se este interesse é habitual e se liga do bom grado à contemplação da natureza, denotando uma

30 *Ibidem*, § 29, 116.

disposição do ânimo favorável ao sentimento moral. O esquematismo Kantiano do comprazimento do gosto estético, ligado à imaginação, será um marco necessário para permitir uma nova leitura transcendental sobre a vida do belo e do sublime. Com Kant abre-se uma nova visão sobre o juízo estético do belo e do sublime, que virá a marcar a filosofia contemporânea.

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Thesis of “The Court is Nothingness” by Montesquieu

Summary

Here I get to the heart of “The Spirit of Laws”. Because of the grandeur of the book’s task, I will elucidate it in order. Parts 1 and 2 of “The Spirit of Laws” are the core of the book. Law expresses the relationship between things. That is, God, man, animals, and things each have a law. That animals have laws means that animals also have instinctive group rules and things have laws that are in accordance with the rules and natural laws of things. This is all organically connected, meaning organic world connections. This is what Buddhism calls ‘Engi’ and it is the worldview advocated by my philosophy and the Biocosmological Association. The fact that it is discussed from the perspective of cosmology is what makes it different from conventional Montesquieu studies.

Then, three political systems are proposed. They are republican government, monarchy and tyranny. This is only an ideal type. Contradictions appear in various places. But that is Montesquieu’s true intention. In other words, he supports the absolute monarchy of Louis XIV. However, he is not satisfied with it and while criticizing it, he aims for a republican government with the aristocracy. This is the embrace of contradiction. Kitarō Nishida, a leading figure in Japanese philosophy, called this ‘self-identity of absolute contradiction’. Montesquieu’s goal was to achieve national peace and stability, not revolution. In this light, we can understand the contradiction. In the following, we will consider the people’s education, virtue, punishment, equality, Chinese tyranny, defense, and courts that support the political system. Its conclusion poses a court of nothingness, invisible to the people, which does not cause fear among the people.

Key words: political system, philosophy, education, Law, Montesquieu.

<Overall structure of “The Spirit of Laws”>

Part 1: General Law, Natural Law, Real Law, Principles of the Three Forms of Government, Education, Civil and Criminal Trials, Prohibition of Luxury and Corruption in the Three Forms of Government

Part 2: Defensive and Offensive Forces, Political Liberties, Civics, Taxes and Finances

Part 3: Nature of Climate and Law, Slavery, General Spirit of the Nation

Part 4: Commerce and Law, Money, Number of Inhabitants

Part 5: Religion and Law

Part 6: Roman law and Legislation of the Frankish Kingdom

1. LAW AND WORLD RELATION

This chapter discusses law in general. What is law?

"Laws, in their most general signification, are the necessary relations arising from the nature of things. In this sense all beings have their laws: the Deity His laws, the material world its laws, the intelligences superior to man their laws, the beasts their laws, man his laws."¹

Law expresses the relationship between things. That is, God, man, animals and things each have a law. That animals have laws means that animals also have instinctive group rules and things have laws that are in accordance with the rules and natural laws of things. This is all organically connected, meaning organic world connection. This is what Buddhism calls 'Engi' and it is the worldview advocated by the Biocosmological Association. Here, things in the world and universe are related. Then, it is tempting to postulate a creator of the relationship. Either the relationship arose by chance or it is something that rules the world, the universe or what I call the transcendent-being. In anticipation of this question, Montesquieu calls this accident and atheism in general, 'a certain blind predestination' and says that it is an unexplainable absurdity that blind predestination gave birth to a wisdom being, man by chance. He opposes atheism first as an absurdity that mere chance could produce human beings. Since the theory of evolution had not appeared at that time, this is a powerful preemptive attack. Here, Montesquieu created a situation in which the transcendent-being, God, appeared.

"There is, then, a prime reason; and laws are the relations subsisting between it and different beings, and the relations of these to one another.

God is related to the universe, as Creator and Preserver; the laws by which He created all things are those by which He preserves them. He acts according to these rules, because He knows them; He knows them, because He made them; and He made them, because they are in relation of His Wisdom and Power."²

Montesquieu, perhaps assuming an atheist view, posits the existence of a *raison primitive* which has laws and relations. Then God appears. Since God is the creator of the world and the universe, he also created laws and relations. Herein lies the source of laws and relations of things. This is what is generally called natural law. Since it is the law of the world and the universe, it includes the laws of motion of matter and the laws of natural science.

"Since we observe that the world, though formed by the motion of matter, and void of understanding, subsists through so long a succession of ages, its motions must

1 "The Spirit of Laws", Great Books in Philosophy, Prometheus Books, Amherst, New York, 2002, p. 1 | sketch it "The Spirit of Laws".

2 *ibid.* p. 1.

certainly be directed by invariable laws; and could we imagine another world, it must also have constant rules, or it would inevitably perish ...

These rules are a fixed and invariable relation. In bodies moved, the motion is received, increased, diminished, or lost, according to the relations of the quantity of matter and velocity; each diversity is uniformity, each change is constancy.”³

This passage shows that material bodies also have laws. It may seem odd that matter has laws, but since everything is interconnected, it has laws. It applies to the laws of motion in nature, where uniformity and constancy are always preserved.

The material world has laws. Therefore, animals and plants also have laws.

“By the allurements of pleasure they preserve the individual, and by the same allurements they preserve their species. They have natural laws, because they are united by sensation; positive laws they have none, because they are not connected by knowledge. And yet they do not invariably conform to their natural laws; these are better observed by vegetables, that have neither understanding nor sense.”⁴

Animals have laws and rules based on their senses and survival needs. In animal reproductive behavior, the stronger male dominates the female to mate. There are rules and laws based on the logic of the strong. Monkey society has its own rules and laws. However, since they do not have culture, they do not have actual laws like humans do. Plants have and follow laws based on natural laws. Pollen is carried by bees and other insects to pollinate and produce flowers. These are the laws of plants.

What about human laws?

“Man, as a physical being, is like other bodies governed by invariable laws. As an intelligent being, he incessantly transgresses the laws established by God, and changes those of his own instituting. He is left to his private direction, though a limited being, and subject, like all finite intelligences, to ignorance and error: even his imperfect knowledge he loses; and as a sensible creature, he is hurried away by a thousand impetuous passions. Such a being might every instant forget his Creator; God has therefore reminded him of his duty by the laws of religion. Such a being is liable every moment to forget himself; philosophy has provided against this by the laws of morality. Formed to live in society, he might forget his fellow-creatures; legislators have, therefore, by political and civil laws, confined him to his duty.”⁵

As a naively natural being, man is governed by natural law, including scientific laws. However, since he is also an intelligent being with reason, he breaks the divine laws established by God and changes the laws established by himself. Since human beings are finite, they are prone to ignorance and error. Therefore, God revealed religious law and philosophers admonished him with morality. Furthermore, since man is a social being in Aristotle’s sense, he was made aware of his duties by the laws of society, the state, and civics.

Moreover, what is at issue is the law of the state before the establishment of society. This is the state of nature of Thomas Hobbes and Jean Jacques Rousseau.

3 *ibid.* pp. 1–2.

4 *ibid.* p. 3.

5 *ibid.* p. 3.

Consider a group of savages. There is no speculative conception there, but they have the intelligence of self-preservation. Montesquieu describes savages found in the forests of Hanover. They are said to be extremely timid. Even today there are savages deep in the Amazon and New Guinea, but they do not meet easily with modern people. Nor do they need to meet. They live quietly in the backcountry. They live a self-sufficient life without conflict. Montesquieu wrote, "Peace will be the first natural law". So, he states that the natural state is not a state of struggle like Hobbes. When we feel weakness, we help each other, sympathize with each other, form groups, societies and create natural laws. The study of savage societies is today the domain of cultural anthropology and Chapter 2, "On the Laws of Nature," is an earlier study.

Chapter 3 describes substantive laws, which Montesquieu classifies into three categories. The first is the "droit des gens" (universal law), which is the law between peoples (nations), the second is the "droit politique" (law of the state system), which should be observed within nations, and the third is the "droit civil" (civil law), which is the law between citizens. The first is today's international law, the second is national law and the third is civil law. In explaining the universal civil law, Montesquieu says that even the Iroquois⁶, a native people of North America who eat prisoners of war, have this law. They send and receive diplomatic missions. They know several laws about war and peace. The drawback is that they are not based on the principle of law. The laws of the state system are necessary for governing the country, without which society and the state cannot function. Here, Montesquieu says that the most natural governance is "a governance whose own character is better adapted to the character of the people for whom it is established". The people's disposition here is the general spirit or national spirit in Hegel's sense that we will discuss later. This statement can be regarded as a preview of the general spirit of the people.

Laws are necessary as the basis for governing but they must be related to the nature and principles of the polity. The nature and principles of government are supported by the people's land, climate, religion, economic activities, culture, way of life and the world as a whole. It is Montesquieu's "The Spirit of Laws" that considers all these various relationships. This law does not refer to any one definite law but rather to the Buddhist concept, Engi, of the connection and origination of things or, as I have expressed it, the world connection. This connection is organic because it is connected to all things by the energy of nothingness as the flow of life that fills the universe. In other words, it is an organic world linkage. "The Spirit of Laws" can be said to be an examination and clarification of the organic world linkage.

2. ON THE POLITY

While Part I was an elucidation of the law, Part II will be the nature of the polity and the law. Montesquieu argues for three types of polities. Montesquieu advocates three types of polities: republics, monarchies, and tyrannies. A republican government is a democratic government when the people have supreme power. When the supreme power is part of the people, it is an aristocracy. A republican government includes both a democratic and an aristocratic government. A monarchy is a government

⁶ Wikipedia, Iroquois Confederacy.

ruled by one person but with laws enacted and governed by laws. A tyranny is a government of one person without laws or rules and it is governed by the will and whim of one person.

Everyone feels a certain discomfort in this writing. That is, in schools, the polity is spoken of according to the number of rulers. One is a dictatorship, two or more is an oligarchy, and a majority is a democracy. A dictatorship is a monarchy and a tyranny. An oligarchy is an aristocracy and democracy is a republic. This traditional classification is due to Aristotle. Montesquieu's classification leaves out the oligarchy of the few and includes tyranny. Montesquieu could not have been unaware of Aristotle. Daringly, Montesquieu proposed his own three types. This is because Montesquieu himself is a supporter of monarchy. He criticizes the monarchy of Louis XIV but also affirms it. And in some places, he praises it. This is a contradiction. And this contradiction goes further. It is a distrust of democratic government. While he admires the republican government of ancient Greece and Rome, he still does not trust democratic government because of the danger of popular rule. When merchants and peasants become citizens and participate in politics, they become corrupt. In this sense, Aristotle rejects democratic government, and Montesquieu also rejects political participation by the common people. His gaze is on the aristocracy.

"It was only by the corruption of some democracies that artisans became freemen. This we learn from Aristotle, who maintains that a well-regulated republic will never give them the right and freedom of the city..."

In fine, every kind of low commerce was infamous among the Greeks; as it obliged a citizen to serve and wait on a slave, on a lodger or a stranger. This was a notion that clashed with the spirit of Greek liberty; hence Plato in his laws orders a citizen to be punished if he attempts to concern himself with trade."⁷

Montesquieu only speaks in words of democracy as an ideal. Practically, he denies revolution. His real intention is to defend the monarchy of Louis XIV. But this monarchy is not a lawless monarchy. It is a monarchy that obeys the law, not the unilateral tyranny of an emperor or sultan as in the Orient, China or the Islamic empire. This arbitrary and coercive regime of rulers of the Asian type is called tyranny and is distinguished from the French monarchy. For this reason, he did not follow Aristotle's classification. Montesquieu is swayed by three concepts: longing for democracy, criticism of monarchy and praise of monarchy. That is a contradiction. Kitarō Nishida, one of Japan's foremost philosophers, defined this state of contradiction as 'self-identify of absolute contradictory'.

So why is Montesquieu so critical of democratic government? Aristotle is largely telling because he states that democracy degenerates into popular government. The first of these, according to Montesquieu, is the inability to determine the number of civilians in an assembly in Book 2, Chapter 2. It is the determination of the people who can participate in the civil assembly and the right to vote. He notes that in Sparta, the number was 10,000. As an example of failure, he cites the example of Rome. It appears in Chapter 9 of "Considerations on the Causes of the Greatness of the Romans and their Decline".

⁷ "The Spirit of Laws", p. 38.

In there, Ambitious people called people from every city and every nation to Rome. They made people vote in elections and caused chaos. The election was a conspiracy. Even the elected were like a mob. And they moved the people's assembly. The people's authority, the law, became illusory and anarchic.⁸

The expansion of the Roman empire was based on the granting of citizenship to the peoples who came under its rule. Many people became Roman citizens but as the empire expanded, their sense of their homeland, Rome, waned. Their sense of duty, pride and spirit were lost. Eventually they moved toward independence and away from Rome. This is the situation of the elections on the way. Montesquieu, quoting from Cicero's "Letters to Atticus" (*Les Lettres de Cicéron à Atticus*), Vol. 4, No. 18, clearly shows the fraud and corruption of the elections at that time. There are the chaos of voting, the mobs and the illusion of popular authority. The progression of anarchy is indeed the descent into popular politics.

Voting chaos, mobs, and anarchy are all possible situations in today's world. The 2020 U.S. presidential election was a close race between candidates Biden and Trump. The winner was determined by the way of the votes and the definite number of valid ballots cast. Candidate Trump was not satisfied with his loss. He appealed to his supporters to demonstrate and assemble in Congress. A large number of demonstrators occupied the assembly. The Congress in session was suspended and even a fatality occurred. One wrong move and the United States would have been divided. It was a reenactment of the Civil War that threatened to destroy American democratic politics. Democratic politics is not perfect. There is still the possibility of electoral fraud and corruption. The same is true in Japan.

The second critical reason of democratic government is the lack of civic competence. Although the people are fully capable of listening to reports on the affairs of others, they are not suited to handle affairs on their own. Paperwork is processed at a certain speed but the people are either too fast or too slow. Sometimes the people overturn everything by a hundred thousand arms but sometimes they advance only as far as an insect by a hundred thousand feet. This is a criticism of democracy and a point that takes time. Whatever is done is a consideration, a meeting. Nothing is ever decided. The same is true today. So often, military tyrannies emerge, such as the coup d'état in Myanmar in 2021 and the military pressure politics is still in place today.

The third is the people's loss of motivation to govern. The people become calm and feel attached to money but not to public service. With no interest in governing, the people just quietly wait for their paychecks.

Thus, they are extremely critical of democratic government. In contrast, the aristocracy is effective. Montesquieu himself is an aristocrat, so he is defending himself. He explains the effectiveness of the aristocracy in terms of the election of Solon's property in ancient Greece and the necessity of the Senate. Its symbolic words are.

"no monarch, nobles; no nobility, no monarchs; but there may be a despotic prince."⁹ The aristocracy functions as an intermediate power between the monarch and the

8 "Montesquieu", *Great Books of the World*, translated by Kōji Inoue Chuōkōron-sha, 1972, p. 268.

9 Confucius' "The Spirit of Law", p. 16.

people. But that is not all. Even monarchs have laws. There must be a repository of laws to check that these laws are enforced. This is the Courthouse to which Montesquieu once belonged. Its members are, needless to say, nobles. The aristocracy serves an important function as an intermediate power body that supports the monarchy. Without them, a tyrannical state would be arbitrary and a government of fear because the monarch is the law.

“for since a despotic government is productive of the most dreadful calamities to human nature, the very evil that restrains it is beneficial to the subject.”¹⁰

“A man whom his senses continually inform that he himself is everything and that his subjects are nothing, is naturally lazy, voluptuous, and ignorant. In consequence of this, he neglects the management of public affairs.”¹¹

And he only gives himself over to the most beastly passions in the rear court and follows his foolish whims. These feelings and passions in tyranny are fear. What, then, are the sentiments and spiritual foundations of a democratic or monarchical government? According to Montesquieu, democracy is ‘virtue’ in the sense of a moralist, and monarchy is ‘honor’.

It is well known that democracy in Athens declined due to moral decadence. Montesquieu cites the failure of the Puritan Revolution. It overthrew the monarchy and brought about a democracy but those involved in this revolution had no virtue at all. The people did not find democracy only in the success of Oliver Cromwell (1599–1658). Cromwell’s expedition included the massacre of about 600,000 Irish people. After him, politics was at a standstill and the monarchy reverted to monarchy. The people, freed from monarchy and dictatorship, would be mere arbitrariness and crowds without virtue. The Greek democracy presupposes the three primary virtues of wisdom, courage and temperance, according to Plato. Justice is realized when these three primary virtues function effectively. Montesquieu must have had this in mind. He also posits moderation as the principle and spiritual foundation of aristocracy, since he is a successor to Aristotle. This moderation can form a great republic with equality between the aristocracy and the people.

“Moderation is therefore the very soul of this government; a moderation, I mean, founded on virtue, not that which proceeds from indolence and pusillanimity.”¹²

Aristotle’s moderation is alive and well.

And what is needed in a monarchy? It is, he says, less virtue and more honor. In a monarchy, matters are carried out with as little virtue as possible. It is as if the best machine is the least movement with skill and the gears with power. Some courtiers are sincere and some dishonest. Extra sympathy is instead a poison. Courtiers are ambitious. It is honor that controls them.

“for to be a good man, a good intention is necessary and we should love our country, not so much on our own account, as out of regard to the community.”¹³

10 *ibid.* pp. 16–17.

11 *ibid.* p. 18.

12 *ibid.* p. 23.

13 *ibid.* p. 24.

3. ON EDUCATION

Education is necessary to acquire virtue. Montesquieu discusses education in monarchies and in republics. Education in a monarchy requires 'nobility', 'frankness' and 'politeness'. In particular, it demands 'politeness' with an awareness of life at court. Politeness means respect for all people. Montesquieu wrote that it becomes natural at court. But politeness is common to all worlds.

In China, Confucius taught a culture of courtesy. *Rei* is the surface manifestation of benevolence. Standing up and bowing is a sign of benevolence and respect for others. Confucius was an orphan, raised in a maiden's house. He mastered rituals such as funeral rites, studied hard. Then he became a minister of justice. The teachings of Confucius became the basis of *reites* and the foundation of Asian culture¹⁴.

Montesquieu also emphasized the importance of rites. Prior to Montesquieu, the Catholic priest John Baptiste De La Salle (1651–1719) also emphasized the importance of rites in the education of the people. De La Salle had lived a privileged life as the son of a judge but when he saw the life of the poor people, he felt the need for education. This was just during the reign of Louis XIV. At that time, education for the common people was not widespread and children were living in the open. Only the children of the upper classes were educated in Latin. However, children who did not learn courtesy and language could not get good jobs unless they took over the family business and lived in poverty. It was De La Salle who gathered and educated the children who were wandering the streets of Paris. He gave up all his possessions and devoted himself to education, establishing schools in France, tuition free, taught in French, with classes of 20-30 students. He worked hard to spread the education system. His education spread throughout the world and he has two high schools and an orphanage in Japan. The belief of this De La Salle was the education of courtesy¹⁵.

De La Salle and Montesquieu are 28 years apart. De La Salle was a priest. Montesquieu was a judge and then a man of letters at the Court of Paris. Probably they did not communicate. However, they were both Christians and shared the same importance of courtesy and the practice of love for humanity at large.

The next step is education in the Republic. It is precisely in the republican form of government that all the powers of education are needed. The honor of monarchies is fostered by passion and this honor fosters passion. But political virtue is self-sacrifice. This virtue is 'love of the law' and 'love for the motherland'. This love demands that we put the public good above our own interests. This love is especially coveted in countries with democratic governments. To achieve democracy, it is important to nurture a good people and a spirit of love and commitment to one's country. Therefore, in a republic, everything depends on establishing this love. It is the father himself who will transmit this love to his children. This seems to be a pep talk to the fathers of the world. Montesquieu's father was a military man, so he must have had

14 "Philosophy of Nothingness and Love", Kiyokazu Nakatomi, Hokuju Company, 2002, Tokyo, pp. 291–325. English version, Lambert Academic Publishing, 2016, Germany, pp. 413–466.

15 "Philosophy of religion of Saint John Baptist De La Salle and its development", Lambert Academic Publishing, 2012, Germany, pp. 233–254.

this love for his country and for the public. The time of Louis XIV reflects a time of war after war after war.

"It is not the young people that degenerate; they are not spoiled till those of mature age are already sunk into corruption."¹⁶

As for the education of a tyrannical regime, education will be unnecessary. This is because it is easier to govern ignorant people who do not think. All that is needed is to instill fear.

4. VIRTUES OF THE POLITICAL STATE

In the previous section, virtue was mentioned as a principle of government. So what exactly is that virtue? It is love for the republic. In a democratic country, it is love for the law and love for democracy. Love of democracy is love of equality and love of simplicity¹⁷. In short, that is patriotism, equality and simplicity.

Each individual has various desires. But he preaches love for the nation by suppressing his various desires. Monks are cited as an example. A monk has a strong attachment to his monastic community. This is because he killed his desires and observed the discipline of the monastic community. They were honed through rigorous training. The Jesuits were represented in Japan by Francisco de Xavier (1506–1552) is well known. He was one of the founders of the Jesuits but his Spanish nationality is not mentioned in Japan. He remains as Francico de Xavier of the Jesuits. This is probably because he himself wished to do so and because he came to Japan to evangelize through severe trials. Like this attachment, man must abandon himself and love his country.

Recently, something astonishing happened in patriotism: on February 24, 2022, Russia started, for reasons of protection of the Russian people military action in eastern Ukraine. Eventually, it reached the center of Ukraine. The capital, Kiev, appeared to be on the verge of falling. However, Ukrainian President Zelensky declared, "I will fight for my country until the end." The declaration spread across the Internet. Immediately, the spirit of the people was inspired. The fighting became fierce. American military officials had predicted the fall of the capital in two days. But it continued on April 1st. In terms of forces, the Russian army has about 900,000 soldiers and 1,200 aircrafts, while the Ukrainian army has about 190,000 soldiers and 120 aircrafts. The difference between victory and defeat in war is air power. Russia has about 10 times as many aircrafts as Ukraine. Only women and children can be evacuated to Poland and other neighboring countries, while the Ukrainian government prohibited men to leave the country. The remaining women at home are creating Molotov cocktails. It looks like Japan during World War II. Japanese women made bamboo spears and trained in thrusting. It reminds me what I learned at school. It's painful.

Russian President Vladimir Putin is also moving with patriotic fervor; around March 20, he passionately explained the legitimacy of the Russian operation in front

¹⁶ "The Spirit of Laws", p. 34.

¹⁷ *ibid.* p. 40.

of an audience of about 200,000 people. For some reason, however, the broadcast was abruptly interrupted. Patriotism is the driving force that motivates but when it clashes, it leads to war. It is a double-edged sword. In Afghanistan in 2021, when Taliban militants overwhelmed the capital, Kabul, then President Ghani did not fight at all. He quickly defected with the country assets. The U.S. president also approached President Zelensky about accepting asylum. But Zelensky refused and resisted. The future of the situation is not at all clear. There were many wars in Montesquieu's time and the crisis is the same today.

Back to Montesquieu. Continuing with virtue, love for democracy is love for equality and simplicity.

In a democracy, there must be equality. Equality cannot be achieved if there is an extreme difference between rich and poor. Aristotle also said. "I demand equality of wealth." It is also love for frugality. The standard of frugality is the level of necessities for one's family. In modern times, the term is epitomized by Karl Marx. Each individual does not need to have a mansion. And luxury and extreme generosity are born on the basis of frugality. The law desired frugal habits so that one could contribute to one's country. Here Aristotle's moderation is alive.

"The good sense and happiness of individuals depend greatly upon the mediocrity of their abilities and fortunes. Therefore, as a republic, where the laws have placed many in a middling station, is composed of wise men, it will be wisely governed; as it is composed of happy men, it will be extremely happy."¹⁸

5. VIRTUOUS PERSONS AND PUNISHMENT

Montesquieu, who preaches virtue, gives useful suggestions about punishment from his experience as a former judge. One of them is that when the people are virtuous, very little punishment is necessary. It is written in Book VI, Chapter 11. The Roman people had integrity. This integrity was so powerful that in order to make the people obey the good, the legislator only had to show the good. Instead of a command, it was enough to give advice.

The penalties of the laws of the king and the laws of the Twelve Tables were largely abolished in the Republic by the laws of Valerius and Porcia. However, it was not recognized that this led to a deterioration of discipline and security in the republican government. These laws, passed between 509 BC and 184 BC, exempted them from punishment of flogging, crucifixion and other which degraded and humiliated Roman citizens. This meant that public safety was protected.

