

HANS JOAS' "SACRALIZATION THEORY" AS A NORMATIVE CONCEPT¹

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Abstract: *The German social theorist Hans Joas has put forward the thesis that the development of human rights is not to be traced back to anti-religious secularism: what we are talking about here is a peculiar process of sacralization, in the course of which an "aura of sacredness" is created around the members of modern societies. Kantian philosopher Otfried Höffe thinks that Joas strives to create an "affirmative genealogy": i.e. the elaboration of a method following which we could get an overview of the "authentic history" of the development of human rights and acknowledge the claim to the validity of these rights at the same time. The theory of Joas is seen by Höffe as the unauthorized intervention of a sociologist into the area of rational philosophical argumentation. In my study, I'm trying to outline an answer on Höffe's criticism. Firstly I'm demonstrating that according to Joas's view the normative philosophy can be replaced by a historical-sociological analysis. Instead, he was thinking in terms of a complementary relationship: he regarded that the involvement of the perspective of historical sociology had a seminal effect on the reconsideration of the familiar normative positions. Secondly that I'm trying to outline Joas's normative theory in contrast of Habermas's discourse theory. I'm arguing that the development and maintenance of rational discourses depend on preserving certain social practices that evolve spontaneously: consequently, comprehensive social criticism cannot be purely based on the requirement of the discursive rationality. Finally, I will also highlight the problems and restraints of the "Joasian" normative theory.*

Keywords: *Hans Joas, sacralization, human rights, social philosophy, sociology of religion.*

German social theory expert Hans Joas has strongly criticized the position (mainly associated with Max Weber) according to which the process of modernization should basically be described as a process of secularization

¹ The writing of this paper was supported by MTA's (Hungarian Academy of Sciences) Premium Postdoctoral Research Program. I'm grateful for Györgyi Sárík, who helped me to prepare the English version of my paper.

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(Joas, 2017: 167). In his view, it is through reaching an understanding of the new types of sacralization processes that we can comprehensively examine modern societies. In his book entitled *The Sacredness of the Person*, for example, he has put forward the provocative thesis that the development of human rights is not to be traced back to anti-religious secularism: what we are talking about here is a peculiar process of sacralization, in the course of which an “aura of sacredness” is created around the members of modern societies.

Joas’s concept received sharp criticism. However, the sharpest criticism was expressed by philosophers rather than the representatives of historical sociology. Kantian philosopher Otfried Höffe thinks that Joas strives to create an “affirmative genealogy”: i.e. the elaboration of a method following which we could get an overview of the “authentic history” of the development of human rights and acknowledge the claim to the validity of these rights at the same time. The problem is, however, that the skeptical approach of the contemporary theoretical expert to the classical perspective of historical philosophy means accepting that it is impossible to bridge the gap between the genesis that takes the historical eventualities into account on the one hand, and the philosophy that requires the affirmation of the criteria of sensible justification on the other hand. Thus, it is very difficult to understand how we could manage to justify the validity of legal norms by following the method of historical genesis. In Höffe’s opinion, in such a way, what we have at best is the opportunity to present their “acceptability” or “plausibility”. Höffe thinks that the analysis presented by Joas, which mostly relies on the ideas expressed by Durkheim, is not supplemented by a philosophical reasoning that requires a claim for rational validity (Höffe, 2011). This is why the work of Joas is seen by Höffe as the unauthorized intervention of a sociologist into the area of rational philosophical argumentation, as opposed to which the apologetics of classical philosophy should be elaborated (Fonk, 2013: 127-128).

In my study, I argue for the following: Joas did not claim that the set of the normative criteria of philosophy can be replaced by a historical-sociological analysis. Instead, he was thinking in terms of a complementary relationship: he regarded that the involvement of the perspective of historical sociology had a seminal effect on the reconsideration of the familiar normative positions. It is from the aspect of this assumption of mine that I have re-read the analyses of Joas on the development of the norms of human rights and human dignity. First, I am going to explain that

when he formulated his criticism of Beccaria and Foucault (which was seemingly only historical), what Joas was striving for was in fact the examination of the interaction between historical sociology and the normative theories. He considered that if no authentic historical concept of the evolution of human rights can be outlined, the realistic direction of the humanization of modern societies cannot be identified either, consequently, we will also fail as normative theoretical experts. I am showing that Joas finds the fundamentals of the authentic history of the evolution of human rights in the ideas of Durkheim, along with the key points of reference of the new normative theory. I have described the resulting normative theory in contrast with the discourse theory of Habermas. According to the evolving theory of Joas, the development and maintenance of rational discourses depend on preserving certain social practices that evolve spontaneously. Consequently, comprehensive social criticism cannot be purely based on the requirement of observing the norms of discursive rationality. There is a more inherent historical perspective, starting out from which a theoretician may shed light on the successful and unsuccessful versions of individualization and may point out those structural problems which prevent rational decision-making in certain social situations. Finally, I will also highlight the problems and restraints of the evolving normative theory.

The prohibition of torture and the perspective of the Enlightenment

Joas thinks that in order to explore the nature of human rights, it is not sufficient to subject the human rights declarations of the late 18th century to theoretical analysis. What one should rather focus on is the circumstances of their generation