This statement is a lesson that is still relevant today. By showing the opposite of this, harsh laws are meaningless; they make the people suffer. It is the decree of Tsunayoshi Tokugawa (1646–1709) in Japan's Edo period (1603–1867) against the mercy of the living. In "The Spirit of Laws," in Volume 6, Chapter 13, I wrote critically about Japanese laws during the reign of Iemitsu Tokugawa (1604–1651), which is the preceding statement. During the reign of Tsunayoshi, the number of abandoned children and sick people left unattended increased, he issued a decree to value life.

¹⁸ *ibid.* pp. 41–42.

As his successor, Tokumatsu, died at the age of five, the law forbade the killing of animals in addition to valuing the lives of living creatures. Tsunayoshi was born in the year of the dog, so the law took special care of dogs. However, he cherished them so much that dogs overflowed the streets of Edo. In fact, anyone who shot a bird with a gun or caught a duck in a net was condemned to death. In some cases, they were banished or imprisoned. It is said to be the worst law in the history of Japan. Excessively harsh laws undermine human life. It is easy to imagine how the people suffered during this period. You cannot kick a dog that bites a child. The child is left to be bitten. The practice was banned by the 8th shogun, Yoshimune Tokugawa (1684-1751). Regardless of whether the people of the time were virtuous or not, strictness is not always a good thing.

In these instances, from Montesquieu's point of view, Japanese politics is tyranny. Chapter 13, *The Impotence of Japanese Laws*, clearly shows Japan during the Edo period.

The report was based on the materials from a missionary:

“Excessive punishments may even corrupt a despotic government; of this we have an instance in Japan.

Here almost all crimes are punished with death, because disobedience to so great an emperor as that of Japan is reckoned an enormous crime. The question is not so much to correct the delinquent as to vindicate the authority of the prince...

Even things which have not the appearance of a crime are severely punished; for instance, a man that ventures his money at play is put to death.

True it is that the character of this people, so amazingly obstinate, capricious, and resolute as to defy all dangers and calamities, seems to absolve their legislators from the imputation of cruelty, notwithstanding the severity of their laws. But are men who have a natural contempt for death, and who rip open their bellies for the least fancy – are such men, I say, mended or deterred, or rather are they not hardened, by the continual prospect of punishments?¹⁹

Here, he writes about the temperament and tendencies of the Japanese people. Since this is a bibliography, it is questionable whether it conveys the reality of the situation. Seppuku which is suicide by cutting belly is mentioned and described as if seppuku was an everyday occurrence. It must have been conveyed that way to Montesquieu.

In Japan, tyranny strived but became even more cruel than despotism. This is the origin and the spirit of Japanese law. It succeeded in destroying Christianity with a disgusting slaughter. But it also exposed its weakness through the aforementioned "Decree of mercy for all living creatures" by Tsunayoshi Tokugawa.

Another example I will give is that of Iemitsu Tokugawa. Here he is emperor.

"The Emperor having abandoned himself to infamous pleasures, lived unmarried, and was consequently in danger of dying without issue. The Deyro sent him two beautiful damsels; one he married out of respect, but would not meddle with her. His

19 *ibid.* p. 85.

nurse caused the finest women of the empire to be sent for, but all to no purpose. At length, an armorer's daughter having pleased his fancy, he determined to espouse her, and had a son. The ladies belonging to the court, enraged to see a person of such mean extraction preferred to themselves, stifled the child. The crime was concealed from the Emperor; for he would have deluged the land with blood. The excessive severity of the laws hinders, therefore, their execution: when the punishment surpasses all measure, they are frequently obliged to prefer impunity to it."²⁰

This Iemitsu Tokugawa indulged in shameful pleasures (Homosexuality) and did not attempt to marry. So he was in danger of dying without an heir. The Emperor, concerned, sent an imperial girl (Takako Takatsukasa) to marry Iemitsu. However, the one did not get along and lived separately due to a personality mismatch. Later, when Iemitsu met another noble nun (Oman no Kata), he fell in love with her at first sight and immediately took her as his concubine. The lady-in-waiting (Otama) also caught Iemitsu's eye and eventually became his concubine. Otama was actually the daughter of a merchant family. But due to succession issues, she joined a samurai family and was accepted by a nun (Oman-no-kata). Then she became a lady-in-waiting. In the Edo period (1603–1867), there was a strict class system, with samurai, farmers, artisans and merchants. Such cross-status marriages were not usually possible. However, Otama's appearance and abilities transcended her status. The daughter of a merchant became the wife of the shogun and gave birth to a son.

One theory is that there was one Tsunayoshi, the fourth son. Another record has two: Kamematsu, the second son and Tsunayoshi, the fourth son. Montesquieu took two theories. The second son, Kamematsu died prematurely at the age of 3 or 5 for unknown reasons. Montesquieu states that Kamematsu was strangled to death in the inner palace. If Otama's son was only one, then the fourth son was Tsunayoshi, the future fifth shogun and the author of the aforementioned "Decree of mercy for All Living Creatures". Montesquieu was mistaken.

Tsunayoshi cherished his mother, Otama. when she died, he built a splendid temple, Gokokuji in the northwest of Tokyo, near present-day Ochanomizu Women's University. The construction of this temple was a great financial burden for the Shogunate. Montesquieu's story of Otama is a good illustration of Japan in the Edo period. It was also the origin of the term "tama no mikoshi," to marry a man of wealth, a popular belief that a daughter marries a nobleman.

Although Iemitsu was fond of Oman no Kata, she had no children. According to be a matter of tradition, it is said that there was an internal secret in the inner palace that no blood of a court noble should be allowed into the shogunate family. Even if Oman-no-kata became pregnant, she was given an abortifacient. Tsunayoshi was also puzzled by the fact that he had no sons after Tokumatsu, who died of illness at the age of five. It is alleged that the ladies of the inner palace refused to accept the successor of Tsunayoshi, because Tsunayoshi enacted the foolish law called "Decree of mercy for all living creatures". They forced the wife of Tsunayoshi to take abortion pills and leave no children.²¹

²⁰ *ibid.* p. 87.

²¹ Still, do you want to ride on the ball? The life of a "grocer's daughter" who was loved by Iemitsu. <https://www.tm-ffice.co.jp/column/20160530.html>.

Montesquieu's view that Iemitsu's second son Kamematsu was strangled contains the possibility of fact. If these allegations were to come to light as fact, a significant number of women from the inner palace would be executed. Montesquieu is right that there are too many to be punished.

"Decree of mercy for all living creatures", which respected life, functioned in the opposite direction and conversely caused the people to suffer. Strict laws, lax laws or as the saying goes, "A good legislator takes a just medium."²²

There must be harmony between punishments.

*During the reign of King Charles II of England, slander against the king was an acquittal, while slander against the king's ministerial subjects was a sentence of exposed head.

*Seventy people who plotted against Emperor Basil ended up being flogged and having their head and body hair burned.

The official who saved the emperor was beheaded; when a deer snagged the emperor's waistband with its antlers, one of his comrades drew his sword, cut the waistband, and saved the emperor. However, the rescued emperor had him beheaded for pulling out his sword against him.

It is unfair to give the same punishment to a man who chases and to a man who steals and murders.

*In the Grand Duchy of Moscow, the punishment for thieves and murderers is the same, so murder is always committed. Dead men have no mouths to feed, is the word there.

Then, about torture. Torture is appropriate for a tyrannical regime based on fear. A witness is sufficient. In England we have eliminated torture, and there is nothing amiss. Torture is not necessary because of human nature, since its foundation is fear.²³

Today, the Constitution of Japan states the prohibition of cruel punishment and torture. This was after World War II. Two hundred years earlier, Montesquieu had argued that torture was unnecessary. As a judge, he probably knew what torture was. Or, since he was a legal counselor, he may have witnessed it as both a lawyer and a prosecutor.

When I was in university, I saw a torture device at the Meiji University Museum of Criminology. I trembled with fear. In Japan, during the Second World War, under the Security Law, police officers could easily arrest a person simply because they thought he or she looked suspicious. This seems to be the same in China and Russia today. After arrest, beating and kicking were commonplace at police stations. Takiji Kobayashi (1903–1933), a proletarian literary figure, disappeared after his arrest. His body was later sent home. His front was covered in bruises, blackened from internal bleeding. All ten fingers were broken off, there were nail marks on his thighs. Further his testicles had been crushed.

²² "The Spirit of Laws", p. 92.

²³ *ibid.* pp. 89–91.

Kiyoshi Miki (1897–1945), a philosopher and critic of war, was arrested on suspicion of harboring Communist Party members. Imprisoned, he died of nephritis in the filthy prison. Japan eliminated a great heir to the Nishida philosophy. The victims of the Security Law are said to number in the thousands. One of those who made the effort to write the prohibition of cruel punishment and torture into the Constitution was the philosopher of law Fusaaki Uzawa (1872–1955). I have already introduced his philosophy of law in several publications, so I will omit it here. In the above, we have discussed the nature of law and punishment. Since Part VII discusses extravagance, I will discuss luxury next.

6. PSYCHOLOGY OF LUXURY

Part 7 discusses the prohibition of luxuries, the status of women and other issues. First, let us discuss luxuries. There is no need to repeat the discussion of luxuries, since we have already discussed the luxurious life in Versailles. If equality of wealth were realized, the problem of extravagance would not arise. However, as the population grows and society expands, it is not possible to be content with the bare necessities of life. Therein lies the weakness of human beings. Montesquieu cleverly depicts the psychological state of human beings and why they prefer luxury.

“In proportion to the populousness of towns, the inhabitants are filled with notion of vanity and actuated by an ambition of distinguishing themselves by trifles. If they are very numerous, and most of them strangers to one another, their vanity redoubles, because there are greater hopes of success. As luxury inspires these hopes, each man assumes the marks of a superior condition....; for men have desires, more wants, more fancies, when they live together.”²⁴

What caused the extravagance in ancient Rome and Versailles? It is the desire to show off, vanity. It is easy to imagine women’s costumes at Versailles. Decorations that make one look beautiful are vanity. However, a woman’s desire to be beautiful is Plato’s eros and this eros is also the driving force of learning and literature. Montesquieu, however, criticizes excessive pretension and vanity.

Montesquieu suggests the possibility of a national anti-luxury law. For example, these are restrictions on imports of expensive foreign goods and the imposition of high tariffs. However, as nations become wealthier, luxuries will still increase. One wrong move can cause economic disparity, destroy economic equality and make democratic politics untenable. What measures can be taken at the national level? This depends on the geographical situation and economic strength of each country. The United Kingdom and France have economic strengths that allows them to tolerate a certain degree of extravagance. China is an example of a country that prohibits luxuries. In Volume 7, Chapter 6, ‘Luxury in China’ in Tang Dynasty (618–907) it is written as follows.

“In China, the population is so prolific and so large that even if the land is cultivated, there is barely enough food to feed the population. Therefore, extravagance is harmful. A spirit of toil and frugality is necessary. One should devote oneself to the necessary arts and crafts and stay away from the arts of pleasure. The spirit of this law can be found in the following words.”

²⁴ *ibid.* p. 95.

"This is the spirit of the excellent decrees of the Chinese emperors." Our ancestors," says an emperor of the family of the Tang, "held it as a maxim that if there was a man who did not work, or a woman that was idle, somebody must suffer cold or hunger in the empire." And on this principle he ordered a vast number of the monasteries of bonzes to be destroyed.

The third emperor of the one-and-twentieth dynasty, to whom some precious stones were brought that had been found in a mine, ordered it to be shut, not choosing to fatigue his people with working for a thing that could neither feed nor clothe them."²⁵

This emperor is thought to be Yongle Emperor²⁶ of the Ming Dynasty (1368 – 1644). He worked hard to establish a world empire in the Ming Dynasty and also worked hard to be thrifty. He exercised thrift after his accession to the throne. When natural disasters occurred, he immediately provided relief to the people. However, as Montesquieu points out, he also made heavy use of eunuchs, thus setting the stage for the eunuch government that followed. In China, the temperance of "knowing enough" is alive in the tradition of the lesson of Confucius, a poor orphan who became Minister of Justice. The founding period of the dynasty was marked by this lesson. However, after three or four generations of emperors, corruption, extravagance and dissatisfaction caught the attention of their successors. The emperors are confined to their palaces, their spirits are weakened. Further their families are also weakened. The powerful rise to power and eunuch politics infest the country. Confucius' precepts became the state religion as Confucianism and developed into Zhu Zi Gong. But the rulers are weak.

For reference, Empress Dowager Queen Cixi (1835–1908) during the late Qing Dynasty is renowned as one of the three most evil women in China. She poisoned her nephew, threw a woman alive into a well and amputated the limbs of a rival woman. Other horrific anecdotes remain. She reigned for 50 years and repaired the Summer Palace, one of the most beautiful gardens in the world, covering an area of about 290 hectares. I visited it once. At the top of the hill is a magnificent pagoda, where she enjoyed watching the Peking Opera and banquets every evening. Below the tower is a large lake, which is too big to visit in a day. This wasteful spending prevented the government from budgeting on military spending, especially on warships and was the cause of its defeat by Japan in the Sino-Japanese War.

Montesquieu's views on women are described. In Book VII, Chapter 9, "Of the Condition or State of Women in different Governments," he states that women are not so modest in countries with monarchies. This may refer to women at court. At court, they are free to use their husbands' positions and act in a spirit of freedom. However, each man uses the charms and passions of women for his own advancement. What women are allowed is vanity and extravagance. The opulence has been described above. Luxury made the Palace of Versailles luxurious. At the same time, adultery was commonplace. This situation was probably the reason why he wrote that women were not so modest. In republican countries, on the other hand, women are free by law and confined by custom. Luxury is banished from them and with luxury. Corruption and vice are also banished.²⁷

²⁵ *ibid.* p. 100.

²⁶ Wikipedia. Yongle Emperor (永樂帝).

²⁷ "The Spirit of Laws", pp. 102–103.

Here, women in the monarchy are not modest, while women in the republican government are free and observe purity. Most likely, Athens had special office holders who monitored the behavior, dress, etc. of the ladies.

It is worth noting in Chapter 10 that the Romans had family courts. It kept an eye on the general conduct of the ladies. It was adultery. This was because it involved the serious governance of customs in the Republic. In a republic, purity seems to have been protected. But when it collapsed and a monarchy or dictatorship took over, the people learned from the ruler. Adultery progressed and the country eventually collapsed. We have learned that the family court exists today, a fact that has existed since Roman times. However, there is a difference between today's family courts, which deal with domestic affairs and juvenile crimes as they have more of a supervisory role for women. Despite the establishment of family courts in Rome, the emperors were unable to deter sexual debauchery. The goodness of the practice proves that it is not shaped by the legal rule of the emperors.

Although women are mentioned, there is one case that illustrates Montesquieu's foresight. It is the common property system for married couples in Chapter 15. He says that common property between husband and wife is suitable for a monarchy. The reason is that it makes wives take more interest in household chores and returns them to the care of the home. On the other hand, the republican system is detrimental because it allows property gains and wealth to be used for extravagance. The common property system for married couples appears to be equal for men and women, but it depends on the political system. In a republican system, wealth causes women to engage in extravagance. However, under the monarchy, women at the court were extravagant. Herein lies the contradiction between Montesquieu's vision and his own.

These contradictions are also true of the beautiful customary law of the Samnites in Chapter 16. The Samnites who lived in south central Italy in the founding period of Rome had a customary law that is admirable. That is, one gathered all the young men and judged them. Of all, the one chosen as the best took as his wife a daughter of his choice. The one who received the second highest vote after him also chose a wife. The same applies to the following. Superior qualities and service to one's country were taken into consideration. According to Montesquieu, it was an excellent practice to be admired. It is like state control of marriage. While excellent for procreation and prosperity, this is a completely male-dominated practice that does not take into account the ideas of women. In Montesquieu's time, the father decided on marriage and this would be an extension of that practice.

In the next chapter, Chapter 17, Montesquieu, who preaches male dominance, says that it is against both reason and nature for the master in the home to be a woman. However, he says it is reasonable for a woman to rule an empire. The gentleness and modesty of women make good governance possible. He says that ladies succeed in India, the Grand Duchy of Moscow and England. Probably Queen Elizabeth of England has made a strong impression. There may also be the later reign of Maria Theresa of Austria. But there is also the aforementioned brutal example of Empress Dowager Cixi in China.

7. THE PSYCHOLOGY OF BAD EQUALITY IN DEMOCRACY

Part 8, Chapter 2, Corruption of the Principles of Democracy, describes the principle defects of democratic government. It states:

"The principle of democracy is corrupted not only when the spirit of quality is extinct, but likewise when they fall into a spirit of extreme equality, and when each citizen would fain be upon a level with those whom he has chosen to command him."²⁸

What does that mean? I can do the work of a representative because I have chosen to do so. I feel that I am equal to the representative. In other words, when anyone tries to obtain the post of representative, he or she becomes corrupt. They elect a representative and think that they are the same as the representative. There is no respect for the legislators. It is disrespect for all office holders. One has no respect for the legislator nor for the old man, or even the father. There will be no love of custom and order. Soon virtue will be lost. Voting is bought with money, because then anyone can become one. This evil spirit of equality corrupts and destroys democracy. The collapse of authority and order leads to the collapse of society. This is possible even today.

Let me give you an example of psychological analysis. A town mayor was elected. A high school classmate of the mayor is often heard to say, "In high school, he was far below me in grades. How could he become mayor? If he could do it, I could easily become mayor, too. I'll go to the mayor's office and pressure him to support my new project". This kind of relationship is a foot-dragging game if one step is taken in the wrong direction. The result is a repeated recall and re-election of the mayor. Political stability is lost because a leader cannot be determined. In addition, elections continue to be rigged.

An example of extreme equality is communism. Communism demands equality of wealth. Property is owned by the state and there are no beggars. Once one leader is chosen, the rest is extreme equality. The examples are the current China, North Korea, Cuba and the former Soviet Union. Their leaders are the historical oppressors, Stalin and Mao Zedong. The number of those purged by Stalin is said to be as many as 20 million and Mao Zedong purged 4-5 million people. In the end, the Soviet Union collapsed. Equality runs the risk of tipping to the extreme. Montesquieu seems to have predicted this.

"Democracy has, therefore, two excesses to avoid – the spirit of inequality, which leads to aristocracy or monarchy, and the spirit of extreme equality, which leads to despotic power, as the latter is completed by conquest."²⁹

Here we have tyranny. In Part VIII, Chapter 21, we are told about the Chinese empire.

²⁸ *ibid.* p. 109.

²⁹ *ibid.* p. 110.

8. ON CHINESE TYRANNY

A large empire is a characteristic of a tyrannical regime because it governs a vast territory. From this point on, China becomes a despotic regime. A republic is a small state and a single monarchy is a medium state. In Montesquieu's mind, tyranny is imagined as the empires of China, Turkey, Persia and India. By the way, the difference between a monarchy and a despotism is that in a monarchy, laws exist and laws function. On the other hand, a despotism is an arbitrary government of the emperor, in which laws do not function. Certainly, Qin Shi Huang of the Qin Dynasty and Kublai Khan of the Yuan dynasty of China may have had this aspect. However, that is not to say that China has no laws and that they do not function. To rule a vast territory, one needs a certain amount of law. China has had law-oriented thought and legalists since around the 4th century B.C. Montesquieu's view that tyranny is the absence of functioning laws seems to be an oversimplified distinction between monarchy and tyranny. Sultanates such as Turkey and Persia also have Islamic law, which is still functioning today in the 21st century. In a sense, this seems to be a failure of simplification. Montesquieu notes at the end of Chapter 9 of Book VI: "I shall show hereafter that China is, in this respect, in the same case as a republic or a monarchy."³⁰

He describes it as follows. This is a contradiction and he himself also notes that the distinction between the three polities was useless.³¹

To sum up, Montesquieu had a difficult time discussing China. He proceeds with the people's definition. He then describes the Chinese as "a people who cannot be made to do anything without beating them with a stick". In short, the Chinese are animalistic and can only be manipulated with a stick or a whip. In the end, however, they triumph over tyranny.

"The climate of China is surprisingly favorable to the propagation of the human species. The women are the most prolific in the whole world. The most barbarous tyranny can put no stop to the progress of propagation....In spite of tyranny, China by the force of its climate will be ever populous, and triumph over the tyrannical oppressor.

China, like all other countries that live chiefly upon rice, is subject to frequent famines. When the people are ready to starve, they disperse in order to seek for nourishment; in consequence of which, gangs of robbers are formed on every side. Most of them are extirpated in their very infancy; others swell, and are likewise suppressed. And yet in so great a number of such distant provinces, some band or other may happen to meet with success. In that case they maintain their ground, strengthen their party, form themselves into a military body, march up to the capital, and place their leader on the throne.

From the very nature of things, a bad administration is here immediately punished."³² Here, geopolitics describes China's vastness and population growth and states that this population growth will overcome tyranny. Today, China is still the most

30 *ibid.* p. 81.

31 *ibid.* p. 122.

32 *ibid.* pp. 122–125.

populous country in the world with 1.2 billion people and a vast land mass. Because of its long history, various dynasties have emerged, prospered and declined. Famine led to the expansion of bandit gangs, which eventually became dynasties. When the politics of that dynasty is bad, the heavens change its rulers. It is a revolution. Revolutions occur at the behest of heaven. It is a heavenly idea. Heaven was originally the ancestor god, the nature god, the ruler of the world and the universe. Eventually it became the stream of the Great One, Life, which is so great and beyond words that it is also called nothingness. It became the foundation of Chinese and Asian thought. My concept of nothingness is in this tradition. On the basis of this heaven, governments are destroyed and built. The Chinese monarchs knew this law. Therefore, they encouraged the people to have only one virtue: labor. For the people's labor, the sovereign must also be frugal and moderate. It was Confucius who taught this. His teachings contributed enormously to the building of the Chinese empire. Montesquieu could not connect the teachings of Confucius to the expansion of the empire. Geopolitics alone would inevitably lead to a dependence on power and, in the end, geopolitics alone limits our understanding.

“China is, therefore, a despotic state, whose principle is fear. Perhaps in the earliest dynasties, when the empire had not so large an extent, the government might have deviated a little from this spirit; but the case is otherwise at present.”³³

In China, where the land area is small, it may have been a monarchy. But when the country became vast, it became a rule of force and fear. It is doubtful that this can be said so simply. While the rule of force has come up, the next section, Part II, Part IX, describes the relationship between defense forces and law.

9. DEFENSE CAPABILITIES AND THE MODERN WAR IN UKRAINE

As described briefly in the previous section, as I write this paper on March 30, 2022, Russia advanced into Ukraine. The world is in the middle of a major economic crisis. Hundreds of thousands of Russian troops are besieging Ukraine, just prior to the capture of Kiev from the west and east to the capital. During the war, Russian President Vladimir Putin has suggested the use of nuclear weapons, causing a worldwide uproar. Moreover, Ukraine has one of the largest nuclear power plants in Europe. If it were to explode, radiation would be dispersed throughout the world. Near Kiev is the Chernobyl nuclear power plant which accident resulted in a massive explosion, and the Russian military has captured it. This is no longer just an issue for Russia and Ukraine. It is now a crisis of world destruction, involving nuclear weapons and nuclear power plants. How did this conflict arise?

The dialogue was also televised twice, at the end of February and the beginning of March. The first was on February 28, with the former Japanese Minister of Foreign Affairs and the Ukrainian Ambassador to Japan. The second one was on March 2, the former Japanese Defense Minister and the Russian Ambassador to Japan. Each session lasted two hours each. Each country's arguments and ideas were presented respectfully. I was able to listen to both Ukraine's and Russia's arguments. However,

³³ *ibid.* p. 125.

Russia's argument was the threat of NATO. It is claimed that after the collapse of the former Soviet Union, NATO and the capitalist camp led by the United Kingdom and the United States have expanded their power and are threatening Russia. The primary reason is to prevent Ukraine from seeking NATO membership. In terms of threats, NATO is similarly threatened by Russia. If threat is the reason, then NATO can also declare war on Russia. This is not a reason. The second reason is to protect Russian citizens in Donetsk and Luhansk Oblasts in eastern Ukraine, who are being persecuted. It is the same in every war to go to war in the name of protecting one's own people. Hitler's advance was also to protect the Germanic people. However, the protection of the Russians in eastern Ukraine quickly led to a surprise attack on the entire Ukraine and that too on a Ukrainian air base, taking control of the airspace and advancing violently. Russia says it is not attacking civilians. However, the public feels threatened, so they are evacuating. Already 4 million people have fled to Poland, Romania and other countries. Dozens have also evacuated to Japan. The Russian government claims that the video is nothing more than a video creation of NATO countries. However, in the interviews, we see one displaced person after another who is suffering in reality. The work of the Red Cross is also evident. It is no longer possible to pass them off as fakes.

On the other hand, in Russia, speech is strictly controlled and only the Russian state-run broadcaster is functioning. It is obvious that this is convenient for the regime. In Japan, at a rough count, there are more than 10 broadcasters. And a wide variety of information is being broadcast. Some of it may be confusing, bad information or fake. However, there is no such control of speech in Japan. Demonstrations are also legally allowed. I also protested at the Russian Embassy with a placard reading "NO WAR PEACE". The police politely responded. However, in Russia, as well as in China, people have been arrested just for holding placards. This situation is unusual. Most Russians seem to think that it will end soon, just like the last annexation of Crimea. The annexation of Crimea was blitzed by Russia before it was well understood and annexed without any major armed conflict. As for those of us in Asia, it is really just a matter of Ukraine and Russia. This time, however, is different. The war has escalated, displacing more than 4 million people and threatening nuclear war. Japan is an Asian country, the victim of two atomic bombings and in 2011, it suffered a massive earthquake that triggered a tsunami and the explosion of the Fukushima nuclear power plant. With these experiences, Japan cannot stand by and watch another country's war. We want this war to stop as soon as possible. I believe this is the view of most of the world.

This is the feeling of regret when one sees someone who has lost a family member or home in a war, or the feeling of pity when one sees someone's misfortune. It is in a passage from the Chinese Mencius. If anyone sees a small baby about to fall into a well, one should feel "compassion". It is not because he wants to get in with the child's parents or because he cares about his reputation. This "heart of compassion" is the starting point of "Jin, Benevolence" the universal love of humankind. It is from this standpoint that I am discussing the war in Ukraine.

Back to Montesquieu's defenses. In Montesquieu, a republic is destroyed by a foreign power if it is small and by an internal defect if it is large. This law always exists. How can a small country survive? Is there a state system with the advantages of

a republican government and the external power of a monarchy? Here, Montesquieu raises the concept of a state system. Aristotle also discussed this and Montesquieu gives a concrete example of a federated republic. It was this federation that made ancient Greece prosper and it was this federation that enabled the Romans to conquer and defend the world. In Montesquieu's time, he cited the Dutch, German and Swiss alliances, which are considered the eternal republics in Europe. Such countries, powerless states are always in danger of invasion. If conquered, they lose their executive and legislative powers and simply live like slaves. Montesquieu proposes a national system of federated republics. The spirit of republican government is peace and moderation.³⁴

This seems to apply to Japan which is a small country. It is an island nation with an extremely small land area. However, it has a population of 120 million. Some kind of cooperation with neighboring countries is necessary. After World War II, Japan and the U.S. entered into a mutually beneficial defense and economic relationship through the Japan-U.S. Security Treaty. There are many problems. One should not forget the participation of Japan in the Vietnam War. However, Japan has managed to maintain peace through this relationship. Even without human warfare, Japan is at war with earthquakes, volcanic eruptions, tsunamis and other natural disasters. It is nervous about how to deal with them.

Section 10 has a definition of war. What were Montesquieu's views on pacifism?

"The life of government is like that of man. The latter has a right to kill in case of natural defence: the former have a right to wage war for their own preservation.

In the case of natural defence I have a right to kill, because my life is in respect to me what the life of my antagonist is to him: in the same manner a state wages war because its preservation is like that of any other being."³⁵

Human beings have the right to protect themselves as self-preservation. This is natural defence and in the case of a nation, it is self-defense. War as a form of national defence is recognized. When trouble arises between citizens, they can appeal to the court but if they cannot wait for the court's ruling, they can defend themselves only when they are about to lose their lives.

Between nations, aggression is the only time the only means of preventing annihilation. As a result, small societies have the right to wage war more often than large societies. This is because small societies are always in danger of ruin. Therefore, the right to war arises from strict justice. Leaders need to keep this in mind. If he stands on his own glory, his own ritual, his own merit, blood will be spilled on earth and lives will be lost.

Even if you win a war, you must not treat the other side like a slave. Montesquieu is referring to the Roman law of universal civil law. It is necessary that reason, religion, and philosophy show respect for the customs of the other side. It is that of Alexander the Great that he honors in his method of governance. He created an unprecedented empire from Macedonia to Greece, Egypt, Persia and India. He had a 'spark of

34 *ibid.* pp. 127–128.

35 *ibid.* p. 133.

reason³⁶ in his conquest plans, practicality and passion. In chapter 14 it is noted. His reign was as follows:

- (1) At the beginning of the business, they did only solid things. However, when the situation became stable and not influenced by fortune, he took measures that seemed reckless. In his struggle against the Persian navy, he won by drawing the Persians away from the coast and forcing them to abandon their superior navy. Alexander took Egypt because King Darius had massed a large number of his troops in other areas, leaving Egypt defenseless in the meantime. Persia, a vast empire, was exposed to the inconveniences and disadvantages of its vastness. As a result, Alexander won the battles of Issos and Arbela, and came to dominate the world. After the Battle of Issos, Alexander consolidated his occupied territories and pursued Darius without pause. His advance was so rapid that Darius was unable to regain his footing back in his own province and was defeated.
- (2) On the retention of conquered lands. Alexander did not impose Greek laws, culture and customs on the Persians. He did not treat the Persians as slaves. He showed much moderation and respect to the mother and wife of the defeated King Darius. This was probably due to the influence of Alexander's teacher, Aristotle.

He respected Persian customs and laws and encouraged marriages between Greeks and Persians. The union of peoples through marriage is strong. Alexander took the women of the conquered nation as his wives. The policy of encouraging marriage led to the establishment of many Greek colonies in Persia, which eventually became a large empire. He also sent Jewish colonial groups to Alexandria to keep the Greeks and Macedonians from depleting their power. From this period on, the Jews had a unique ministry. Any practice was good as long as it was faithful to Alexander.

As for the placement of officials, a Macedonian was placed at the head of the army but a local was placed at the head of the government. Balance was taken into consideration. He also respected the ancient traditional culture and valued monumental buildings. In an interesting expression by Montesquieu, "He conquered everything in order to preserve everything," Alexander's idea was always to increase the prosperity and national power of his country. Normally, a king would be inclined to extravagance and vanity but Alexander was a man of frugality. He closed his hand tightly to private spending and opened it to public spending. He was a Macedonian when it came to setting up his own house but he was a generous king when it came to wounding his generals, sharing the spoils of war and promoting his soldiers. This is Aristotle's practice of moderation.

- (3) I will also give you his misdeeds. One is the burning of Persepolis and the other is the murder of Kleitos. Persepolis was the historical royal palace of Achaemenid Persia. According to "The Eastern Expedition of Alexander the Great" by Arrianos, Alexander set it on fire himself, despite repeated warnings from his men.³⁷ However, Arrianos notes that he does not believe that Alexander acted calmly and that he was not getting back at the Persians of old by setting

³⁶ *ibid.* pp. 143–146.

³⁷ "Chronicle of the Eastern Expedition of Alexander the Great", Upper volume, Flavii Arriani, Translated by Akira Oomuta, Iwanami Bunko, Tokyo, 2001, pp. 230–231.

fire to it. In Plutarch's "Contrastive Chronicles," it is said that Persepolis was set on fire by words of a prostitute at a banquet. However, even Persepolis in ruins is a world heritage site today. There must have been a considerable reason for setting fire to it, but it seems to be a mystery. It can be said that Alexander took this arson as instructive and thereafter preserved the cultural heritage.

Kleitos (early 4th century BC – 328 BC) was an ancient Macedonian general, friend of Alexander and one of his close officers. His sister was Alexander's nanny and a friend of Alexander. He saved Alexander's life when he was in danger in the war. He opposed Alexander's policy of fusion of Eastern and Western cultures and was often at odds with Alexander. Although he was Alexander's subordinate, he was older than Alexander. He expressed his opinions because he was close to Alexander. Alexander's success was not his alone; it was the combined efforts of his friends. At a banquet, they quarreled and Alexander, in a fit of passion and liquor, stabbed him to death with a spear. This can be seen as a rebellion against Alexander's policies. But Alexander regretted his friend's murder for the rest of his life.³⁸ Montesquieu wrote of this regret, saying that he saw the beauty of his soul near his fury and his weakness.

In a battle Kleitos saved Alexander by cutting the arm of a warrior who was slashing from behind. Shortly before that, Alexander had been engaged in a white combat with an enemy warrior. The other warrior's sword struck Alexander on the head, blowing off part of his helmet. Meanwhile, Alexander stabbed his opponent in the chest with his spear, which pierced through his armor and reached his heart. Luckily, Alexander's helmet held and Alexander survived. He was also lucky in white combat.³⁹

Note that if it is a political entity but the conquest is extensive, it assumes tyranny. This is where the contradiction in Montesquieu's classification of the three political entities comes in. Ruling a large empire requires strong power and has a tyrannical aspect. That is what Montesquieu is saying. In Montesquieu's first definition of tyranny, there were no laws and the arbitrary will of one ruler was everything. In Alexander's rule, however, the conquered lands respected their own customs and laws. There was legal control, which Montesquieu's definition does not apply. Since he ruled according to local laws and customs, Alexander's rule seems to have been a monarchy, an aristocratic monarchy since it was supported by powerful retainers such as Kleitos.

The above has discussed Alexander's rule from Montesquieu's view of war. Montesquieu sees in Alexander an ideal. Although he was a strong and tyrannical ruler because of the vast scope of his rule, there were many conversations at banquets, especially with Kleitos. Even though he was drunk and Kleitos was rude, there were dialogues and discussions.

Here we return to the contemporary war in Ukraine. Ukrainian President Zelensky is calling for an immediate ceasefire and total withdrawal of Russian Troops from Ukraine territory but Russian President Putin is demanding neutralization, demilitarization, and other conditions. There is no sign of a ceasefire. The only people who can stop Putin are the Russian people. However, there are strict controls on speech in Russia with arrests and severe penalties for simply participating

³⁸ *ibid.* pp. 283–286.

³⁹ *ibid.* p. 79.

in demonstrations. A law has been hastily enacted that allows the company to be punished for any information that differs from the government's views on the war. With this, many foreign media outlets were forced to leave and information could no longer be disseminated within Russia. And then came the purge. Critical Journalists for the government have been poisoned and imprisoned for 15 years. Nearly 200 people have been assassinated by Putin's rule as a result of such repression. Such purges have also occurred in Japan in the past. Now, it is more pronounced in China and North Korea. It is, so to speak, a politics of fear. In this politics of fear, the courts are at the mercy of the country's leaders and do not function as courts. The courts are absorbed by the legislators and the executive and become arbitrary to the dictatorship. So Montesquieu, insisting on the separation of powers, wrote of the weak courts as nothingness. We will proceed to elucidate this.

10. SEPARATION OF POWERS AND THESIS OF "THE COURT IS NOTHINGNESS"

Montesquieu advocates the famous separation of powers in Book 11, Chapter 6, "On the English State System".

"In every government there are three sorts of power: the legislative; the executive in respect to things dependent on the law of nations; and the executive in regard to matters that depend on the civil law.

By virtue of the first, the prince or magistrate temporary or perpetual laws, and amends or abrogates those that have been already enacted. By the second, he makes peace or war, sends or receives embassies, establishes the public security, and provides against invasions. By the third, he punishes criminals, or determines the disputes that arise between individuals. The latter we shall call the judiciary, and the other simply the executive power of the state."⁴⁰

As for the first legislative power, it is obvious. The second power is the universal law, or international law. That is the executive power to make peace, declare war, conduct diplomacy, ensure security and prevent aggression. The third power is civil law, that is, the power to adjudicate individual disputes within a state, the judicial power. It would be more concise if he had written legislative, executive and judicial power from the beginning. Having made this distinction clear, he issues a warning.

"When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression."⁴¹

40 "The Spirit of Laws", p. 151.

41 *ibid.* pp. 151–152.

When legislative and executive powers are combined, freedom does not exist. And when judicial power is combined with legislative and executive power, it means the power of the oppressor, the dictator and freedom does not exist. All is lost. For these three powers are combined in the single body of the emperor to form a formidable tyrannical rule.

Examples of this horrendous tyrannical rule include Sulla (Lucius Cornelius Sulla Felix, 138 BC – 78 BC) in the late Roman Republic and Henry VIII (1491–1547) of England. Sulla and Henry VIII are discussed elsewhere but not in this section. In particular, Sulla is discussed in the “Dialogue de Sylla et d’Eucrate (Dialogue of Sulla and Eucrate)”, written around 1724.⁴² This is a literature of dialogue between the fictional philosophers Eucrate and Sulla.

Sulla was a regent, general and dictator in the late Roman Republic. And he had a reputation as a brave military man and an excellent politician, he rebelled against Marius, who had brought him up. Then Sulla forced him to become a regent and dictator. He violently oppressed the Mariusians. He created a proscriptio (list of executioners) and made anyone who did not support Sulla write his name on this list as an enemy. It is said that about 9,000 people died in the purge. At this time, Sulla was a dictator and had full grasp of all legislative, executive and judicial powers. Eventually, Sulla abandoned this post and enjoyed a peaceful, hedonistic life.

In response to this oppression, Montesquieu dialogues with Sulla, who self explains. The most important question is: “Why did you oppress them so cruelly? What are your thoughts on that?” The first is. Sulla answers without any guilt. “My policy was for the peaceful rule of Rome. Because of it, we live in peace.”

This purge of Sulla came as a shock to Montesquieu. He saw the maladministration of the three powers.

Next is Henry VIII. While he is admired as an able and distinguished monarch, he was married six times during his life. One of his most tragic marriages was to the young Anne Boleyn, whom he fell in love with despite the fact that he had a wife, Catherine. The marriage was arranged. That meant a divorce from Catherine. However, those were Roman Catholic times. The Pope did not recognize divorce. So England broke away from Catholicism and became independent as the Church of England. This move was opposed by Thomas More (1478 - 1535), a historical humanist who was the Lord Chancellor at the time. Thomas More opposed his marriage to Anne. Henry VIII, who was disturbed, executed Thomas More for treason. Thomas More left behind the words, “Even in my death”. The Lord Chancellor is the current Chief Justice of the Supreme Court. Henry VIII executed the Lord Chancellor for marrying a young girl. It was a historic suppression. He was canonized by the Catholic Church and the Anglican Church in 1935, 400 years after his death. So was Anne happy when she married Henry VIII? Ironically, three years later, Anne, who did not give birth to a boy, was executed for adultery. The movie “Anne of 1000 Days” is well known. Anne in the movie can only be described as pitiful. Henry VIII married and divorced more. In the end, he died of a maggoty disease.

⁴² Montesquieu [Life and Thought], 3 volumes, Tadahiro Fukukama, I, 1975, Sakai Shoten, pp. 310–316.

Montesquieu, who takes up the misfortune of rulers having jurisdiction as representative of these two bad examples, advocates the independence of the courts. However, unlike parliament, the courts are only weak institutions because they do not have a popular base. Symbolic of this is that the court is nothingness. Moreover, even if a court institution is created, there is no need for a permanent court because the rulers control the judges with their power. And so he notes the thesis that "The court is nothingness." Instead, he proposes a trial by jury of termed intellectuals and other jurors, referring to the jury system that existed in 18th century England. Since it is not a permanent institution, it has the effect of preventing interference by the ruler.

Nor should the court be an institution that strikes fear into the hearts of the people. When the people know who the judges are, they fear them. This represents a politics of fear. Both Sulla and Henry VIII were dictators and kings but they were also, in effect, judges. The people of the city would have been frightened and terrified of them. This is meant to deny that.

"The judiciary power ought not to be given to a standing senate; it should be exercised by persons taken from the body of the people at certain times of the year, and consistently with a form and manner prescribed by law, in order to erect a tribunal that should last only so long as necessity requires.

By this method the judicial power, so terrible to mankind, not being annexed to any particular state or profession, becomes, as it were, invisible. People have not then the judges continually present to their view; they fear the office, but not the magistrate."⁴³

In French, the court is invisible, it is nothingness. This is an expression.

The court has no foundation. The following is a description of it.

"The legislative power is therefore committed to the body of the nobles, and to that which represents the people, each having their assemblies and deliberations apart, each their separate views and interests.

Of the three powers above mentioned, the judiciary is in some measure next to nothing; there remain, therefore, only two;⁴⁴

11. CONCLUSION

The above discussion has focused on Parts I and II of "The Spirit of Laws," discussing law as an organic linkage of the world, the three political bodies, education, and the military.

The court is nothingness, which means, first, that the courts do not have a base like the parliament. In that sense, it has no power base. So it is nothingness.

Second, the court is nothingness, which means that permanent judges are unnecessary in the sense of eliminating fearful judges. It can be a one-year term position, a jury. No court commissioner. Instead, it would preach the need for a higher court to watch over and keep custody of the law. This is predicated on the French monarchy.

43 "The Spirit of Laws", p. 153.

44 *ibid.* pp. 155–156.

Third, the judges are made invisible, so that it is not known who the judges are. There is no fear of judges. Sulla and Henry VIII would have had the people terrified because they were the judges. Henry VIII declared, "I will punish for high treason all those who announce the death of the king."⁴⁵ So the doctors did not mention that the king was in a critical condition in the last stages of his illness. The king died of a general, maggoty illness. Meanwhile, Thomas More, who had opposed the marriage of Henry VIII and Anne Boleyn, was executed for treason. Thomas More was a Lord Chancellor, now Chief Justice of the Supreme Court. The chief justice of that court was executed and became nothing. His life ended but his courageous claim lived forever. As mentioned above, 400 years later, he became a saint of the Catholic Church and the Anglican Communion. His achievement was his lofty aspiration to defend "the independence of judges" and "the conscience of judges," despite the king's repeated blackmail. The spirit of "independence of the judiciary" and "conscience of judges" has reached the Japanese judiciary today. It has had an eternal and infinite influence on Japan's judiciary. Montesquieu, a former judge who lived in England for two years and observed Parliament, would have been impressed by the spirit of Thomas More. The judge was reduced to nothingness. Over this, the thesis that "the court is nothingness" was described. From this philosophy Montesquieu established the separation of powers derived from Aristotle. Further I would superimpose and develop that idea into the principles of nothingness and love leading to eternity, infinity, transcendent-being and love. Such a development of philosophy is what Montesquieu would have wanted. He expected his readers to think, not just read.

45 *ibid.* pp. 192–193.



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Fisioterapia pelos caminhos da principiologia em Bioética */ Physiotherapy according to Principiology by Bioethics*

Summary

Morality requires not only that we treat persons autonomously and refrain from harming them, but also that we contribute to their welfare, or not. Such beneficial actions fall under the heading of beneficence, and others are malificents. No sharp breaks exist on the continuum from the non infliction of harm to the provision of benefit, but principles of beneficence potentially demand more than the principle of normal beneficence because agents must take positive steps to help others, and make up the justice. These principles of Ethics play a very important role to the pedagogy, and your applications, as I presents on this paper with applications in Physiotherapy.

Key words: Principlism, Beauchamp, Childress, bioethic, ethic, applications, medicine, casuistic, pedagogic reflexion.

INTRODUÇÃO

Na sua magnífica obra, T. Beauchamp e J. Childress apresentam um modelo de Bioética com a finalidade de servir como instrumento, para a deliberação ética, na prática dos profissionais de saúde. Este modelo surgiu logo após o conhecido *Belmont Report* – finalizado e aprovado em 1978 – pelo que existem semelhanças estruturais e de conteúdo entre este último e a teoria de Beauchamp e Childress.¹

1 Em 1974, o Congresso Norte-Americano criou a "National Commission for the Protection

Neste modelo bioético, os princípios possuem carácter *prima facie*, devido à influência, principalmente, da obra *The Right and the Good* de W.D. Ross. Deste modo, a validade *prima facie* dos princípios conduz à ausência de qualquer tipo de hierarquia entre os quatro, dado que num primeiro momento todos têm valor e devem ser respeitados, mas na medida em que outras razões suficientemente fortes exigirem a adopção de um outro princípio, a infracção poderá ser justificada. Para Beauchamp e Childress, alguns actos, do mesmo modo, podem ser *prima facie* errados ou correctos em determinadas circunstâncias, porque duas ou mais normas entram em conflito nessas circunstâncias.² Frente a princípios, que são *prima facie* e conflituam entre si, o dever de agir de acordo com um outro princípio será determinado pela análise do que é certo ou errado na circunstância concreta, em que o indivíduo se encontra.

Assim, a partir da 4ª edição dos *Principles of Biomedical Ethics*, Beauchamp e Childress propõem o método de especificação e ponderação dos princípios por forma a obter uma coerência geral e um apoio mútuo entre normas socialmente aceites. Através da especificação, procede-se a um desenvolvimento conceptual progressivo do princípio abstracto por forma a que este se relacione cada vez mais com as situações concretas da prática. A ponderação é assegurada pelo percurso contínuo entre os princípios e as situações concretas, e vice-versa, para ser possível a aferição destes à prática.³

Com estas particularidades metodológicas, que caracterizam o modelo, os autores pretendem salvaguardar as lacunas da aplicabilidade dos princípios que propõem, principalmente em situações concretas de conflito entre princípios, respondendo, assim, a algumas críticas de que foram alvo. Na realidade, ao proporem este método, para especificar e ponderar sobre os princípios, os autores estão a admitir que o modelo não prevê regras directamente aplicáveis a estas situações, o que parece ser indicativo que tal não constitui um objectivo a atingir.⁴

Beauchamp e Childress, para além de aliam princípios tradicionais da ética médica (beneficência e não-maleficência) com outros até tão ausentes das considerações éticas da prática clínica, desenham esses princípios a partir da moral comum, como um grupo de normas que todas as pessoas sérias partilham.⁵ De acordo com os autores, a moral comum contém normas que cobrem todas as pessoas em todos os lugares. Nenhuma norma é mais básica na moralidade da vida,⁶ demonstrando assim o seu propósito em conhecer um modelo que assenta em princípios de natureza universal e objectiva. O facto dos princípios encontrarem a sua justificação na moral comum parece constituir uma forte razão para a utilização destes na reflexão bioética actual.⁷

of the Human Subjects of Biomedical and Behaviour Research”, comissão esta responsável pela elaboração do “Belmont Report”, da qual também fez parte Tom Beauchamp, pelo que não é surpreendente as semelhanças encontradas.

2 BEAUCHAMP, p. 14.

3 *Idem*, 4ª ed., pp 24–33.

4 GILLON, R., “Ethics needs principles – four can encompass the rest, and respect for autonomy should be first among equals”, in: *Journal of Medical Ethics*, 2003, 29: 307–312.

5 BEAUCHAMP, p. 3.

6 *Idem*

7 NEVES, M. C. P., “A teorização da Bioética”, in: NEVES, M. C. P. (coord.) – *Comissões de Ética. Das bases teóricas à actividade quotidiana*, 2ª ed. revista e aumentada, Coimbra: Gráfica de Coimbra, Lda, em colaboração com o Centro de Estudos de Bioética / Pólo dos Açores, 2002, p. 46.

A Fisioterapia é um serviço prestado por fisioterapeutas a indivíduos de forma a desenvolver, manter e restaurar o máximo movimento e capacidade funcional ao longo da vida. Os fisioterapeutas estão focados em identificar e maximizar a qualidade de vida e o potencial de movimento nas áreas da promoção, prevenção, intervenção, habilitação e reabilitação.

O principal objetivo da Fisioterapia é proporcionar a oportunidade para vivenciar a realidade clínica, preparando-os para a vida profissional, enquanto fisioterapeutas. Neste contexto, existe a possibilidade de contactar com casos reais de patologias e, assim, criar uma ponte de ligação entre as aulas teóricas e as práticas. Tem também como objetivos proporcionar ao aluno não só o aperfeiçoamento das técnicas aprendidas em sala e aquisição de novas técnicas, bem como o desenvolvimento de uma atitude profissional face ao utente, à sua família e aos outros membros da equipa. Deste modo, o aluno consegue desenvolver de forma tutelada a capacidade de avaliar o utente, definir objetivos, planear o programa de tratamento e usar os métodos e técnicas apropriados para atingir os objetivos, ao mesmo tempo que desenvolve as suas capacidades interpessoais e éticas. Assim, neste relatório, irei relatar o que fiz durante o estágio e os casos em que tive oportunidade de intervir de forma ativa.

PRINCÍPIO DO RESPEITO PELA AUTONOMIA

O princípio do respeito pela autonomia é um princípio que afirma a capacidade do indivíduo para a autodeterminação e exige a regra da veracidade, como condição mínima para a sua aplicabilidade. De acordo com os autores, o respeito pela autonomia requer um reconhecimento permanente como a pessoa tem o direito a agir em concordância com as suas próprias convicções. Tal não significa apenas a abstenção de interferir em escolhas individuais, mas também a obrigação moral de promover condições que permitam a realização dessas eleições autónomas. Como tal, as circunstâncias que possam impedir o agir autónomo da pessoa como, por exemplo, o medo ou a falha de conhecimento acerca de determinada situação, têm de ser evitadas.⁸ Segundo esta perspectiva, respeitar a autonomia da pessoa implica o reconhecimento da capacidade de todas as pessoas para as próprias decisões, baseadas nos valores pessoais e crenças e a promoção efectiva de condições que favoreçam o exercício dessa autonomia. Nesta linha de pensamento, o respeito pela autonomia é uma acção que se dá quando o direito das pessoas é assegurado, reconhecido e promovido.

O princípio do respeito pela autonomia pode ser formulado de forma negativa, segundo a qual as acções autónomas não devem ser sujeitas ao controlo exercido por outras pessoas.⁹ Nesta formulação, ampla e abstracta, o princípio não admite excepções e, como tal, requer especificação em contextos particulares por forma a que se constitua um ditame de conduta, que assegure os direitos da pessoa como, por exemplo, o direito à liberdade e ao consentimento informado. Assim, através da especificação, será possível determinar as excepções válidas ao princípio que surjam, eventualmente, em determinadas circunstâncias.

⁸ Cf. BEAUCHAMP, pp. 63–64.

⁹ *Idem*, 5ª ed., p. 64.

Na sua formulação positiva, o princípio exige que se revele informação que auxilie a pessoa no processo em que se favoreça a tomada de decisão autónoma. Assim, a revelação de informação constitui uma obrigação moral do profissional de saúde. Contudo, para além da revelação importa, ou ainda mais, que se assegure que a informação revelada seja compreendida, que se mantenha a voluntariedade na decisão e que se fomente adequada tomada de decisão.¹⁰ Isto demonstra que as acções autónomas podem necessitar de algum tipo de auxílio para que ocorram na prática, como acontece quando um doente quer decidir sobre o seu tratamento. Mas, para isso, necessita da ajuda do profissional de saúde, para que entenda os possíveis benefícios e prejuízos implicados pela sua decisão.

Por seu lado, a omissão de informação constitui uma violação do princípio do respeito pela autonomia, salvo casos em que a pessoa recusa a informação, quando esta poderá ter um efeito antiterapêutico ou em situações de incompetência ou urgência, ou seja, nas situações em que é invocado um privilégio terapêutico.¹¹

As duas formulações do princípio do respeito pela autonomia possibilitam a derivação de várias regras, as quais também têm carácter *prima facie*. São exemplos dessas regras: “dizer a verdade”, “respeitar a privacidade das pessoas”, “proteger a informação confidencial”, “obter o consentimento dos doentes para as intervenções”, “quando solicitado, ajudar as pessoas a tomar decisões importantes”.¹²

Na formulação deste princípio, Beauchamp e Childress tomaram por base a moralidade de Kant. Contudo, o deontologismo kantiano evidencia a autonomia da vontade como princípio supremo da moralidade. Desta forma, desrespeitar a autonomia da pessoa implica a sua desconsideração como fim em si mesmo e a sua perspectivação como simples meio, susceptível de objectivação.¹³ A moralidade de Mill centra-se na individualidade dos agentes autónomos, pelo que se deve permitir que o indivíduo se desenvolva em função das suas convicções pessoais sempre que estas não interfiram na liberdade dos outros.¹⁴ Assim, o princípio enunciado por Beauchamp e Childress implica o respeito pela autonomia das pessoas, reconhecendo o direito de se expressarem e agirem de acordo com a sua vontade, desde que não haja prejuízos noutros indivíduos.

No que concerne à criação de condições para o exercício da autonomia, os autores indicam diversas fórmulas de acção absolutamente necessárias, das quais se destacam: a revelação de informação por parte do profissional de saúde, a verificação da compreensão da informação que foi revelada, a avaliação da competência do que tem de decidir, a avaliação da vontade da pessoa e do cumprimento do processo de consentimento informado, as quais passamos a apresentar com maior detalhe.

10 *Idem*, p. 64.

11 *Idem*, p. 84.

12 *Idem*, p. 65.

13 NEVES, M. C. P., “A teorização da Bioética”, in: NEVES, M. C. P. (coord.) – *Comissões de ética. Das bases teóricas à actividade quotidiana*, 2ª ed. revista e aumentada, Coimbra: Gráfica de Coimbra, Lda., em colaboração com o Centro de Estudos de Bioética / Pólo dos Açores, 2002, p. 45.

14 BEAUCHAMP, 5ª ed., p. 64.

A revelação de informação, para além de ser um direito do cidadão e um dever do profissional de saúde, salvo os casos em que há recusa a ser informado,¹⁵ constitui uma necessidade para a pessoa na medida em que a ausência desta não lhe permite um adequado processo de tomada de decisão. Todavia, o excesso de informação poderá constituir algo contraproducente, pois poderá dificultar o processo de compreensão da informação que é transmitida.

Sendo o processo de revelação de informação em saúde algo de complexo, uma vez que determinar o que deve ou não ser revelado, é uma questão não resolvida e de difícil consenso.¹⁶

Este modelo principialista preconiza que a informação deve ser dada em função das necessidades e pretensões do doente, para que ele seja capaz de decidir no melhor bem para si.¹⁷

Para explicarem melhor esta posição, Beauchamp e Childress fazem uma referência crítica a três critérios de revelação: critério da prática profissional, critério de pessoa razoável e o critério subjectivo. O primeiro critério confere ao profissional de saúde a determinação do como deve ou não ser revelado ao doente a informação, visto que são estes peritos nos assuntos a revelar e os detentores de um compromisso moral de agir para o bem-estar do doente. O critério de “pessoa razoável” determina que a informação deve ser revelada em função das necessidades de uma hipotética pessoa, ou seja, em função do que uma pessoa “razoável” considere importante para poder tomar uma decisão. Por último, o critério subjectivo é aquele que sustenta que a informação a ser revelada deve ser determinada em função das necessidades individuais da pessoa.¹⁸

Pelo exposto, pode-se verificar que no segundo e terceiro critérios, contrariamente ao primeiro, a autoridade na determinação das necessidades informativas desloca-se do profissional de saúde para a pessoa,¹⁹ o que leva a crer que poderá ser uma das razões pela qual os autores refutam o primeiro critério. No entanto, na opinião dos autores, o carácter hipotético e abstracto do segundo critério confere algumas dificuldades de ordem conceptual, moral e prático, pelo que defendem o critério subjectivo como o melhor critério moral a ser utilizado no processo de revelação de informação.²⁰

Uma outra obrigação que deriva do princípio do respeito pela autonomia, será assegurar e comprovar a compreensão da informação revelada. O processo de compreensão de informação pode ser comprometido por diferentes factores, nomeadamente a incapacidade por parte da pessoa em compreender informação elementar, a sua falta de atenção perante o que lhe é dito ou até mesmo a recusa à informação, o facto de a informação ser científica ou de natureza incompreensível e a quantidade excessiva de informação que é transmitida.²¹ Assim, os autores propõe algumas acções que devem ser empreendidas, de tal maneira que o processo de compreensão seja eficaz. De entre essas acções salienta-se o cuidado em adaptar

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16 *Idem*, pp. 81–83.

17 *Idem*, 5ª, pp. 81–83.

18 *Idem*, pp. 80–83.

19 *Idem*, p. 82.

20 *Idem*, pp. 80–83.

21 *Idem*, pp. 88–92.

a linguagem às características da pessoa, determinar a sua capacidade de compreensão e transmitir a informação necessária em diferentes momentos, esclarecendo todas as dúvidas manifestadas.²²

Dada a natureza complexa do processo de compreensão, os autores argumentam que para que ocorra uma tomada de decisão adequada, ou seja, informada e consistente com convicções do indivíduo, não existe necessidade de uma compreensão completa, mas sim que a pessoa seja capaz de compreender se dispõe da informação pertinente e confiança justificada e relevante acerca da natureza e consequências dos seus actos.²³ Na opinião dos autores, a subjectividade inerente ao processo de tomada de decisão não pode ser um impeditivo ao desenvolvimento de acções, que visam promover a eleição autónoma uma vez que, pelo facto das acções nunca serem completamente informadas, voluntárias ou autónomas, não se pode concluir que elas nunca serão adequadamente informadas, voluntárias ou autónomas.²⁴

Uma outra condição necessária para o exercício da autonomia é a competência da pessoa. O conceito de competência é contexto da tomada de decisão e definido, no modelo bioético principialista, como a capacidade da pessoa para entender a informação e para emitir juízos sobre essa informação em concordância com os valores, ao pretender alcançar determinado objectivo e expor o seu desejo perante os outros.²⁵ Para os autores, este conceito está associado ao da autonomia, não pelo seu significado, mas pelo seu fundamento, visto que uma pessoa autónoma é necessariamente competente para tomar decisões. Nesta linha de raciocínio, os julgamentos acerca da competência da pessoa, para autorizar ou recusar uma intervenção, devem-se basear na capacidade para entender e processar a informação, bem como para reflectir sobre as consequências de um acto.²⁶ A competência, para decidir, constitui uma *conditio sine qua non* para a aplicação do princípio do respeito pela autonomia, dado que a obrigação de respeitar a autonomia não se estende aos indivíduos considerados incompetentes ou não autónomos.²⁷

Uma outra obrigação requerida pelo princípio do respeito pela autonomia refere-se ao assegurar e promover a voluntariedade dos actos individuais. De acordo com a perspectiva dos autores, a voluntariedade de um acto reside na execução desse acto pela pessoa, sem que esteja submetida a qualquer tipo de controlo ou influência externa.²⁸ Neste sentido, a liberdade de eleição ou de decisão da pessoa deve ser assegurada pelos profissionais de saúde, para que o princípio seja respeitado. Assim, a obrigação moral consiste em coagir a pessoa para aceitar determinado tipo de intervenção clínica ou de investigação, podendo, no entanto, admitir-se algum tipo de persuasão, nomeadamente nas situações em que é necessário apelar à razão. De igual modo, compete ao profissional de saúde a verificação da presença das condições que, de alguma forma, podem comprometer a voluntariedade dos actos como, por exemplo, efeitos medicamentosos, distúrbios psicológicos ou, até mesmo, a própria doença.²⁹

22 *Idem*, pp. 88–92.

23 *Idem*, p. 88.

24 *Idem*, p. 89.

25 *Idem*, p. 71.

26 *Idem*, p. 72.

27 *Idem*, p. 65.

28 *Idem*, p. 93.

29 *Idem*, pp. 94–98.

Pelo exposto, poderemos verificar que a competência e a voluntariedade se assumem como pressupostos do princípio do respeito pela autonomia, na medida em que, pela ausência do primeiro, o princípio não pode ser aplicado e a ausência ou comprometimento do segundo constitui uma violação do princípio.

Um outro pressuposto será o consentimento informado o qual se assume como a expressão do exercício da autonomia e tem vindo a ser considerado como paradigma, em diferentes contextos, nomeadamente na assistência à saúde e na investigação. Aliás, no plano da relação profissional, a obtenção deste é um imperativo ético e uma exigência legal, bem como um processo pelo qual se reconhece, de forma efectiva, o direito do doente para participar activamente nas decisões relativas à saúde e no percurso da doença.

Tal como foi mencionado anteriormente, a obtenção do consentimento informado constitui uma das regras que especifica o princípio. Para o cumprimento desta regra, Beauchamp e Childress propõem uma estrutura que suporta três componentes, a saber: condições prévias, elementos informativos e características do consentimento, as quais, por sua vez, se subdividem em sete elementos, que definem a regra, e que já foram anteriormente abordados: competência e voluntariedade (condições prévias); revelação, recomendação e compreensão (elementos informativos); decisão e autorização, a favor ou contra (elementos de consentimento).³⁰

Admitindo dois pólos opostos para os elementos de consentimento – a favor ou contra – os autores reconhecem a possibilidade da recusa informada a qual, à semelhança da decisão informada, constitui uma acção autónoma a ser respeitada.

O princípio do respeito pela autonomia tem vindo a ser alvo de críticas, desde a 1ª edição dos *Principles of Biomedical Ethics*, devido a ser considerado como o “super-princípio” em relação aos demais.³¹ Contudo, os seus autores negam essa supervalorização, argumentando que todos os princípios do modelo têm carácter *prima facie* e como afirma Neves: “o texto escrito não o permite afirmar senão, eventualmente, a partir dos casos ilustrativos em que, frequentemente, numa situação de conflito entre os vários princípios, o da autonomia parece prevalecer.”³² Em Fisioterapia há uma grande autonomia de aplicação de terapêuticas naturais.

PRINCÍPIO DA NÃO-MALEFICÊNCIA

O princípio da não-maleficência está intimamente ligado à máxima *primum non nocere*: “em primeiro lugar, não causar dano”. Este princípio possui uma longa tradição em ética médica e tem as suas origens no Juramento Hipocrático. Deste modo, apresenta-se como princípio de relevância, na prática moral, especialmente

30 *Idem*, p. 80.

31 RENDTORFF, J. D.; KEMP, P.. *Basic ethical principles in European bioethics and biolaw*, vol. I, Copenhaga / Barcelona: Centre for Ethics and Law / Intituto Borja de Bioética, 2000, pp. 18-19; MARTÍNEZ, J. L., “De la Ética a la Bioética”, in: BRITO, J. H. S. (coord.), *Do início ao fim de vida*, Actas das primeiras jornadas de Bioética, Braga: Publicações da Faculdade de Filosofia da Universidade Católica Portuguesa, 2005, pp. 200–201.

32 NEVES, M. C. P., “A teorização da Bioética”, in: NEVES, M. C. P. (coord.), *Comissões de Ética. Das bases teóricas à actividade quotidiana*, 2ª ed. revista e aumentada, Coimbra: Gráfica de Coimbra, Lda., em colaboração com o Centro de Estudos de Bioética / Pólo dos Açores, p. 45.

na biomedicina, uma vez que serve como orientação efectiva para os profissionais da saúde. Este princípio, segundo Beauchamp e Childress, é reconhecido por muitos tipos de teorias éticas, sejam elas utilitaristas ou não-utilitaristas. Embora o aceitem, há filósofos – como Frankena – que defendem a união desse princípio ao princípio da beneficência. Tal união seria pertinente na medida em que as obrigações implicadas por ambos os princípios poderiam ser derivadas unicamente a partir do princípio da não-maleficência,³³ como a filosofia da escolástica, que defendia o princípio da forma seguinte: *bonum est faciendum malumque vitandum*. A posição dos autores, contudo, é a de que essas obrigações são distintas. Isso pode ser observado no caso das regras que contêm imperativos negativos, como o de “não causar dano” e as que consistem em imperativos positivos de acção, como “ajude as pessoas”. Assim, as implicações do princípio de não-maleficência diferem das inferidas a partir do da beneficência e não devem, portanto, ser subsumidas num único princípio.

Justificando a pertinência de enunciar os princípios de não-maleficência e da beneficência, como princípios distintos, os autores, à semelhança do princípio do respeito pela autonomia, apresentam duas formulações para o princípio da não-maleficência: uma negativa e outra positiva.

Na formulação negativa, o princípio da não-maleficência é assim enunciado: não se deve causar dano ou mal.³⁴ Dele derivam as regras, “não matarás”, “não causarás dor ou sofrimento aos outros”, “não incapacitarás”, “não ofenderás” e “não privarás os outros dos bens da vida”.³⁵ Quando formulado positivamente, o princípio admite três enunciados normativos: deve-se prevenir o dano ou o mal; deve-se evitar ou recusar o mal; deve-se fazer ou promover o bem,³⁶ que, para outros autores, constitui o princípio da beneficência.

Poderemos perceber que, embora pareçam ter o mesmo alcance ou extensão, os dois princípios diferem, principalmente, quanto às possíveis regras que originam e que podem ter maior peso ético, conforme a própria elaboração. No principialismo, assim como em muitas vezes, ocorre, na ética, que a forma negativa é predominante, pois o dever de não causar dano parece ter maior peso ético do que o imperativo da beneficência: deve-se primeiro prevenir um dano para depois promover um bem. Contudo, isso não significa que o princípio da não-maleficência tenha mais valor do que o da beneficência. Dado o carácter *prima facie* dos princípios, nem mesmo diante de um conflito, entre eles, é regra que as obrigações de não-maleficência predominem.³⁷ Dadas essas peculiaridades, a sua diferenciação é pertinente na medida que foram perspectivados exclusivamente como princípios, dado que ambos enunciam obrigações morais a cumprir necessariamente.³⁸

De acordo com o modelo bioético de Beauchamp e Childress, o princípio da não-maleficência enuncia obrigatoriedade de não causar dano ou mal e de não impor

33 *Idem*, p. 114.

34 BEAUCHAMP, p. 88.

35 *Idem*, p. 117.

36 *Idem*, p. 115.

37 *Idem*, pp. 114–115.

38 NEVES, M. C. P., “A teorização da Bioética”, in: NEVES, M. C. P. (coord.), *Comissões de Ética. Das bases teóricas à actividade quotidiana*, 2ª ed. revista e aumentada, Coimbra: Gráfica de Coimbra, Lda., em colaboração com o Centro de Estudos de Bioética / Pólo dos Açores, p. 43.

o risco de dano. O mal é entendido pelos autores num sentido não normativo de contrariar, frustrar ou impedir os interesses de alguém.³⁹

Neste sentido, para que o princípio seja respeitado, o profissional de saúde têm a obrigação de agir por forma a que os resultados da sua acção não comprometam ou coloquem em risco os interesses da pessoa. Todavia, os autores defendem que uma acção maléfica pode não ser moralmente condenável, se a intenção subjacente a essa acção, determinasse primeiro e directamente um bem.

Com efeito, a aplicabilidade do princípio da não-maleficência pode conduzir a um duplo efeito na medida em que os resultados negativos de uma acção podem ser moralmente justificados ou moralmente condenáveis, pois dependem da natureza da intenção, que subjaz essa acção.⁴⁰ Este duplo efeito suscita dificuldades de vária ordem, nomeadamente a determinação da natureza intencional de uma acção ou a determinação de que é um efeito intencional e ainda na eventual relevância da distinção entre acção e feito.⁴¹ Em quase todas as técnicas de Fisioterapia não existem quaisquer riscos para os pacientes, visto que são métodos e técnicas naturais e extrínsecos, que se aplicam.

PRINCÍPIO DA BENEFICÊNCIA

O princípio da beneficência, nos *Principles of Biomedical Ethics*, enuncia a obrigatoriedade do profissional de saúde ou investigador de promover, prioritariamente e sempre, o bem da pessoa. Por forma a clarificar a obrigatoriedade, exigida por este princípio, os autores fazem a distinção entre os conceitos de beneficência e benevolência.

Um acto beneficente pode ser classificado como aquele que proporciona um bem a alguém. Acções beneficentes, portanto, são todas aquelas que beneficiam as pessoas. O princípio da beneficência parece ter carácter imperativo e expressa uma obrigação moral de agir em benefício das pessoas. A beneficência, assim, distingue-se da benevolência, que pode ser caracterizada como uma virtude, que leva o agente a praticar actos beneficentes. O princípio da beneficência exige das pessoas que elas ajam por forma a promover o bem. Apesar dos actos beneficentes não serem obrigatórios, o mesmo não ocorre com aqueles que são implicados pelo princípio da beneficência. No contexto do modelo principialista, praticar o bem passa a ser um dever estabelecido por tal princípio e não apenas o resultado de uma disposição ou virtude dos homens.⁴²

O princípio da beneficência é apresentado, através de dois princípios, os quais consistem na beneficência positiva e na utilidade. O primeiro determina que se aja promovendo o bem, ou seja, que reais benefícios sejam providos por uma acção. Todavia quando uma pessoa pretende agir por forma a beneficiar as demais, deve avaliar os custos

39 *Idem*, p. 116.

40 *Idem*, p. 117–132.

41 *Idem*, pp. 130–132; NEVES, M. C. P., "A teorização da Bioética", in: NEVES, M. C. P. (coord.), *Comissões de Ética. Das bases teóricas à actividade quotidiana*, 2ª ed. revista e aumentada, Coimbra: Gráfica de Coimbra, Lda., em colaboração com o Centro de Estudos de Bioética / Pólo dos Açores, p. 43.

42 *Idem*, pp. 166–167.

e benefícios da sua acção. Como referem os autores, ser adequadamente beneficente requer geralmente que se determine quais as acções que produzem um conjunto de benefícios suficientes para justificar os seus custos.⁴³ A obrigação moral de fazer o bem, estabelecida pelo princípio da beneficência, parece exigir assim, ao autor da acção, uma ponderação das consequências da sua acção.

Tendo em conta que a avaliação dos benefícios, assim como dos riscos, não deve ser meramente uma atitude do agente. Mas uma obrigação, correlacionada pelo dever da beneficência, justifica, na opinião dos autores, a inclusão de um outro princípio, o da utilidade, o qual requer do indivíduo um equilíbrio entre os benefícios, riscos e custos de determinada acção. O princípio da utilidade surge como uma extensão do princípio da beneficência positiva, sendo a sua aplicação restrita à avaliação de benefícios, riscos e custos,⁴⁴ não devendo ser estendida pela ponderação de outros tipos de obrigação.⁴⁵

À semelhança dos princípios que abordamos anteriormente, o princípio da beneficência permite a derivação de algumas regras, nomeadamente: “proteger e defender os direitos dos outros”, “prevenir que aconteça algum dano aos outros”, “suprimir as condições que podem produzir prejuízo a outras pessoas”, “ajudar as pessoas com deficiência” e “salvar pessoas em perigo”.⁴⁶

Como já antes fora referido, as regras da beneficência distinguem-se das não-malificência, na medida em que, enquanto as segundas têm carácter proibitivo, as primeiras apresentam normas positivas de acção, que raramente são passíveis de punição legal, quando não cumpridas e tampouco exigem que as atitudes sejam realizadas de forma imparcial. Os autores afirmam que é possível agir em não malificência para com todas as pessoas mas, geralmente, é impossível actuar em beneficência para com todas as pessoas. Com efeito, o fracasso do agir em não-malificência para com uma parte interessada é imoral, mas o fracasso do agir em beneficência para com a parte interessada é muitas vezes não imoral.⁴⁷

Embora, a concepção da autonomia defendida, nos *Principles of Biomedical Ethics*, refuta a tradicional atitude paternalista, que durante anos perpetuou nos cenários assistenciais, Beauchamp e Childress admitem que, em determinadas situações e sob determinadas condições, algumas expressões de paternalismo podem ser justificadas. Como complemento desta posição, os autores elencam quatro condições que podem justificar algumas atitudes paternalistas em contexto de cuidados de saúde e as quais passamos a citar: um doente corre risco de um significativo dano; a acção paternalista provavelmente prevenirá o dano; os benefícios delineados por paternalismo superam os seus riscos; serão adoptadas as alternativas que asseguram os benefícios e reduzem os riscos com a mínima restrição da autonomia.⁴⁸ Neste domínio, são mais os benefícios deste princípio em Fisioterapia.

43 *Idem*, p. 166.

44 Estes termos são definidos pelos autores como: custos – recursos, necessários para operar os benefícios, bem como os efeitos negativos decorrentes da procura e realização do benefício; risco – mal, prejuízo futuro entendido como contrariedades relativamente a interesses como a vida, a saúde, o bem-estar, benefício – refere-se de valor positivo como a vida e a saúde. Cfr. BEAUCHAMP, pp. 194–195.

45 *Idem*, p. 166.

46 *Idem*, p. 167.

47 BEAUCHAMP, 5ª ed., p. 108; p. 248.

48 *Ibidem*, p. 186.

PRINCÍPIO DA JUSTIÇA

O princípio da justiça, proposto nos *Principles of Biomedical Ethics*, impõe que todos os seres humanos devem ser tratados de igual modo, não obstante as suas diferenças.⁴⁹ Os fundamentos teóricos deste princípio subjazem nas várias teorias da justiça, nomeadamente a utilitarista, a liberal, a comunitária e a igualitária e no princípio formal de Aristóteles, assim como num outro grupo de princípios denominados, pelos autores, como princípios materiais.⁵⁰ Na formulação do “princípio da justiça”, os autores introduzem o conceito de justiça distributiva.

Assim, o termo “justiça” é interpretado, na obra de Beauchamp e Childress, a partir da noção de justiça distributiva e refere-se à “distribuição equitativa e apropriada, determinada por normas justificadas, que estruturam os termos da cooperação social”.⁵¹ A justiça distributiva, quando utilizada em sentido mais amplo, refere-se à distribuição de todos os direitos e responsabilidades na sociedade, incluindo, por exemplo, direitos civis e políticos,⁵² como refere J. Rawls ao dizer que a justiça é a virtude das instituições sociais.

Dado que a distribuição, na sociedade contemporânea, ocorre, na maioria das vezes, num ambiente cada vez mais escasso de recursos, torna-se impossível contemplar todos os elementos dessa sociedade de igual modo. Assim, a justiça distributiva serve de critério para distinguir as acções injustas, que podem ser consideradas aquelas que causam prejuízos às pessoas, na medida em que negam os benefícios, aos quais elas têm direito, das acções justas que se referem aos actos que respeitam os direitos individuais.⁵³ Nesta linha de entendimento, a formulação do princípio da justiça deveria possibilitar a derivação de regras que garantissem o cumprimento de acções em benefício dos doentes, como, por exemplo, a garantia da prestação de cuidados de saúde.

Partindo de um conceito de justiça, intimamente associado à distribuição equitativa e apropriada na sociedade, os autores perspectivam o princípio da justiça a partir da enunciação do princípio de justiça formal e dos princípios de justiça material.

O princípio de justiça formal (também denominado princípio da igualdade) parte do pressuposto de que os iguais devem ser tratados igualmente e os desiguais devem ser tratados desigualmente e têm as suas origens na filosofia aristotélica, no livro V da *Ética a Nicomaco*. Contudo, na opinião dos autores, este princípio não permite a formulação de regras que possam estabelecer a aplicação de políticas de justiça social, devido à dificuldade em especificar o que se deve entender como igualdade e devido à ausência de critérios, que determinam, quando os indivíduos são iguais.⁵⁴

Os princípios da justiça material, por sua vez, justificam a distribuição igual entre as pessoas, oferecendo critérios ou características, que permitam distinguir o que seria um tratamento igual de um tratamento desigual. Um exemplo desta forma

49 *Idem*.

50 *Idem*, pp. 227–235.

51 *Idem*, p. 226.

52 *Ibidem*.

53 *Ibidem*, p. 226.

54 *Ibidem*, p. 227.

de especificação é considerar a “necessidade” como critério de avaliação para a igualdade. Assim, aquele que não tiver as suas necessidades fundamentais satisfeitas sofrerá prejuízos. Logo, a distribuição dos recursos sociais deve atender à satisfação destas necessidades; caso contrário, a não satisfação destas constituir-se-á como dano fundamental para o indivíduo.⁵⁵

Outras formas de especificação do princípio material da justiça são citadas pelos autores: a cada pessoa uma parte igual; a cada pessoa de acordo com a necessidade; a cada pessoa de acordo com o esforço ou a cada pessoa de acordo com a contribuição; a cada pessoa de acordo com o mérito; a cada pessoa de acordo com as trocas do mercado”.⁵⁶ Porém, não definem qual o critério mais adequado, embora reconheçam que determinadas características como, por exemplo, a raça, o sexo, a posição social não deveriam ser aceites como critério para a distribuição adequada dos recursos.⁵⁷

Muito embora o critério de necessidade seja um critério válido para a justa distribuição de recursos, consideram os autores, que, assumi-lo como único critério, coloca problemas à organização e formulação de programas de cuidados de saúde ou de políticas de saúde, sejam elas pública, sejam privadas, na medida em que a adopção de um critério pode opor-se a outro.

Os autores chegam a afirmar que uma teoria da justiça plausível poderia conter todas as especificações há pouco mencionadas, desde que fossem assumidas em *prima facie*, em que o peso axiológico-ético de cada uma delas teria de ser ponderado no seio de um contexto particular ou na esfera em que são especialmente aplicadas.⁵⁸ Porém, atendendo ao facto de que a aplicação de um critério exclui a possibilidade de aplicação de outro, parece ser indicativo que todos os critérios devem ser assumidos.

Nesta linha de pensamento, muito embora todos os critérios materiais fossem considerados *prima facie*, permanecia a indeterminação relativamente às circunstâncias em que cada critério deveria ser aplicado e nos casos de conflito, qual deveria ser escolhido. Com este tipo de argumento, os autores defendem que os princípios abstractos, se não forem considerados como parte de uma teoria, pouco ajudam para distinguir as acções justas das injustas. Neste sentido, parece que a solução é recorrer às teorias da justiça, a fim de ser possível delinear um princípio com capacidade de aplicação prática.

Como tal, Beauchamp e Childress analisam quatro teorias de justiça – utilitária, libertária, comunitária e igualitária – e demonstram que, pese embora as teorias poderem oferecer fundamentos úteis para a definição de políticas de saúde, em sociedades pluralistas e com diferentes concepções de justiça social. A sua adopção coloca problemas de coerência no sistema social. Isto porque, pela adopção dos fundamentos teóricos de cada uma delas isoladamente, não se cuaduna com as diferentes visões de justiça social e a adaptação de todas implica diferentes modelos de justiça, cujos resultados vão ser substancialmente diferentes em questões hoje em dia tão fundamentais como é o caso de acesso aos cuidados de saúde e a definição de prioridades na distribuição dos escassos recursos de saúde.⁵⁹

55 *Ibidem*, pp. 228–230.

56 *Ibidem*, p. 228.

57 *Ibidem*, pp. 235–239.

58 *Ibidem*, p. 228.

59 *Ibidem*, pp. 230–270.

Mediante esta perspectiva, Beauchamp e Childress consideram que, na construção de uma reflexão sobre políticas de saúde, as entidades responsáveis devem ter em consideração que nenhuma teoria de justiça ou sistema de distribuição de cuidados de saúde são necessários ou suficientes. Como afirmam os autores, não existe um único princípio de justiça capaz de responder a todos os problemas de justiça.⁶⁰

Assim, os autores apelam à necessidade urgente de um consenso social sobre a concepção de justiça, que deve ser implementada por forma a que o sistema de cuidados de saúde responda adequadamente. De acordo com este princípio, existe uma distribuição igualitária de bens nas relações entre fisioterapeutas e os doentes.

Os relacionamentos interpessoais e a procura de atingir os próprios objetivos estão intimamente interligados. Existe uma perspectiva de relacionamento entre as pessoas, vistas como meios para atingir fins. De acordo com essa perspectiva, as pessoas servem como pontes para concluir as suas próprias metas, ajudando as outras para alcançar os seus objetivos de várias maneiras. Mas também deverão fornecer os seus conhecimentos, habilidades e recursos, dando apoio emocional e encorajamento. Assim, os fisioterapeutas empregam o tempo e o conhecimento adquirido, aplicando tratamentos ao utente, esperando que este se empenhe e cumpra todas as indicações dadas, em ordem a uma rápida recuperação ou prevenção, de acordo com a sua condição atual, com vista a obter um bom resultado e melhorias face ao tratamento efetuado.

Há, em Fisioterapia, um tratamento individualizado e completo e é de salientar a relação de amizade, simpatia e respeito existente entre os fisioterapeutas, auxiliares e os utentes, tornando o ambiente mais familiar e agradável. Ao nível da abordagem terapêutica observa-se não só um bom desempenho por parte dos fisioterapeutas na realização das técnicas, como também a adaptação das mesmas de acordo com o estado do utente no momento e nas condições físicas do espaço. Logo, o utente sente-se familiarizado com o ambiente, facilitando pois o trabalho do Fisioterapeuta, criando-se na verdade um ambiente de interajuda segundo as justicas comutativa e distributiva.

ÉTICA FRONÉSICA: SENTIDO PRINCIPIOLÓGICO EM FISIOTERAPIA

A pedagogia tem tanto de arte, quanto de teoria, como ciência da educação, para se relacionar e fundamentar eticamente. *In genere*, a pedagogia poder-se-á definir como uma filosofia e uma ciência da *educação*. Segundo a cultura grega, o *pedagogos* significa, etimologicamente, aquele que age ou actua com crianças, que, muitas das vezes, era um escravo culto, que faz parte da *oikia*. Naturalmente que a sua função, além de transmitir conhecimentos sob a forma de *trivium et quadrivium*, também transmitiam princípios de vida, tal nos diz etimologicamente a palavra latina *educatio* (*e-duco*), será conduzir ou levar através das normas e das condutas.

Por aqui vemos a relação filosófica que existe entre a Ética e a Pedagogia, tal como encontramos de forma análoga, quando Wittgenstein diz que ética e estética são uma unidade. Igualmente, vamos dizer que ética e pedagogia formam um todo.⁶¹

60 *Ibidem*, p. 227.

61 Cf. WITTGENSTEIN, L., *Tractatus Logico-philosophicus*, Surkamp-Verlag, Frankfurt-am-Main, 1984, 6.41.

A ética é a morada ontológica e axiológica da conduta, representada em normas e virtudes do agir humano. Da mesma forma, a pedagogia é a morada do agir por formação e transmissão de princípios. Toda a ética é um discurso pedagógico, podendo a pedagogia não ser ética, porque as condutas serão expressas nessa urbanidade. Pedagogia e Ética são duas formas de sistematizar o “agir humano” em duas perspectivas complementares.

Os princípios fundamentais da Bioética, expressos no relatório de Belmont, não cobrem a solução de toda a pendência, que se apresenta no quadro ético.

A “autonomia” da pessoa, estudada por Kant, na *Fundamentos da Metafísica dos Costumes*, está conexo com a dignidade da pessoa humana, a qual é fundamental para se tomarem decisões em matéria pedagógica. Pela educação em geral e pela educação sanitária, o princípio da autonomia pode tornar-se uma arma contra o próprio bem, porque, em muitas situações pedagógicas, a decisão vale conforme o grau de esclarecimento e de informação do sujeito, que decide, quer seja o docente, quer o discente.

A decisão do escolápio será motivada essencialmente pelo raciocínio, a decisão do doente será motivada essencialmente pelo medo, isto é, pela emotividade. O mesmo fenómeno decisório poderá surgir no domínio da pedagogia.

A relação docente-discente, característica fundamental da pedagogia, naturalmente que, nos aspectos éticos, se encontra no âmbito do respeito pela autonomia, tal como é frisado por Beauchamp e Childress.

Uma conclusão, neste momento, é óbvia, a qual reflecte necessariamente que nenhum princípio ético esclarece sozinho uma orientação ética, mesmo aplicada no âmbito pedagógico.

Assim, o problema do agir humano, da ética à pedagogia, em situações delicadas, é, pelo contrário, o da escolha entre princípios, que aconselham vias diversas e amiúde opostas. Se este problema tem implicações morais, então não o terá menos em matéria de pedagogia.

Estamos muito longe já da problemática simplista de obedecer ou não a um princípio que monopolize o dever, como o é no caso da autonomia.

Segundo as relações entre pedagogia e ética, trata-se antes da racionalização de valores decorrentes de certa interpretação da natureza humana ou das necessidades individuais, racionalizações abstractas, que exigem alguma mediação para reintegrar o comportamento humano, a saber a virtude individual da prudência, exercitada pela arte da casuística. Assim, a *recta ratio agibilium* de S. Tomás de Aquino⁶² é apresentada por nós como um princípio fundamental em pedagogia.

Pedagogicamente pensando, o acerto entre o mundo e o agir humano vem do controlo racional do mesmo agir, dominado pela – *phrónesis* – (sabedoria prática) de Aristóteles, como coroamento da virtude (*areté*).⁶³

62 Cf. AQUINATIS, ST.THOMAE, *Opera Omnia*, 2 (II), Frommann Verlag, Stuttgart, 1980, *Summa Theologiae*, I-II, q. 114, art. 8; II-II, q. 108, art. 2.

63 Cf. ARISTOTELES, *Ética a Nicómaco*, traducción del grego, Editorial Gredos, Madrid, 1998, 1145 a⁵⁻⁶, 1140 b.

A prudência, que estamos a referir, exerce-se como juízo da razão prática, que abrange todas as circunstâncias e dimensões do agir pedagógico e do ético. A prudência é vivencial em Pedagogia, por onde se devem orientar os formadores perante os formandos. A ética da prudência supera *de facto et de iure* toda a dicotomia excessiva entre ética de intenção e ética do resultado. Daqui que a intenção não sabe o que quer, se despreza a avaliação antecipada do resultado provável. Esta norma tem aplicação em Pedagogia, que está entre a intenção e o resultado educativo. Surge dialecticamente uma pedagogia fronesial, onde a norma educativa será: *prudencia sit habitus cum vera ratione actions, non quidem circa factibilia, quae sunt extra hominem, sed circa bona et mala ipsius hominis. Atqui prudentia est recta ratio agibilium circa unius hominis bona vel mala, idest sui ipsius.*⁶⁴

Daqui que a prudência (*phrónesis*) será a figura de proa da Ética, dado que formula as regras da acção (boa ou má) e sabe implementá-las.

A situação da prudência como “sabedoria prática” (*phrónesis*) já está delineada em Aristóteles. Ainda que subordinada a uma “sabedoria” (*sophia*) mais abrangente, dominando a ordem da acção e a ordem do saber intelectual, a “sabedoria prática” da *phrónesis* determina a ética e, portanto, a vivência da moralidade, dado que vincula numa síntese o agente, o contexto da acção, a natureza da mesma e o seu resultado previsível. O mesmo princípio da prudência, no agir humano, aplica-se à Pedagogia.

A Pedagogia prudencial não cultiva a oposição, mas a complementariedade ou coordenação entre a racionalidade e a emotividade, vive entre o resultado da aprendizagem e a intenção de ensinar e transmitir princípios de conduta humana. Surge aquilo a que chamarei de “Pedagogia de Descrição”. A prudência condiciona a vida moral ao apontar a livre avaliação do acto que acarreta a responsabilidade do agente, que poderá ser o aluno ou o professor.

Como a prudência designa uma actividade articulada, relacionando uma deliberação de descrição à luz de valores permanentes com a condição singular do agir educativo. Mas, esta qualidade pedagógica não se contenta com o escolher dos meios mais convenientes ao caso. Ela ordena a execução da decisão e acompanha o projecto até ao fim da sua realização.⁶⁵ A Prudência é uma virtude fundamental no exercício da Fisioterapia.

Pedagogicamente dizendo, a prudência corresponde à perplexidade individual do agente, confrontado com uma decisão ética delicada para ser tomada.

Aqui está o sentido prudencial da Pedagogia, que ao recair na *recta ratio agibilium* traduz o novo carácter da relação docente-discente. Esta é uma relação de descrição formativa, em que, na interacção noética e dianoética, vai surgindo a pedagogia decisional, a qual aprofunda e suplanta as formas clássicas de pedagogia na sua fundamentação filosófica.

64 Cf. AQUINATIS, ST. THOMAE, *In Decem Libros Ethicorum Aristotelis ad Nicomachum Expositio*, editio novissima cura ac studio a M. Pirrotta, P. Marietti, Taurini, Italia, 1933, n.º 1196, 1455, 1166, 1167.

65 Cf. SGRECCIA, E., *Manual de Bioética, I, Fundamentos e Ética Biomédica*, tradução de Soares Moreira, Edições Loyola, S. Paulo, 1996, pp. 166–167.

CONCLUSÃO

Os princípios fundamentais da Bioética surgem um pouco como a Tábua dos Dez Mandamentos para iluminar a nova ética secular, que é plural e dominada pela principiologia. Trata-se de uma ética proposta por Beauchamp e Childress. Os autores elaboraram uma espécie de “paradigma” ético, voltado para quem trabalha na área da saúde, com o fim de fornecer uma referência prático-conceitual, que os pudesse orientar na casuística clínica. Este paradigma principiológico é constituído pela formulação dos princípios da autonomia, beneficência, não-maleficência e justiça, interpretado à luz do utilitarismo (S. Mill) e do deontologismo transcendental (Kant).

De facto, os princípios de Beauchamp e Childress fornecem indicações gerais do comportamento, mas é o valor ético do Bem da pessoa, como fim último a ser atingido, que confere o sentido último da acção.⁶⁶

O nosso grande objectivo, neste trabalho, fora fazer uma incursão da principiologia no âmbito da Filosofia da Educação, de modo que permitisse criar uma nova “sabedoria prática pedagógica”, inspirada na *epiqueia* de S. Tomás de Aquino e no sentido aretológico de Aristóteles, que poderá definir uma *pedagogia prudencial*, tão necessária para docentes e discentes, nos dias que correm.⁶⁷ Porque a pedagogia prudencial tem tanto de ética, quanto a ética tem de *recta ratio agibilium*, segundo o esquema doutrinal de S. Tomás de Aquino, por influência de Aristóteles.

A nova forma de Pedagogia poderá eticamente autofundamentar-se segundo o esquematismo elaborado pela principiologia. Por meio desta leitura ética, surge uma uma leitura pedagógica nova e diferente.

Eticamente falando, a educação seria impotente e ideológica se ignorasse o objectivo da adaptação e não preparasse os homens para se orientarem neste mundo. Desde o início existe no conceito de Educação, para a consciência e para a racionalidade, uma certa ambiguidade, que procura a sua solução numa forma de paradigma ético, sob diversas formulações, dado que o conceito de pedagogia é analógico e apresenta muitas dimensões.

Naturalmente que as tarefas que se poderão atribuir à educação já não são mais atribuições de alguma formação superior, mas elas também se colocam em planos que, vistos pelas representações hierárquicas da formação, se situam mais a nível inferior e por aqui deverão começar. Logo, um dos pontos centrais da educação moderna reside na relação entre teoria e prática. Como tal buscará a sua raiz numa formulação ética. Daqui se levanta uma Ética Pedagógica e uma Pedagogia da Ética, como elementos complementares de adequada educação.

Ao nível da abordagem terapêutica observa-se não só um bom desempenho por parte dos fisioterapeutas na realização das técnicas, como também a adaptação das mesmas de acordo com o estado do utente no momento e nas condições físicas do espaço. Logo, o utente sente-se familiarizado com o ambiente, facilitando pois o trabalho do Fisioterapeuta, criando-se na verdade um ambiente de interajuda.

66 Cf. BEAUCHAMP, T. ; CHILDRESS, J. F., *Principles of Biomedical Ethics*, fourth edition, Oxford University Press, New York, 1994, pp. 259–266.

67 Cf. SCHELER, M., *A Concepção Filosófica do Mundo*, tradução e posfácio de João Tiago Proença, Elementos Sudeste, Porto, 2003, pp. 83–86.

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The five-factor model of personality as a system of levels of consciousness development

Summary

Based on K. Dąbrowski's theory of personality and F. Laloux's model of levels of consciousness, a hypothesis is presented that the five-factor personality model of P. Costa and R. McCrae reflects the hierarchical structure of consciousness. In order to check it, the relationship between FFM dimensions and the level of non-verbal intelligence, measured using an advanced version of the Raven matrix test, was examined on a sample of 50 Polish citizens. As a side effect, a statistically significant deviation of the dispersion of the Neuroticism factor from the norm calculated for Polish citizens was found. The possible reasons for the anomalously high dispersion of the Neuroticism factor and the prospects for further research in this direction are discussed. Beyond the identified anomaly, the values of the remaining correlation coefficients conform to the hypothesis put forward.

Key words: big, five, personality, theory, traits, nonverbal, intelligence, consciousness, mindfulness, development.

1. INTRODUCTION

This paper presents the interpretation of the Big Five model as a five-level structure of consciousness, in which each subsequent level has developed in an evolutionary way. In ontogeny, this model corresponds to five stages of the development of an individual's personality, aimed at expanding human consciousness to an ever-wider context, within which the individual is given the opportunity to

reasonably coordinate their actions. The final stage of this process is the achievement of wisdom, understood as consciousness not limited by any context, including the context of one's own "Self". This interpretation was built on the basis of the theory of Costa and McCrae (Costa, McCrae, 1992), the theory of positive disintegration by K. Dąbrowski (Dąbrowski, 1964), and the color model of the evolution of consciousness by Frederic Laloux (Laloux, 2014).

According to Dąbrowski, all mental structures and functions, including instincts and dynamisms, are multi-leveled. In theory, such a unifying system should be a model of levels of personality development. The hierarchy of levels of "feeling structures" indicated by Dąbrowski is the closest to this. A very similar and even more elaborate and precise model was created by Frederic Laloux. In his book, Laloux presented his theory of organizational evolution, closely linking it to the process of evolution of human consciousness and society, which has been taking place in parallel over the last hundred thousand years. According to Laloux, new forms of organization become possible due to the emergence of new forms of human consciousness during its evolution. In his theory of evolution of organizations, Laloux draws heavily on the work of Jenny Wade (Wade, 1996) and Ken Wilber (Wilber, 1996, 2000), which provide a detailed overview of the stages of human development.

One can easily see the tight similarity in the descriptions of the psychological characteristics relating to the respective levels/stages/dimensions presented in the three theories (Table 1). This suggests that they refer to the same five mental structures that have formed during evolution. This provides a basis for an attempt to create a new structural-functional model explaining the origin of the FFM dimensions.

Table 1. List of elements of the theories of Dąbrowski, Laloux, and Costa and McCrae grouped by the similarity of descriptions of their psychological characteristics.

Level of personality development according to Dąbrowski	The stage of development of consciousness according to Laloux	FFM dimension according to Costa and McCrae
Primary integration	Impulsive Red	Neuroticism
Single-level disintegration	Conformist Amber	Extraversion
Spontaneous multi-level disintegration	Achievement Orange	Conscientiousness
Systematized and organized multi-level disintegration	Pluralistic Green	Agreeableness
Secondary integration	Evolutionary Teal	Openness to experience

Source: own elaboration.

2. DESCRIPTION OF THE STUDY

The goal of the given study was to verify the claim that the management functions corresponding to the five FFM factors developed in a strictly defined order in the process of consciousness evolution. To test this, a certain variable had to be chosen, the value of which would reflect the level of evolution of consciousness, as its monotonous numerical function. At the same time, the value of such a variable should be minimally influenced by factors such as education and other conditions of upbringing and training of an individual, including the level of language proficiency. As such a variable, the indicator of non-verbal intelligence, measured with the Raven's advanced matrices test, was selected (Raven, Raven, Court, 2012a, 2012b).

The consolidated questionnaire consisted of 100 questions, including the demographic part. The average time to complete such an online survey was approximately 50 minutes. Participants in the study were randomly selected from Collegium Humanum students and Facebook groups dedicated to self-development. Before the analysis, rows were excluded from the data table that were characterized by both too short time to complete the questionnaire and too small (at the level of statistical error) number of correct answers to the TMZ test questions. No other data table filtering methods were used. Thanks to this, it was possible to create a sample of 50 respondents. The average age of the respondents was slightly over 35; 75% of the sample were women and 25% men, respectively. The unnormalized values of the FFM factors (N, E, C, A, O), ranging from 0 to 48, and the non-verbal intelligence value, expressed as the number of correct answers to the TMZ test questions (T), ranging from 0 to 36, were selected as variables for correlation analysis. The statistical hypothesis can be expressed by the following statement:

$$R(N, T) < R(E, T) < R(C, T) < R(A, T) < R(O, T),$$

where R - Pearson's correlation coefficient.

Table 2. Descriptive statistics obtained in the study. M = mean value, SD = standard deviation.

Zmienna	Min	Max	M	SD
Wiek	19	71	35.26	11.214
T	4	36	21.46	8.355
N	4	43	23.32	11.112**
E	13	41	27.08	7.298
C	14	47	29.06	7.040
A	12	44	30.00	7.368
O	14	46	30.04	7.783

Source: own elaboration.

Table 2 contains the values of the descriptive statistics obtained in the study. Comparing them with the basic psychometric parameters of the NEO-FFI scales (Table 3), one can notice a significant difference between the values of the standard deviation measured for the Neuroticism factor in a given study and the value given in Table 3. The two-tailed F-test confirms the hypothesis that the value of the standard deviation of the Neuroticism factor obtained in this study differs from the normalization value with a significance level of $\alpha = 0.001$.

Table 3. Basic psychometric parameters of the NEO-FFI scales.

Skala	M	SD
N	22,79	7,87
E	22,79	6,86
O	27,80	6,31
A	28,68	5,76
C	29,40	7,26

Source: Zawadzki et al. (2010). Inwentarz Osobowości Paula T. Costy Jr i Roberta R. McCrae. Adaptacja polska. Podręcznik. Pracownia Testów Psychologicznych Polskiego Towarzystwa Psychologicznego, s. 40.

Table 4 shows the correlation matrix between FFM factors and the level of non-verbal intelligence, calculated on the sample created in this study. The table shows that the “Openness” factor does not correlate with any other FFM dimensions. Within the proposed model of personality, this can be easily explained by the claim that reflexivity is not contained in the structure of the “Self”. Neuroticism is negatively correlated with all dimensions of FFM related to the structure of the “Self”. This is consistent with the assumption that this factor plays the role of a “wastebasket” in which all the negative effects of interactions between various elements of the “Self” structure accumulate, which are in fact manifestations of internal conflicts. This may also explain the fact that all other correlations between FFM dimensions are positive. Indeed, if neuroticism has “taken over” all negative interactions, then only positive interactions remain in other dimensions.

Table 4. Correlations between intelligence level (T) and FFM dimensions (N, E, S, U, O). * $\alpha < 0.05$; ** $\alpha < 0.005$.

	T	N	E	C	A
N	-.044				
E	-.231	-.418**			
C	-.215	-.287*	.212		
A	.002	-.248	.316*	.133	
O	.252	.024	.054	.004	.093

Source: own elaboration.

The negative sign of the correlation coefficients between the level of intelligence and the factors “Neuroticism”, “Extroversion”, “Conscientiousness” is easy to interpret within the proposed hypothesis. These dimensions of personality are related to the incomplete structure of the “Self”. Because this structure limits the context and perspective of problem solving, the possibilities for applying intelligence are correspondingly limited. In general, the influence of the “Self” on cognitive processes should be of a limiting nature. In light of this, the “Agreeableness” factor may not have a significant impact on intellectual ability, because the corresponding “Self” structure encompasses the entire environment.

3. REVIEW OF THE RESULTS OF SIMILAR STUDIES

The question of the relationship between intelligence and other personality traits has been of interest to various researchers for a long time and invariably. Even so, we found it difficult to find research results that could be directly compared to this study. Almost all of these studies deal with a variety of highly specialized topics and are either strictly age-limited or use verbal intelligence tests where language proficiency plays an important role. The correlation coefficients obtained in such studies, with the possible exception of the “openness to experience” factor, vary significantly depending on the job performed, and statistical hypotheses about the existence of a relationship are rarely confirmed due to the small sample size. Therefore, the authors of this paper decided not to present the results of such studies here.

However, there are works that are entirely devoted to the study of the relationship between personality traits and the level of intelligence, outside of any narrow context. The results of one of these works, by the way, are very solid, we would like to present here. This is a meta-analysis performed by the authors on a set of 272 samples with a total of 162,636 participants (Anglim et al. 2022). Based on its results, a 95-page paper was published, which includes, among others, a table of correlations between the g factor and the Big Five factors (Table 5).

Table 5. Meta-analytic correlations between the Big Five factors and general intelligence. *p <.05, **p <.01, ***p <.001.

Factor	Number of samples	Total cardinality	The average of the correlation coefficient
Neuroticism	203	116515	-0.08***
Extroversion	198	110673	-0.01*
Conscientiousness	214	120885	-0.02*
Agreeableness	196	109984	0.00
Openness	209	112737	0.17***

Source: Anglim et al. (2022). Personality and intelligence: A meta-analysis. *Psychological Bulletin*, 148(5-6), 301.

As can be seen from this table, the results of the meta-analysis differ little from those predicted by our hypothesis. Another confirmation of relation of the FFM factors with the levels of personality development may be the order of the appropriate

eigenvectors obtained by the method of principal components, if they are arranged in descending order of eigenvalues. The FFM factors are invariably arranged in the same order: N, E, C, A, O. (Zawadzki et al. 2010). It is difficult to immediately find a clear explanation of this phenomenon in terms of the evolution of personality traits. It is possible that the representation of FFM factors in the psychological structure of language, as well as their role in social life, is the greater the longer the history of existence of the corresponding personality traits.

4. DISCUSSION

Correlation values of FFM dimensions with the level of non-verbal intelligence confirm the research hypothesis, except for one anomaly. Namely, the value of the correlation coefficient between the level of intelligence and the “Neuroticism” dimension turned out to be too small. Two facts indicate that this is a clear anomaly. Firstly, the results of the meta-study, presented in Table 5, indicate that this personality dimension should have the greatest negative impact on intelligence in absolute terms, i.e. it should be at the opposite pole to the “Openness” dimension. Second, the standard deviation of this factor turned out to be anomalously large.

Typically, a large variance means that respondents do not understand the essence of the questions being asked. At the time this study was conducted in Poland, the war in neighboring Ukraine had already been going on for nine months. The stress caused by the threat of world war, the influx of millions of refugees, the effects of the coronavirus epidemic, and the negative economic developments caused by these and other factors, have obviously led to an increase in anxiety and uncertainty in general. In this situation, it may not be clear to the respondents to which period the questions of the questionnaire should be referred. This could well have led to confusion, as reflected in the abnormally high dispersion of the “Neuroticism” factor and the de facto loss of test validity for it. The reasons for the anomalously high variance of the “Neuroticism” factor may also lie in the fact that the sample used in the study is significantly different from the sample used to calculate the norms. This suggests the need to repeat the study on a much larger sample, more diverse in terms of demographic characteristics. It is also necessary to confirm or correct the hypothesis of a five-level FFM structure with a sufficiently high level of confidence. It would also be good to use other correlates of the level of consciousness development. For example, a test measuring the level of reflexivity could be used.

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The principles of justice – revenge or forgiveness?

Summary

The aim of the study is to examine the principles of justice, which are used in situation of injustice. 147 participants with the average age of 30.05 years ($SD = 8.53$) answered the questions measuring retributive justice in the context of revenge, benevolence and avoidance by Transgression-Related Interpersonal Motivations Inventory (TRIM-18) (McCullough, 2013; McCullough, Root, & Cohen, 2006), and restorative justice in the context of forgiveness by The Heartland Forgiveness Scale (HFS) (Thompson & Synder, 2003). The results showed that participants are benevolent to injustice or avoid the perpetrator rather than take revenge on the perpetrator. Moreover, participants have tendency to self-forgiveness rather than to forgive others in the situation of injustice. The dependent t-test revealed there is a statistically significant difference between retributive and restorative justice - participants are more restorative-oriented than retributive-oriented. Specific results are part of the contribution.

Keywords: justice, retributive justice, restorative justice, forgiveness, revenge, benevolence, avoidance.

INTRODUCTION

Justice is a very appealing concept because it carries an idea of moral principles and certain balance in the secular understanding of different life situations. However, based on everyday life experiences and events, we know that justice does not exist in society as a whole. Nevertheless, people do not cease to have faith

and especially the hope for justice, even if this hope or belief in a just world can be an ordinary illusion (as Melvin Lerner expressed it in his publication *“The Belief in a Just World: A Fundamental Delusion”* in 1980). Justice in the eyes of the average person can take several forms, whether we are talking about distributive, procedural or interactive justice. In this context, a human evaluates and demonstrates what specific aspect of justice he cares about - the division of resources, the decision-making process or procedures, or the way of interaction, treating himself/herself. After defining an important aspect of justice, a person considers and decides (based on dispositional and situational factors), which principle will be applied in situations of injustice to restore justice from his/her point of view. At this level, a person considers two dominant principles, namely (1) the path of retribution and punishment of the perpetrator or (2) the path of reparation, forgiveness of injustice, guilt committed by the perpetrator. And subsequently, based on the chosen principle of justice, one decides how to act against the perpetrator or against the unjust situation, in other words, how he/she can handle injustice. The purpose of the following part of this contribution is a more detailed characteristic of the two principles of justice which are crucial in handling injustice. This purpose is based on an effort to gain a deeper understanding of human motives in the context of man’s need to keep the scales of justice in balance as well as on the awareness that this issue is very little discussed within the scientific community.

1. THEORETICAL BACKGROUND

The principle of justice describes what a human expects for violation of justice. As mentioned above, it is either the motive of revenge or the motive of forgiveness of injustice that is associated with given expectations. Based on these two dominant motives, it is possible to distinguish two main principles of justice, namely: (1) retributive justice, and (2) restorative justice.

In view of the history of mankind and the traditions of society, it is appropriate to reflect on the fact that retributive and restorative justice has accompanied a human since time immemorial. Two basic paradigms are being revealed here. The first, perhaps historically older, is *“an eye for an eye, a tooth for a tooth”*, which clearly carries the message of revenge, retribution and satisfaction for the restoration of justice and is based on Old Testament teaching (Exodus 21 / 23–25 *“But if there is harm, then you shall pay life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, stripe for stripe.”*). However, with the commencement of Christianity and the dogma of humanism, another paradigm was created that acted as a possible counterpoint to the first one. At this level we speak about *“when someone slaps your right cheek, turn and let that person slap your other cheek”*. It is clear that the essence is reconciliation between the perpetrator and the victim or an understanding of the perpetrator and his/her unfair action. The law of revenge and equal retribution is abolished by Jesus Christ. *“You have heard that it was said: Eye for eye, and tooth for tooth. But I tell you, do not resist an evil person. If anyone slaps you on the right cheek, turn to them the other cheek also.”* (Matthew 5 / 38–39).

With the development of theoretical concepts and research findings, these paradigms were naturally transformed into professional terminology, and thus acquired the

same more sophisticated character. In this context, the philosophical contribution in understanding justice was and is significant, where attention was focused on defining certain normative ethical¹ arguments and moral principles which determine the objective principles of justice (see, for example, Aristotle, 1979; Plato, 2007), however, in ordinary society, principles of justice resonate in their original wording without philosophical embellishments and determine individual values, views on life events and also determine how a person copes with the experience of injustice.

We suppose that when discussing the principles of justice, it is necessary to perceive two levels of this concept – the first, which determines the form of these principles, it is a formal macro level and is primarily transformed into public law, and the second, which determines the real content of these principles, it is the meso, resp. micro level in socio-psychological structures. The ideal situation is when these two levels are interconnected, they complement each other and form a unified essence of justice and its principles. However, we know from the experience of real life that these two levels are interconnected only very laxly and often what is formally given is not applied in practical form. This discrepancy between the form and content of justice has already been pointed out by Aristotle (1979), who distinguished between moral justice and legal justice. On the one hand, there is legal justice which is formal and objective, it includes principles of equality and mutual benefit, but on the other hand, Aristotle points out that the human factor always enters the situations of (in)justice. Interpersonal relationships are dynamic, involve many complex elements, therefore, according to him, it is possible to define justice only with regard to specific objects and specific situations.

Most theoretical and research studies focused on the issue of retributive and restorative justice are carried out at a formal macro level in the field of public law where the focus is on the possibilities of legal system within the perpetrator – victim interaction, where there has been a violation of justice at the crime level and it is considered whether restoration of justice will follow the path of retribution (i.e. punishment of the perpetrator) or the restorative principle will be applied (e.g. mediation). In the following part which deals with the legal basis of justice, we will understand the term “crime” as any experienced injustice that the perpetrator committed against the victim.

In the beginning of law, certain guarantees of justice were applied to the perpetrator whom criminal proceedings were brought. *Magna charta libertatum* or the *Great Bill of Rights* (1215) which was signed by King John Bezzemok, were among the first documents in which these guarantees were formed. The document ensured personal freedom of a man and his property rights. No free man could be prosecuted, arrested, or deprived of property without a court order.

Other documents dealing with this issue include *Habeas Corpus Act*, which was passed by the English Parliament in 1679 and it guaranteed that a person who had been detained had to go to a court and had the court decide whether the imprisonment was legal. When arrested on the basis of a written warrant, the reason had to be given and the perpetrator had to be arrested and interrogated within 24 hours. *The*

¹ More about ethics in everyday life can be found in the book – Czarnecki, P. (2007). *V oblasti etických úloh*. Prešov.

Declaration of the Rights of Man and of the Citizen (1789) passed by France's National Constituent Assembly under the influence of Enlightenment theories, established the principle of prosecution for only legal reasons (*Nulla poena sine lege*) and presumption of innocence. The 20th century brought internationalization of human rights, partly in the period between the two world wars, by the adoption of several international agreements that complemented the system of norms in humanitarian law. After the end of World War II, significant progress was made in the codification of human rights and mechanisms for their protection. Other documents considered as fundamental include:

- *Universal Declaration of Human Rights* from 1948, which states the basic rights and fundamental freedoms (adopted by the General Assembly of the United Nations);
- *The European Convention on Human Rights* from 1950 (adopted by the Council of Europe); as amended by subsequent protocols, special rights for victims of criminal offences were not guaranteed, however, article 6 guarantees the right to a fair trial, that in relation to conduct of criminal proceedings applies to a person charged with a criminal offence but it also applies to victim of criminal offences. Paradoxically, while *The European Convention on Human Rights* uses the term "victim", it is only in relation to a person that has been arrested unjustifiably.

In general, the most significant initiatives in the context of principles of justice are executed by the Council of Europe, European Union and on the international scale, by the United Nations. According to European Union Agency for Fundamental Rights and Council of Europe (2016, p.17) "*in European human rights law, the notion of access to justice is enshrined in Articles 6 and 13 of the European Convention on Human Rights (ECHR) and Article 47 of the EU Charter of Fundamental Rights, which guarantee the right to a fair trial and to an effective remedy, as interpreted by the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU), respectively. As noted above, these rights are also provided for in international instruments, such as Articles 2 (3) and 14 of the United Nations (UN) International Covenant on Civil and Political Rights (ICCPR)⁵ and Articles 8 and 10 of the UN Universal Declaration of Human Rights (UDHR).⁶ Core elements of these rights include effective access to a dispute resolution body, the right to fair proceedings and the timely resolution of disputes, the right to adequate redress, as well as the general application of the principles of efficiency and effectiveness to the delivery of justice.*"

Injustice in the form of criminal activity can affect everyone and every year millions of people in the European Union become fall victims to this kind of injustice. According to Eurostat data, around 30 million crimes against persons or property are recorded annually and many crimes remain unreported. Criminal activity often affects more than one victim and those close to the victims also suffer indirectly. Therefore, it is possible to make a qualified estimate that approximately 75 million people become direct victims of criminal activity every year².

2 Eurostat, *Statistics in focus*, 36/2009. Estimates are based on analysis of the EU International Crime Survey listed in „*The Burden of Crime in the EU*“ (www.europeansafetyobservatory.eu) with assumed rate of unreported crime being 60%. These statistics do not include minor offences.

Over the centuries, criminal justice systems of western civilization have evolved with focus on retributive justice, detection of perpetrator and conviction, condemnation, punishment, or in better case, resocialization of perpetrator. In such a context, the victim of injustice is perceived as secondary and irrelevant, treated only as a witness by the administration of justice. Only over the course of the recent decades, there have been considerations about reconciliation and satisfaction for victims of injustice.

It is a paradox that from a historical point of view, the majority of cultures used the principle of restorative justice as the main method to resolve the issue of injustice. A great deal of this has been lost under the influence of colonization and European retributive criminal justice systems. Nowadays, a number of countries are rediscovering the restorative principle of justice and modifying their philosophy of thinking and resolving the issue of injustice in such a manner that it will incorporate positive aspects of current practice (Liebmann, 2007).

The official and significant documents (Council of Europe, Council of the European Union, United Nations), the historical development of which we have briefly explained, were preceded by a long-term devoted and inventive work of organizations, that have been and still are aimed at eliminating injustice in the position of perpetrators and victims and providing free of charge, discreet and independent services for victims and to build on the principle of restorative justice. One of those organizations is *The European Forum for Victim Services*. To achieve its goals, it applies basic ethical principles:

- the human rights of victims must be protected in the same way as the human rights of perpetrators;
- dealing with the perpetrator must not exacerbate victim's stress and trauma caused by criminal offence;
- all victims must be treated without any discrimination;
- the forum and its member organizations are engaged for victims of crime, but not against perpetrators;
- victim services must not be affiliated with any political party.

Ethical approaches are based on the idea that victims should be adequately recognized and that they should be treated with respect for their dignity. The victims have a right to access judicial mechanisms and right to prompt compensation for the harm and loss they suffered. They also have a right to receive appropriate specialized assistance in dealing with emotional trauma and other problems caused by victimization. It is primarily the matter of not labelling victims of injustice in terms of criminal offences just as 'forgotten persons' in modern systems of criminal justice.

For instance, in the Slovak Republic, the right of victims to restorative justice is legislatively enshrined in Act 217/2017 Coll. on Victims of Crime and on Amendments to Certain Acts, as amended – taking into account the primary interests and needs of victims, preventing secondary victimization, as well as their preferred treatment of criminal behavior of the perpetrator and the possibility of declaring the impact of crime on their health, property directly to the perpetrator.

According to Daly (2005), restorative justice presents an essentially new domain in the statutory sphere, therefore it has several limitations:

- there is no agreed-upon definition of retributive justice;
- retributive justice deals with the penalty, not fact-finding phase of the criminal process;
- it is easier to achieve fairness than restorativeness in a retributive justice process;
- a „sincere apology“ is difficult to achieve;
- the conference process can help some victims to recover from crime, but this is contingent on the degree of distress they experienced;
- it is better to expect modest results than to have high expectations from the principle of retributive justice.

Despite given limitations, it is necessary to emphasize that by its action, restorative justice endeavors to sustain a balance in the public. It equalizes convulsions between the aggrieved persons and the public requesting reintegration of perpetrators to public life. Concurrently, the mission of restorative justice is to adhere to the balance of rights and responsibilities of perpetrator, aggrieved persons, public and state (Lichner & Šlosár, 2018).

To understand the meaning of justice principles on meso level or micro level in socio-psychological structures, it is important to take into consideration the inimitability of every single human being. If we incorporate this fact into analysis of principles of justice, we can comprehend the often mentioned notion that *“Justice is in the eye of the beholder”*. This notion incorporates a fundamental essence stating that different people have a different outlook on justice and this subjective perception consequently influences the meaning of justice as such. The differences in the perception of justice are the center of discordance regarding the proper way of dealing with injustice. On the one hand, there is a retributive principle that understands justice as a one-sided viewpoint against the perpetrator. On the other hand, the restorative principle perceives justice as a repeated reconciliation between involved conflicting parties (Okimoto, Wenzel, & Feather, 2011).

Carlsmith and Darley (2008, p. 193) perceive retributive justice as *“a system by which perpetrators are punished in proportion to the moral magnitude of their intentionally committed harms”*. According to Wenzel and Okimoto (2016, p. 238), retributive justice deals with *“the subjectively appropriate punishment of individuals or groups who have violated the rules, laws or norms and therefore it is assumed they have committed harm, transgression or offence”*. The authors state that this perception of retributive justice underlines its psychological quintessence at the human level, considering that it culminates in personal experience with injustice, therefore the punishment is inflicted on the perpetrator by victim, not by third party (e.g. mediator, court, etc.) and neither is the punishment inflicted by the perpetrator as an attempt for penitence. The punishment proposed by the perpetrator is not considered as a principle of retributive justice. Despite the fact that it might be a response which the perpetrator demands in order to obtain penitence and correction of injustice, in this context, the self-reflection with confession of inequitable action and acceptance

of guilt is an unilateral step towards consensual restorative justice (Woodyatt & Wenzel, 2013).

However, in everyday life the perpetrators are punished by power holders in most cases. The punishment is (implicitly or explicitly) part of common definitions of power that are often conceived as a control over the results of other people and punishments imposed on them (Keltner, Gruenfeld, & Anderson, 2003).

The fundamental question of retributive justice is *“How should those who consciously, morally, directly or indirectly harmed others be punished?”*. Retributive justice entails the human certitude that the perpetrator will be punished by a rightful and adequate penalty, proportional to the seriousness of iniquitous action (Van Prooijen, Coffeng, & Vermeer, 2014). Retributive justice recognizes the fairness of the allocation of punishment and retaliation, just proceedings, retribution of offender and compensation for victim (Cook & Hegvedt, 1983). In essence, there is an assumption that a person expects to be punished for the violation of norms. Given to this cognizance, justice is evidently determined through the victim’s focus on personal status and power that have been disrupted by iniquitous action. (Wenzel et al., 2008). Through iniquitous action, the perpetrator vilifies and derogates the importance of the victim as a human being weak, in order to feel weak, powerless and worthless (Murphy & Hampton, 1988). If those apprehensions for personal status and power are exacerbated, it is probable that victim will understand justice in its retributive nature, accept the retributive principle and will seek for options that would underestimate and extenuate the perpetrator, and restore the balance of status and power (e.g. through retaliation, punishment, revocation of rights, etc.) (Wenzel et al., 2008).

As previously mentioned, in the course of justice restoration a person is focused not only on the principle but also on the aspect of justice. In the practice of retributive justice, it may seem that if injustice is committed, we can perceive it as a transgression of social norms (procedural justice), resulting in an inequitable division of goods or services, for instance through embezzlement (distributive justice). In spite of an iniquitous situation having both procedural and distributive aspects, the main aim of the victim is to bring the perpetrator to justice and provide some kind of punishment or retaliation to enable re-establishment of justice (Boersema, 2011).

Restorative justice stands contrary or as an alternative to retributive justice. Restorative justice deals with ways to rectify and atone for harms caused by perpetrators and it is centered on the victim of inequity, it perceives the act of injustice in terms of harming a person and relationship more than a violation of rights. From a given perspective, a restoration of justice is not a process of determination of guilt and sanctions, as it can be observed in case of retributive justice. Restorative justice is focused on repairing the harm done, rebuilding relationships, assuring responsibility, creating opportunities for compensation, creating possibility for reconciliation and development of social conditions (Gilbert, Schiff, & Cunliffe, 2013). From the perspective of restorative justice, perpetrator who commits inequitable action derogates the importance of norms and rules, ignores the unity of values, and questions their legitimacy (Vidmar, 2002). The extent to which the perpetrator shares identity with the victim and the victim considers the relationship with the offender as significant for their self-concept, inequitable action can threaten the social identity of the victim (Wenzel

et al., 2008). If those identity values become negative, the victim perceives injustice as restorative and therefore seeks options that would facilitate the reassessment of importance and concordance of values violated in inequitable action (e.g. requesting apology) (Okimoto, Wenzel, & Feather, 2012). Justice will be re-established in case that both concerned parties reach a mutual understanding of inequitable action and that will lead to restoration of compliance with norms and values (Okimoto, Wenzel, & Feather, 2012). Such an approach to justice can reduce the extent of injustice in the future through modification of values and behavior of perpetrator, and among other things, it offers a greater sense of security for the victim (Zehr, 2005). Restorative justice thus includes elements of penitence and efforts to rectify the relationship between perpetrator and victim that facilitate the tendency to forgive the perpetrator (Witvliet et al., in Witvliet et al., 2008).

Forgiveness suppresses motives of unforgiveness (e.g. revenge and/or avoidance) by strengthening of positive cognitions (e.g. focusing on humanity of perpetrator rather than thinking about perpetrator in a context of offense, harm) and emotions (e.g. compassion, empathy, mercy) towards perpetrator. For instance, Karremans, Van Lange and Holland (2005) proved that the very quintessence of justice has predicted the extent to which people have been able to forgive harm or inequitable action. If persons perceived justice as a prosocial value, they were more susceptible to forgiveness, while those who perceived justice through retributive principle had a tendency to score lower in the extent of forgiveness.

Both principles are inherent for all individuals and which principle will be utilized by them depends on (1) the nature of relationship between victim and perpetrator (the closer and more personal relationship between victim and perpetrator would likely mean that restorative principle would be more dominant), (2) the victim's value orientation (if victim highly regards status and power, they would be more inclined to retributive justice and attempt to punish the perpetrator; if victim values the quality of relationship and reliance, they would be more inclined towards restorative justice).

It is understandable that if we experience injustice, it becomes easier for us to punish the perpetrator with whom we are not familiar and do not maintain a confidential, close relationship, and we also assume that there will not be any contact with the perpetrator in the future. However, in case that unfair treatment is caused by a person close to us with whom we have a common past and presumably common future, we are more likely to consider the path of reparation and forgiveness.

Both principles are aimed at the same point - restoring the justice. It is necessary to add and not to forgive that *“social justice in the sense of its absolute does not exist or is very difficult to grasp and can probably remain only at the level of theoretical-philosophical discourses. Absolute justice touches on ideal, even utopian, notions of a society that would be maximally fair, moral, and virtuous in the principles of equality, universality, and congruence of just considerations. However, we know from the history of mankind that society is not just, and so it is not possible to achieve absolute justice, but only relative justice, corresponding to the relativity of moral systems and the diversity of ideas of justice”* (Geffert & Rovenská, 2022, p. 8).

2. METHODOLOGY

2.1. Aim of the research

The dilemma of whether to forgive the perpetrator his/her guilt and harmonize relations or to take revenge and repay injustice accompanies each person in everyday life situations and depends on many dispositional and situational variables. The answer to the question of whether people tend to forgive or avenge is still not satisfactorily answered. Based on the intention of the contribution, based on a study of the literature and the theoretical background, it is effective to ask this research question:

- What principles of justice do the respondents follow in the event of injustice?

The aim of the contribution is to examine the principles of justice that exist among the respondents in situations of experienced injustice.

2.2. Measurements

Based on the effort to fulfill the aim of the research, a questionnaire method was chosen, specifically an online questionnaire created using the Google Forms. The questionnaire includes a set of methodologies, namely:

- Socio-demographic variables identifying gender (female/male), age, marital status (single, married, divorced, widower/widow), highest level of education (primary, secondary without final exams, secondary with final exams, university I./II./III. degree) and type of employment (permanent employment, part-time work, temporary job, unemployed, disability pension, old-age pension);
- Transgression-Related Interpersonal Motivation Inventory (TRIM-18) (McCullough, 2013; McCullough, Root, & Cohen, 2006) – the methodology was chosen to measure the motive not to forgive injustice, thus capturing retributive justice. The same questionnaire was chosen, for example, by Witvliet et al. (2008) in their research on measuring retributive justice. Specifically, it is an 18-item measure that evaluates the motive of unforgiveness in situations where people perceive that another person has hurt them in a way that they consider painful and morally wrong. Specifically, there is a motive of unforgiveness in three ways: 1) avoidance (7 items, e.g. *“I pretend it no longer exists for me.”*), 2) revenge (5 items, e.g. *“He/she will pay me for hurting me.”*), 3/ benevolence (6 items, e.g. *“Even if his / her actions hurt me, I wish him / her only the good.”*). Individual items are rated on a scale of 1 to 5 (1 = strongly disagree, 5 = strongly agree). Cronbach’s alpha values in this study were: 1) avoidance.71; 2) revenge.50; 3) benevolence.62;
- Heartland Forgiveness Scale Questionnaire (Slovak adaptation Chlebcová & Greškovičová, 2019; The Heartland Forgiveness Scale HFS, Thompson & Synder, 2003) – this is an 18-item questionnaire designed to assess dispositional forgiveness. The questionnaire contains items that reflect a person’s tendency to forgive oneself, other people and situations beyond their control (e.g. natural disasters). The questionnaire is either used as a whole (i.e. the total sum of score of

disposition forgiveness is calculated) or the scores of the three mentioned factors are calculated – 1) forgiveness of self (6 items, e.g. “*Although I feel bad at first failing something, I can gradually relax.*”); 2) forgiveness of others (6 items, e.g. “*Although some have hurt me in the past, I was finally able to see them as good people.*”), and 3) forgiveness of situations (6 items, e.g. “*I will finally come to terms with the bad situations in my life.*”). Respondents rate their answers on a scale from 1 (almost always false of me) to 7 (almost always true of me), and for each of the items they should express how they usually react to the given situation. Cronbach’s alpha values were as follows: 1) dispositional forgiveness.76; 2) forgiveness of self.68; 3) forgiveness of others.53; 4) forgiveness of situations.60.

2.3. Research sample

147 respondents were involved in the research. The research sample consisted of 75 women (51.00%) and 72 men (49.00%). The age of the respondents ranged from 18 to 52 years, with an average age of 30.05 years (SD = 8.53). In terms of other socio-demographic indicators that possibly characterized the research sample, it was found that 77 respondents (52.40%) stated marital status of “single”, 63 respondents (42.90%) stated marital status of “married”, and 7 respondents (4.80%) reported marital status of “divorced”. Within the highest level of education attained, 1 respondent had completed basic education (.70%), 10 respondents completed secondary education without the final exam (6.80%), 87 respondents completed secondary education with the final exam (87.20%), 16 respondents (10.90%) achieved the I. degree of higher education, 21 respondents (14.30%) the II. degree of higher education and 12 respondents (8.20%) achieved the III. degree of higher education. The analysis of inclusion into working life showed that 102 respondents (69.40%) worked on a permanent basis, 19 respondents (12.90%) had a temporary job, 19 respondents (12.90%) were unemployed, 5 respondents (3.40%) worked part – time, 1 respondent (.70%) received a retirement pension and 1 respondent (.70%) received a disability pension. The research data set was obtained on the basis of occasional selection based on the availability of people and their willingness to participate in the research. All participants were treated in accordance with the ethical principles of the research. Potential respondents were invited to the survey mainly via social networks and an email with a web link to the questionnaire. It is notable that the research set is heterogeneous and the respondents of various socio-demographic variables accumulate in it. The variability of the research data set can contribute to a better clarity of the results, so the results will not be distorted from the perspective of a certain dominant socio-demographic variable. As the research sought to explore the current situation of the researched issue, the diversity of the research data was desirable despite the fact that it is not a representative research data set.

2.4. Results

The first step of the analysis, based on descriptive statistics, was an attempt to describe the input data illuminating the degree of retributive and restorative justice among the respondents. ANOVA for repeated measures showed that there was a statistically significant difference between the levels of the measured variable for the main factor, “retributive justice”, with $F(1.953; 285.091) = 5.569; p < .001$. In other

words, the difference in the values of the individual dimensions in the “retributive justice” factor was not accidental. Based on the Bonferroni post hoc test, a significant difference between the dimensions was confirmed – avoidance and revenge ($p < .001$), revenge and benevolence ($p = .002$). The revenge as a motive thus proved to be the least used. Specific data are given in Table 1.

Table 1. Descriptive data on retributive justice

	MIN	MAX	M	SD
Avoidance	1.43	5.00	3.42	.65
Benevolence	1.00	5.00	3.34	.64
Revenge	1.60	4.40	3.05	.69

M - mean; SD - standard deviation

In terms of restorative justice, the results showed the following findings. The mean of disposition forgiveness reached 4.25 points ($SD = .71$) (individual items were rated on a scale from 1 - almost always false of me to 7 - almost always true of me). ANOVA for repeated measures showed that there was a statistically significant difference between the levels of the measured variable for the main factor “restorative justice”, with $F(1.776; 259.309) = 4.093; p = .022$. The difference in the values of the individual dimensions in the factor of “restorative justice” was not accidental. The Bonferroni post hoc test confirmed a significant difference between the dimensions - forgiveness of self and forgiveness of others ($p = .046$). We can therefore conclude that within the framework of restorative justice in the context of dispositional forgiveness, the tendency to forgive oneself in an unjust situation prevails among the respondents. Specific data are given in Table 2.

Table 2. Descriptive data on restorative justice

	MIN	MAX	M	SD
Forgiveness of self	2.00	7.00	4.38	1.03
Forgiveness of situations	2.00	7.00	4.21	.90
Forgiveness of others	2.00	7.00	4.15	.85
Dispositional forgiveness	2.89	7.00	4.25	.71

M – mean; SD – standard deviation

The analyzes also sought to find out which of the principles of justice is more dominant among the respondents. Using the dependent t-test, we found that:

- there was a significant statistical difference between dispositional forgiveness and avoidance, with respondents tending to forgive rather than avoiding experienced injustice ($t_{(146)} = 10.500; p < .001; M_{\text{forgiveness}} = 4.25; SD_{\text{forgiveness}} = .71 / M_{\text{avoidance}} = 3.42; SD_{\text{avoidance}} = .65$);
- there was a significant statistical difference between dispositional forgiveness and

- benevolence, with respondents tending to forgive rather than be permissive of an injustice experienced ($t_{(146)} = 13.106$; $p < .001$; $M_{\text{forgiveness}} = 4.25$; $SD_{\text{forgiveness}} = .71$ / $M_{\text{benevolence}} = 3.34$; $SD_{\text{benevolence}} = .64$);
- there was a significant statistical difference between dispositional forgiveness and revenge, with respondents tending to forgive rather than avenge the injustice experienced ($t_{(146)} = 11.557$; $p < .001$; $M_{\text{forgiveness}} = 4.25$; $SD_{\text{forgiveness}} = .71$ / $M_{\text{revenge}} = 3.05$; $SD_{\text{revenge}} = .69$).

DISCUSSION AND CONCLUSION

Revenge or forgive injustice? That is the fundamental question that the presented contribution tries to answer from a theoretical and empirical point of view. Theoretical conclusions offered us certain preconditions in the evaluation of retributive and restorative justice at several levels of discourse with a clear conclusion - both principles appear in the history of mankind and in each period of society the development was more dominant. Rather, the focus now is on restorative justice, as many experts believe that *“punishment, as a fundamental principle on which criminal law has stood since time immemorial, is counterproductive, ineffective, leaving victims, perpetrators and communities dissatisfied, focusing strictly formally on a process that assesses issues of guilt and punishment, where the state is primarily injured by crime, while forgetting the needs of victims and perpetrators, such as forgiveness, reconciliation, compensation”* (Horeháj, 2020, p. 1).

As mentioned in the theoretical part of the contribution, the formal setting of the principles of society in a public context may not always reflect the principles of justice at the socio-psychological, individual level. For this reason, research was conducted to capture the individual, psychological foundations of the principles of justice. At this point, of course, we are aware of the limit of the research, as our findings cannot be considered generally valid as the research sample was not representative. Nevertheless, we consider our findings to be important and worthy of professional discussion and attention.

Retributive justice was measured as the principle of not forgiving injustice in terms of avoidance, revenge and benevolence. The results showed that the respondents preferred to 1) avoid the contact with the perpetrator rather than take revenge on him/her and 2) preferred to be benevolent towards the perpetrator rather than take revenge on him/her.

The very punishment of the perpetrator, in its formal essence, meets the requirements of fairness, and thus should help close the gap in injustice and restore justice. The victim can truly believe that punishing the perpetrator will bring one a sense of satisfaction and comfort. However, as Carlsmith, Wilson, and Gilbert (2008) have shown, punishing the perpetrator will not improve the victim's feelings, and revenge itself will make the victim feel even worse. The authors found that such affective reward does not evoke feelings of satisfaction, redress and justice. The reason may be that retributive justice focuses only on the issue of punishment for the perpetrators and does not seek to compensate the victims or help them meet their emotional needs. The retributive principle generally does not directly support prosocial responses or reconciliation (Witvliet et al., 2008).

For example, Bies and Tripp (2004) have shown that if the victim has the opportunity to avoid the perpetrator, he or she will do so in order to prevent unpleasant situations at work or in personal life. Benevolence has a similar effect. As Jahanzeb, De Clercq, and Fatima (2021) found, benevolence against injustice reduces the likelihood of a negative reaction to an unpleasant experience of injustice. It is therefore possible to assume that the victim's experience with injustice and his/her efforts to eliminate negative emotions will lead to less hostile ways of coping with this unfairness. If the victim chooses the retributive principle of justice, he or she prefers avoidance or benevolence.

Findings about retributive justice prove to us that a person in the position of a victim is not a person longing for revenge, but rather prefers mitigating manners, or rather chooses forgiveness as a way of coping with injustice.

Restorative justice was ascertained through a questionnaire that measured dispositional forgiveness in terms of forgiveness of self, others, or situations. As the results showed, respondents tended to forgive themselves rather than the perpetrator.

In general, forgiveness eliminates the motive not to forgive (e.g. through revenge and / or avoidance) and negative emotions (e.g. fear, sadness, anger) by promoting positive cognitions (e.g. focusing on the humanity of the perpetrator rather than defining things in the context of an injustice) and positive emotions (e.g. compassion, empathy, mercy) towards the perpetrator (Witvliet et al., 2008).

If we look at injustice as a psychological process in which one party knowingly offends the other, then the victim's relationship with the perpetrator is devalued. At this point, the victim perceives injustice and, after an initial outburst of anger against the perpetrator, begins to analyze the situation through the basic question "*Why did I allow the other person to offend me?*". Thus, when we talk about restorative justice, the victim primarily focuses the emotions and cognitions on oneself and not on the perpetrator. And that is why people may tend to forgive themselves rather than the perpetrators. It is not so much a matter of understanding the perpetrators and their behavior, but of understanding why the victims allowed the perpetrators to behave unjustly towards them. In order for the victim to cope with injustice, victim must first forgive himself/herself, deal with feelings of disappointment, anger towards oneself or feelings of remorse and self-blame. Remorse, understanding and accepting one's wrongdoing, coming to terms with oneself and others, the ability to minimize negative emotions towards oneself, perceiving the positive behavior of others, and being aware of close relationships are psychological mechanisms that can strongly predict forgiveness. Forgiveness can have many benefits relevant to understanding and developing intrapersonal relationships as well as interpersonal ones (Pandey et al., 2020).

So what principle of justice did the respondents follow in the situations of injustice they experienced? The results showed that respondents tended to forgive injustice rather than avoid it, be benevolent or take revenge on injustice. In this context, three explanations can be considered. The first two explanations have already been mentioned in the theoretical part of the paper and are a good argument in support of our findings.

First, the nature of the victim – perpetrator’s relationship could be a possible mediator in the context of justice principles – as stated in the theoretical part, if the victim – perpetrator relationship is closer and ties tighter, it is likely that the victim will try to understand the perpetrator’s wrongdoing, and resolve it by discussing, forgiving, restoring trust, and repairing the cracks that have arisen in the relationship. As reported by Witvliet et al. (in Witvliet et al., 2008), restorative justice contains elements of remorse and efforts to redress the relationship between the perpetrator and the victim, which facilitate the tendency to forgive the perpetrator. Second, the victim’s personality, moral principles, and values may be equally crucial in deciding whether to use the restorative or retributive principle of justice. Karremans, Van Lange and Holland (2005) also state that when people perceive justice as a prosocial value, they are more open to forgiveness. Thus, the more natural principle for them is, “*when someone slaps your right cheek, turn and let that person slap your other cheek*”. However, in our opinion, the answer is not sufficient, because against the background of our theoretical analyzes and research findings, another, third explanation has emerged, which we consider to be the most important. The third explanation for why people choose the restorative principle rather than the retributive one is the common but often overlooked sense of humanity. People are, in their deepest essence, good, friendly and peaceful. Many research studies make it clear that it is easier and, above all, more natural for people to live in peace and harmony, to strengthen their relations and to repair what has gone wrong. Conflicts, retaliation strategies and revenge take too much life energy. Worthington and Scherer (2004) share this view because they found 1) unforgiveness is stressful, 2) managing emotions through forgiveness can reduce stress of unforgiveness, 3) forgiveness as a coping strategy is health-related (according to the authors, forgiveness is a coping strategy focused on emotions, which reduces the level of hostility and anger and is associated with milder physiological manifestations, for example at the level of cardiovascular reactions).

Thus, if the misfortune of injustice occurs, the natural answer is a rising wave of cooperation, rather than resorting to brute force and revenge. Human nature is a creative force, not a destructive one. There are a number of supporting scientific arguments about this whole issue, the most comprehensive of which is currently offered by Bregman (2020) in his publication “*Humanity*” (from the Dutch original “*De meeste mensen deugen*”; from the English “*Humankind*”). In it he cites an excellent parable (Bregman, 2020, p. 26):

The old man says to his grandson, “There’s a struggle going on inside me. It’s a terrible fight between two wolves. One is evil - enraged, greedy, jealous, arrogant and cowardly. The second is good - calm, loving, humble, generous, honest and trustworthy. These wolves also fight inside you and inside every human being.” After a moment, the grandson asked, “Which wolf will win?”. The old man smiled, “The one you feed”.

We are convinced that our explanations of the achieved results are adequate and have professional support in both theoretical and empirical concepts. Of course, we are also aware of the limits of our arguments presented in the discussion – 1) we accept the existence of other alternative explanations, 2) methodologies used in the research are not standardized in the Slovak population, so they may not be accurate,

3) the research was only cross-sectional, and to understand the issue of restorative and retributive justice a more extensive research would be effective in terms of time, research sample and research methods.

In conclusion, we would like to state that both approaches are important for both the individual and society. Currently, however, the scientific literature defines them as opposites, as two opposing extreme values, and this is not correct. Only a minimum of scholars on this issue have considered the fact that both principles, whether punishment or reconciliation, are principles of justice. And that should always be the meaning of the search for fairness, truth, morality, because that is the essence of justice. It is necessary to look at both principles from a broader perspective and critically re-evaluate what has been published so far on the issue and look for new perspectives and ways to establish the justice that is so lacking in today's society.

Retributive justice is described in the intentions of revenge, where punishment is emphasized. However, punishment for the perpetrator does not have to be driven solely by a sense of revenge. If our real goal is to restore justice, then the perpetrators should be punished not as revenge, but as a warning to others. Because often those who commit a crime and escape without punishment continue to do injustice and evil returns. But a fair punishment of the perpetrators will ensure that it no longer occurs to anyone to repeat such wrongdoing and unfairness. Restorative justice, as a more humane version of the search for balance, speaks of understanding the perpetrator and forgiveness. However, what (again) the current professional literature forgets is that forgiveness should not lead to complete individual and social paralysis of the victim. Forgiveness itself is an act of an emotionally and morally mature personality who can forgive and cope with unfairness and wrongdoing, but does not forget. What experts say that the essence of restorative justice is to harmonize the relationship between the victim and the perpetrator may not be true. Forgiveness does not mean automatic restoration of the relationship. Once trust has been damaged, it is an indelible mark in the relationship that is difficult to repair. Forgiveness is thus an expression of an understanding of an unfairness act, mastery of one's ego and negative emotions, a reassessment of the relationship with the perpetrator, and especially an experience in which one's own self can be strengthened. Forgiveness is a form of learning that the situation will not be repeated in the future.

Whether we choose to take the path of revenge or forgiveness depends only on us, on our humanity. Of course, other dispositional and situational factors in coping with injustice are also significant, but at the end of the whole process of considering the principles of justice is the free will of each person, which defines the final decision on which principles of justice will prevail.

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Present-day globalization and the problem of business ethics

Summary

Business ethics, which treats globalization as an economic phenomenon, is therefore one of the many areas of ethical reflection aimed at understanding ethical values that can be implemented on a global scale. Globalization, therefore, means broadening the area of interest for business ethics, but at the same time it creates new problems, the solution of which does not seem fully possible using the conceptual apparatus of traditional business ethics. It requires redefining, among others, the concept of the acting subject or the concept of responsibility. The problem of globalization is therefore a challenge for business ethics, and at the same time an opportunity to overcome a certain stagnation that seems to have occurred recently in this field of knowledge.

Key words: philosophy, ethics, globalization, modernity, ethical rules, business ethics.

In the modern world, the economies of individual countries are closely interconnected, so economic processes in one part of the world affect economies in other parts, as well as the entire global economy. A telling example of this dependence was the bankruptcy of Lehman Brothers in the USA in 2008, which caused the financial and economic crisis around the world. This fact has significant consequences for many aspects of economic life, including business ethics.

Globalization affects the possibility of implementing ethical principles in business on many levels¹. The processes of globalization mean that enterprises are forced to react to phenomena occurring on a global scale, over which they have no influence. Many of these phenomena have effects that seem difficult to accept from both social and political and ethical grounds.

¹ Naturally, globalization also affects other aspects of social life, including morality. Conf. J. Gocko, *Moralno-społeczne aspekty globalizacji gospodarki*, „Roczniki Teologiczne” 2005, b. 3, p. 129.

The debate about business ethics is a multidisciplinary issue combining methods and goals of economic sciences with humanities.² The discourse could be divided into two basic fields, the general economic theories and various implications associated with practical life.³

The unethical behavior of companies operating on a global scale is exploiting employees by lowering wages and forcing them to work in conditions that threaten health and life. Employees hired by multinational corporations in developing countries do not receive sufficient wages to meet their basic living needs, are forced to work several hours a day, have no social security, are punished for not meeting excessive criteria regarding the quality of work, do not create organizations that protect the rights employees, etc.⁴ In turn, labor exploitation in developing countries is putting pressure on working conditions in developed countries under dumping, contributing to the deterioration of the situation of workers worldwide.

Another negative symptom of economic globalization is environmental pollution. It should be emphasized that the degradation of the natural environment entails not only negative effects on nature itself, but also has a number of harmful social effects.⁵ In other words, it is not the environment itself that is the right concern, but people, especially future generations. The goal is to remain in sufficient quality of life in the social and environmental fields.⁶ Hence the activities aimed at environmental protection are ethical activities in the full sense of the word. Meanwhile, pollution from one part of the world often spreads to other parts of the globe, contaminating the environment thousands of kilometers away⁷. While we cannot prevent unpredictable accidents such as nuclear accidents or tanker disasters, there are a number of dangers that can and must be addressed. The condition for this to be counteracted is, however, a compromise consisting in limiting the efforts of enterprises to maximize profit and limiting the efforts of states to satisfy their own, selfish interests. For example, the problem of increasing the concentration of the so-called greenhouse gases in the atmosphere and the associated climate change can only be solved through close cooperation at a global level⁸. Greenhouse gas emissions are therefore a classic example of local action with global effects. This means that in order to avoid the harmful effects of greenhouse gas emissions, cooperation at the inter-state or regional level (e.g. cooperation within the European Union) is insufficient. All countries in the world should join the cooperation in this respect, regardless of the level of economic development⁹.

2 M.Storoška, A.Akimjak, *A multidisciplinary approach in the context of solving current issues in the European civilization environment*, Wien 2021, p. 11.

3 E.Hvizdová, J.Polačko, *Contemporary Economic Discourse: Interdisciplinary Dimensions and Practices - An Introduction*, Mainz 2020, p. 4.

4 Conf. iSlave Behind the iPhone Foxconn Workers in Central China, Hongkong 2001. <http://www.sacom.hk/wp-content/uploads/2011/09/20110924-islave-behind-the-iphone.pdf>

5 Conf. J. Bednorz, *Społeczno-ekonomiczne skutki eksploatacji węgla kamiennego w Polsce*, „Górnictwo i Geologia” 2011, vol. 6, b. 4.

6 V.Olšovská, J.Polačko, *Beekeeping as an integral part of sustainable development*, Wien 2021, p. 49.

7 PAP/AFP, 20 lat po Czarnobylu ryby i grzyby w Finlandii wciąż skażone, 29.08.2007.

8 M. Pietraś, *Społeczność międzynarodowa wobec „tragedii globalnych dóbr wspólnych”*, w: *Polityka – ekologia – kultura. Społeczne przesłanki i przejawy kryzysu ekologicznego*, pod red. A., Papuzińskiego, Bydgoszcz 2000, p. 154.

9 Almost half of greenhouse gas emissions now come from developing countries. Conf. A. Marzec, *O kontrowersjach wokół emisji gazów cieplarnianych i co z tego wynika dla energii*

On the other hand, thanks to the development of communication techniques, public awareness of the negative aspects of globalization is increasing, and thus social pressure is increasing on governments and international organizations, which are expected to take action to reduce phenomena that are unacceptable for ethical reasons.¹⁰ One of the proposals to eliminate unethical behavior in global business is the so-called fair trade. The idea of fair trade includes several basic ethical principles, the observance of which is one of the basic ethical obligations of every enterprise, regardless of the scale of operations. These principles include, inter alia, fair payment for work (sufficient for a dignified life), prohibition of child labor, creating safe working conditions, care for the development of local communities as well as care for the protection of the natural environment¹¹. Currently, a number of activities are underway to promote the idea of “fair trade” in practice. These activities include, among others creating organizations that grant enterprises certificates confirming that a given enterprise complies with the principles of “fair trade”, organizing campaigns to sign appeals and petitions to international corporations, organizing demonstrations and pickets, etc.¹²

While these actions contribute to some reduction in the possibility of unethical behavior, they will not solve the problems of the world economy as a whole. One such problem is the ever-widening gap between developed and developing countries. If we look at the world economy as a certain system of interconnected vessels, then the question arises as to why economic life is booming in some countries and the standard of living of the inhabitants is steadily increasing, while other countries have been in a state of economic collapse for a long time. While the modern economy is based on the accumulation of capital, this capital is still in the hands of the wealthy North, which is getting richer, while the poor South is constantly getting poorer. Similar, still deepening divisions are also taking place inside the societies of both rich and poor countries¹³.

The impact of globalization processes on the development of enterprises is therefore a significant challenge for business ethics. It should be considered whether the problems related to economic globalization should be the subject of traditional business ethics, or whether it would be justified to create a separate ethical discipline, the aim of which would be to study ethical problems on a global scale. The creation of a new ethical sub-discipline would be justified insofar as its subject would be the activities of such entities as international corporations, governments or international organizations. On the other hand, the subject of traditional business ethics would remain the ethical dimension of businessmen’s activities.

On the other hand, it seems that traditional business ethics may try to deal with at least some of the problems of globalization in a similar way as it deals with all other ethical issues in business. Therefore, it can, first of all, define a set of values and principles that should be respected by enterprises operating on an international scale.

odnawialnej, Materiały XXIII Konferencji z cyklu Zagadnienia surowców energetycznych i energii w gospodarce krajowej, Zakopane 2009, p. 92.

10 J.E. Stiglitz, *Wizja sprawiedliwej globalizacji. Propozycje usprawnień*, Warszawa 2007, p. 28.

11 Attempts to implement fair trade are described in *Fair Trade w globalizującej się gospodarce*, pod red. K. Żukrowskiej, Warszawa 2010, p. 127.

12 Conf. I. Bojadżijewa, *Globalna praca – globalna solidarność*, Kraków 2013, p. 47 et seq.

13 Conf. R. Jedlińska, *Społeczny wymiar globalizacji – wybrane problemy*, w: *Współczesne problemy ekonomiczne. polityka państwa a proces globalizacji*, pod red. G. Wolskiej, p. 27.

Certainly, some of the problems related to globalization can be solved in this way. The basis should be a clear formulation of these problems, and then an examination of the potential effects of applying ethical principles for all entities involved in global economic activities, from corporations to customers and employees in poor developing countries.

In practice, the implementation of ethical postulates is the above-mentioned idea of fair trade, which is in fact an attempt to implement the principles of traditional business ethics in global business. On the theoretical level, the result of these efforts is the ethics of international business. This ethics aims to answer the question about ethical values and norms that should be followed by transnational enterprises and governments¹⁴.

From the point of view of practice, a significant obstacle in the case of international business ethics is the lack of means of pressure to enforce compliance with ethical standards by enterprises¹⁵. While ethical problems at the state level can be solved, at least in democratic countries, through social consensus, the respect of which can then be enforced by introducing appropriate legal regulations, there is no supra-state institution that would be able to establish and then implement similar solutions at the level of global economy.

However, it would be unjustified to conclude that the ethics of international business is only a set of postulates that are impossible to implement. International trade is possible thanks to various types of international legal regulations¹⁶, which are, however, to some extent subject to social control. The massive protests against the EU-US trade agreement called ACTA, which prevented the agreement from being finally concluded, show that such control is not only possible but also effective. One can even risk the thesis that societies should have a greater influence on international politics conducted by democratically elected governments than it is currently the case¹⁷.

Democratic societies can exert an influence on the economic process on a global scale only if they are aware of the dangers of economic globalization. Meanwhile, in the sphere of social awareness, globalization also leads to a number of negative consequences. As secularization progresses, moral systems based on religions are decaying. Americanization of the lifestyle and ubiquitous advertising make consumption an absolute priority for many people. Individuals lose their sense of belonging to a moral community and societies are decaying. The primacy of material

14 Conf. e.g. J.H. Dunning, *Governments, globalization and international business*, Oxford 1997.

15 The possibility of exerting pressure on enterprises seems to be a necessary condition for the implementation of ethical standards in business. This is evidenced by the fact that companies that have pioneered high ethical standards in their home countries have often been accused of violating these standards when operating in developing countries. Conf. J. Nakonieczna, *Spółeczna odpowiedzialność przedsiębiorstw międzynarodowych*, Warszawa 2008, p. 48.

16 Some ethical problems cannot be resolved except at the international level. An example is the issue of the so-called intellectual property. Conf. B. Andersen, *Intellectual property rights: innovation, governance and the institutional environment*, Edward Elgar Publishing 2006, p. 74.

17 A referendum could be a way of exercising this control. Conf. <http://www.polskieradio.pl/5/3/Artykul/526349,PiS-zlozylo-wniosek-o-referendum-o-ACTA>

culture and consumerism means that also the intangible elements of culture, including ethical values, begin to be treated as objects of free play of the forces of supply and demand on the free market.¹⁸

The positive aspects of globalization include the fact that the international circulation of information fosters skepticism and undermines confidence in various ideologies. And history shows that great ideas, which are supposed to be a remedy for solving all social problems, are relative and temporary. As noted by E. Cioran, it is not the ideas themselves, but our attachment to them, that constitute the proper source of crimes committed in the name of a higher good. “When we do not want to come to terms with the changing nature of the idea – says Cioran – blood is pouring... Above the wall of unbending beliefs rises a dagger: eyes blazing with passion predict murder”¹⁹.

Globalization therefore forces us to get to know and understand each other, and thus to reject the beliefs we have so far considered unshakable. The necessity to adopt a different point of view of reality is indeed a burden, as it involves the loss of certainty as to the rules governing this reality, but at the same time it forces us to ask questions about what is truly permanent and unchanging in our world.

It is worth noting that the absolutization of morality understood as a socially fixed set of norms may constitute a kind of obstacle preventing us from noticing our own limitations in the sphere of moral life. This fact was pointed out by, inter alia, F. Nietzsche. According to Nietzsche, morality is “the only scheme of interpretation in which man puts up with himself”²⁰. Nietzsche believed that by wanting to get to know man, to get to his true nature, one cannot perceive him as a moral being. “Man – says Nietzsche – has so far been essentially a moral creature, a peculiarity, unparalleled – and as a moral being he was more absurd, liar, more vain and reckless, causing himself more harm than the greatest despiser of mankind could dream of”²¹. For Nietzsche, this finding did not mean, however, that all morality should be rejected as an illusion that distorts man’s nature and the cause of his suffering. He believed that modern man should create a new morality, capable of replacing the ethical tradition derived from Christianity, and at the same time more suited to human nature. However, in order to create this new morality, man would have to look at himself and his current system of values from the outside, see himself as a being subject to limitations that he created and imposed on himself.

Economic activity on a global scale, forcing us to adopt different points of view and understand different ways of thinking, does not constitute a premise justifying the rejection of morality, but it forces us to reflect on what in our own moral thinking is a product of specific historical and social processes, which is therefore a work of chance. From the point of view of the threat of ideologization of social life, globalization can therefore be regarded as an essentially positive phenomenon. On the one hand, it leads to the commercialization of various aspects of human existence, but at the same time it forces us to look critically at our own way of thinking and acting.

18 B. Nikiforowa, *Religijno – kulturowy pluralizm: dziedzictwo i wyzwania przeszłego wieku*, w: *Filozofia wobec XX wieku*, pod red. L. Gawora, Lublin 2004, p. 69.

19 E. Cioran, *Zarys rozkładu*, Warszawa 2006, p. 6.

20 F. Nietzsche, *Wola mocy*, Kraków, 2003, p. 123.

21 *Ibidem*, p. 112.

Philosophy constantly oscillates between efforts to find new models of ethics and attempts to return to traditional ethics.²² It seems that it is precisely in the era of globalization that philosophy has an important role to play, because it is the only field that seeks solid, unshakable foundations on which we can build our image of reality²³. Therefore, regardless of how we perceive the process of economic globalization and how we evaluate the effects of this process on individual areas of social life, we cannot treat the very existence of globalization as a justification for unethical activities. If we accept the objective existence of ethical values and principles, then on the one hand, we do not have the right to act unethically where our conduct would not be considered ethically reprehensible, and on the other hand, we cannot accept actions that are unethical from our point of view only because they concern people shaped in different cultures and moral systems.

22 M.Šandalová, J.Polačko, *Nevyhnutnosť aplikácie tradičných modelov etiky v spoločnosti žijúcej prevažne vo virtuálnom prostredí*, Košice, 2022, p. 107.

23 According to S. Geniušas, the greatest philosophical discovery of M. Heidegger was the claim that the essence of our moral life is a constant tension between the subjectivity of our moral intuitions and affects and the objectivity of ethical values and principles. «I am trying to justify the thesis - writes S. Geniušas - that the most important contribution of Heidegger's phenomenology to ethical issues is the separation of ethical life from subjectivity and placing it between two extremes(...)». S. Geniušas, *Ethics as second philosophy, or the traces of the pre-ethical in Heidegger's being and time*, Santalka. Filosofija, 2009, vol. 17, no 3.



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Impact of the war in Ukraine on major indices of the world's largest stock exchanges

Summary

This article contains an analysis of the impact of the war in Ukraine on the main indices of the largest (capitalization) stock markets in the world, which is part of more detailed research on the impact of the events such as wars, pandemics or great natural disasters, commonly perceived as catastrophes on the economic situation of the world's largest corporations (listed on the largest stock exchanges) and their socio-political position. The conducted study, which covered a period of almost 3 years (32 months), shows that the war in Ukraine had a rather negative but short-term and not decisive impact on the main indices of the largest stock exchanges in the world. Inflation, interest rates, economic slowdown, investment level and the stock market cycle had a major impact on the level of indices. These factors were the main reason for the declines in 2022. On the other hand, in 2023, an upward trend can be observed in most of the analyzed markets, regardless of the war in Ukraine.

Key words: war in Ukraine, stock exchange, largest stock markets, main indices, largest corporations.

INTRODUCTION

Russia's invasion of Ukraine in February 2022 has been going on for several months. The front line is relatively stable, and the "spring counter-offensive" of the Ukrainians, which was announced in the first few months of 2023, turned out to be a propaganda shell, which was no surprise to rational observers. It has long been clear that Russia is unable to defeat Ukraine supported by the West, mainly the US, while Western aid for Ukraine is so small that it cannot defeat Russia. At the same time, I consider it a complete victory for Russia to keep Crimea and Donbass

and install a Moscow-dependent government in Kiev, while maintaining the existing relations with key players on the geopolitical chessboard, while I consider it a complete victory for Ukraine to remove all Russian troops from the territory of Ukraine, regain Crimea and Donbass and negotiate and receive war reparations from Russia. None of these scenarios are realistic, and it is clear that we are dealing with a creeping war that will last a while and will probably end with some intermediate solution.

In this relatively stable situation, one can therefore be tempted to assess the impact of the war in Ukraine on the indices of the largest stock exchanges in the world, bearing in mind that earlier, during the Covid-19 pandemic, these indices recorded significant increases (mainly thanks to technological giants) and that their rates are influenced by a whole range of various factors (Wiśniewski 2014, Barszowski 2015, Szczurowski 2021). However, this does not make it impossible to analyze a separate factor, which is the war in Ukraine, and to estimate its impact on the above-mentioned indices, at least approximately. It can be said that the preparations for the invasion found the global stock markets at the peak of the bull market and, together with the invasion itself, reinforced the trend change and shifted the interest of investors from technology companies to other sectors.

METHODS

I examined the main indices of the world's largest stock exchanges during the Russian invasion of Ukraine (16 months) and comparatively in the same period before the invasion, which in total gives a research perspective of almost 3 years (32 months), which is the same as in the case of the article on the impact of the Covid-19 pandemic on the main indices of the world's largest stock exchanges (Szczurowski 2021). This time, I took February 23, 2022 as the border point, which is the day before the invasion, i.e. the last day of peace. Consequently, the remaining border points became June 23, 2023 and October 23, 2020. It should be remembered, however, that at least from December 2021, we had to deal with the appearance in the public sphere of information that heralded war (Russia's official statements with demands against NATO under the threat of military action, the concentration of Russian troops on the border with Ukraine), while American intelligence informed the US president about the planned Russian invasion as early as October 2021 (Harris 2022). In any case, at the end of 2021, to rational observers of reality, an invasion seemed inevitable, or at least highly probable. Among these rational observers were stock market investors.

For the study, I chose the three largest American stock exchanges in terms of capitalization, i.e. New York Stock Exchange (NYSE) and the National Association of Securities Dealers Automated Quotations (NASDAQ) in the USA and the Toronto Stock Exchange in Canada, the four large and developed Asian stock exchanges (Shanghai Stock Exchange, Tokyo Stock Exchange, Taiwan Stock Exchange, Korea Exchange), as well as the three largest European stock exchanges (Euronext, London Stock Exchange, Frankfurt Börse), with the first two stock markets (NYSE, NASDAQ) being world leaders in terms of capitalization, several times larger than other players (Statista 2021). I skipped the large Chinese stock exchange in Shenzhen, considering the larger Shanghai stock exchange to represent mainland China. In addition,

I supplemented the pool with smaller stock market (Warsaw), which in terms of capitalization is much smaller than the world tycoons, but is nevertheless regional leader. As I wrote above, the main indices of the mentioned exchanges were tested, namely DJI (NYSE), NASDAQ COMPOSITE (NASDAQ), S&P 500 (NYSE and NASDAQ), S&P/TSX COMPOSITE (Toronto Stock Exchange), NIKKEI 225 (Tokyo Stock Exchange), SSE COMPOSITE (Shanghai Stock Exchange), TAIEX (Taiwan Stock Exchange), KOSPI (Korea Exchange), FTSE 250 (London Stock Exchange), CAC 40 (Euronext), DAX (Frankfurt Börse) and WIG (Warsaw Stock Exchange). In all cases, I studied session closing rates. When on the analyzed day there was no session on one of the stock exchanges, then I took into account the closing rate of the last session before the analyzed day.

In addition, I analyzed the rate charts of all analyzed indices over a period of 3 years (weekly interval), resigning from more advanced analytical methods, which are also subject to error (Węgrzyn 2018), and therefore the required workload is not compensated by a significant improvement in the credibility of the study in compared to simple research methods.

RESULTS

The data presented in Table 1 shows that in the period of 16 months before the Russian invasion of Ukraine, all analyzed indices recorded increases from 6% (SSE COMPOSITE) to 38% (CAC 40). In addition to the CAC 40, the main stock indices in Warsaw (31%) and Toronto (27%) also increased significantly. The S&P 500 index, which includes the largest companies from the NYSE and NASDAQ, also recorded a good result (increase by 22%).

The situation changed significantly to the disadvantage during the 16 months of the Russian invasion of Ukraine, as shown by the data in Table 2. Six of the analyzed indices recorded increases of only a few percent (DJI, NASDAQ COMPOSITE, S&P 500, CAC 40, DAX, WIG), while four of them recorded declines (S&P/TSX COMPOSITE, SSE COMPOSITE, KOSPI, FTSE 250). It is worth paying special attention to the main index of the Tokyo Stock Exchange, which was the only one to perform better during the war in Ukraine (increase by 24%) than before its outbreak (increase by 12%). All other indices performed worse during the invasion than in the period before it.

Table 1. Rates of selected stock indices in the period of 16 months before the war in Ukraine

index	stock exchange	10/23/2020 rate	2/23/2022 rate	change
AMERICA				
DJI	NYSE	28335.57	33131.76	+17%
NASDAQ COMP	NASDAQ	11548.28	13037.49	+13%
S&P 500	NYSE, NASDAQ	3465.39	4225.5	+22%
S&P/TSX COMP	Toronto Stock Exchange	16304.08	20744.17	+27%

index	stock exchange	10/23/2020 rate	2/23/2022 rate	change
ASIA				
NIKKEI 225	Tokyo Stock Exchange	23516.59	26449.61	+12%
SSE COMP	Shanghai Stock Exchange	3277.997	3489.146	+6%
TAIEX	Taiwan Stock Exchange	12898.82	15615.41	+21%
KOSPI	Korea Exchange	2360.81	2719.53	+15%
EUROPE				
FTSE 250	London Stock Exchange	18109.57	20841.52	+15%
CAC 40	Euronext	4909.64	6780.67	+38%
DAX	Frankfurt Börse	12645.75	14631.36	+16%
WIG	GPW w Warszawie	47846.25	62826.09	+31%

Source: own study based on stooq.pl, access: 6/23/2023.

Table 2. Rates of selected stock indices during the 16-month period of the war in Ukraine

index	stock exchange	2/23/2022 rate	6/23/2023 rate	change
AMERICA				
DJI	NYSE	33131.76	33727.43	+2%
NASDAQ COMP	NASDAQ	13037.49	13492.52	+3%
S&P 500	NYSE, NASDAQ	4225.50	4348.33	+3%
S&P/TSX COMP	Toronto Stock Exchange	20744.17	19418.23	-6%
ASIA				
NIKKEI 225	Tokyo Stock Exchange	26449.61	32781.54	+24%
SSE COMP	Shanghai Stock Exchange	3489.1460	3197.9011	-8%
TAIEX	Taiwan Stock Exchange	15615.41	17202.40	+10%
KOSPI	Korea Exchange	2719.53	2572.83	-5%

index	stock exchange	2/23/2022 rate	6/23/2023 rate	change
EUROPE				
FTSE 250	London Stock Exchange	20841.52	18062.33	-13%
CAC 40	Euronext	6780.67	7163.42	+6%
DAX	Frankfurt Börse	14631.36	15829.94	+8%
WIG	GPW w Warszawie	62826.09	66272.99	+5%

Source: own study based on stooq.pl, access: 6/24/2023.

It is obvious that the picture resulting from the data contained in the above tables is simplified, to some extent dependent on the adopted quite rigid starting and ending dates of the analyzed periods. A more detailed picture can be found in the charts below, which show the rates of the analyzed indices over the last 3 years (weekly interval). They clearly show the end of the bull market at the end of 2021 and the beginning of 2022. In my opinion, this is partly the result of symptoms announcing a Russian invasion of Ukraine, which were taken seriously by global markets. There was a temporary deepening of the declines in the stock markets on the day of the invasion, but then we were dealing with increases. However, the lowest levels were reached by most of the analyzed indices at the beginning of the fourth quarter of 2022, but it is difficult to associate this directly with the war in Ukraine.



Chart 1. 3-year DJI index

Source: stooq.pl, access: 6/24/2023.



Chart 2. 3-year NASDAQ COMP index

Source: stoq.pl, access: 6/24/2023.



Chart 3. 3-year S&P 500 index

Source: stoq.pl, access: 6/24/2023.

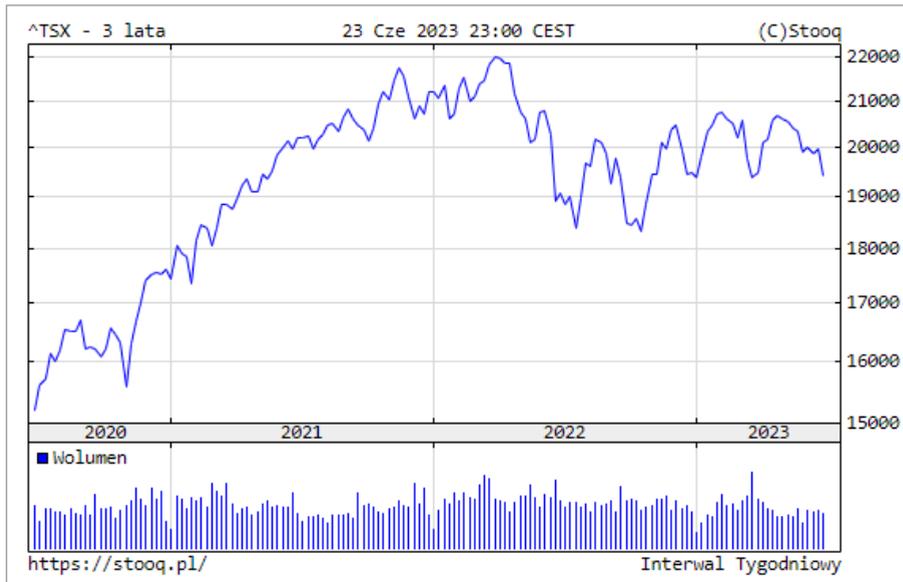


Chart 4. 3-year S&P/TSX COMP index

Source: stooq.pl, access: 6/24/2023.

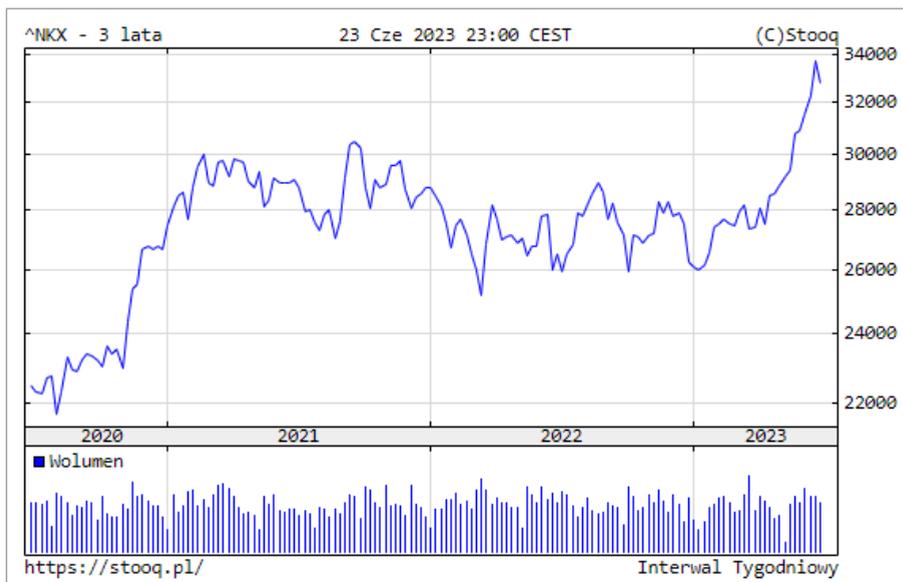


Chart 5. 3-year NIKKEI 225 index

Source: stooq.pl, access: 6/24/2023.

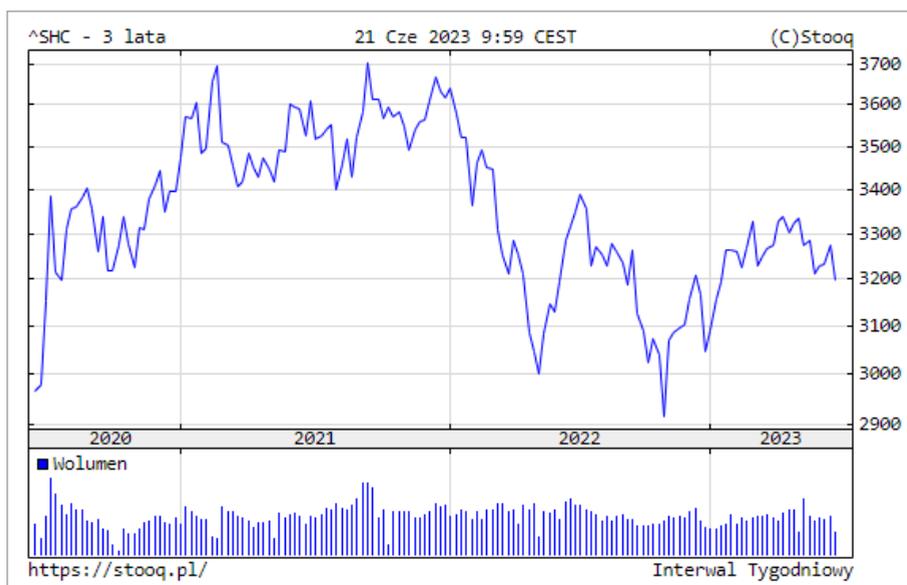


Chart 6. 3-year SSE COMP index

Source: stooq.pl, access: 6/24/2023.



Chart 7. 3-year TAIEX index

Source: stooq.pl, access: 6/24/2023.



Chart 8. 3-year KOSPI index

Source: stooq.pl, access: 6/24/2023.



Chart 9. 3-year FTSE 250 index

Source: stooq.pl, access: 6/24/2023.



Chart 10. 3-year CAC 40 index

Source: stooq.pl, access: 6/24/2023.



Chart 11. 3-year DAX index

Source: stooq.pl, access: 6/24/2023.



Chart 12. 3-year WIG index

Source: stooq.pl, access: 6/24/2023.

It is necessary to be aware of the impact of a whole range of macroeconomic factors on stock exchange indices, which I already signaled at the beginning of the article. These factors include, above all, inflation, interest rates, GDP growth/decrease, money supply and the level of investment (Wiśniewski 2014, Barszowski 2015, Szczurowski 2021), but also media narratives (Shiller 2017). Therefore, the declines on the stock exchanges in 2022 should be associated primarily with inflation and the fight against it by raising interest rates by central banks, as well as with the economic slowdown. The war-related crisis in raw materials also played a role. You also need to be aware of the stock market cycle and remember that until the end of 2021 we had a long-term bull market. After it, in 2022, a bear market appeared in some markets, and a sideways trend in some. In 2023, in most of the analyzed cases, we are already dealing with an upward trend, especially strong in the case of the main index of the Tokyo Stock Exchange, which confirms previous conclusions and also shows the strength of this market.

It seems, therefore, that the direct impact of the Russian invasion of Ukraine on the main indices of the largest stock exchanges in the world was only temporary. It had an indirect impact for a little longer through the crisis in raw materials, but a much greater impact on world stock exchanges had inflation, interest rates, economic slowdown and the stock market cycle. It can even be said that from a certain moment the markets have become accustomed to the war in Ukraine and are indifferent to it. It is worth emphasizing here that the main reason for the increased inflation in recent years is not the war in Ukraine, but the excessive supply of money, which is the result of many years of policy of governments and central banks.

SUMMARY

The above analysis shows that the Russian invasion of Ukraine in February 2022 had a negative impact on the main indices of the world's largest stock exchanges, but it was short-lived. Over time, the stock exchanges got used to the war in Ukraine and can be said to ignore it. Inflation, interest rates, economic slowdown, investment level and the stock market cycle had a major impact on the level of indices. These factors were the main reason for the declines in 2022. On the other hand, in 2023, an upward trend can be observed in most of the analyzed markets, regardless of the war in Ukraine. Summing up, therefore, the impact of this war on the level of the main indices of the largest stock exchanges in the world should be considered relatively small and of secondary importance.

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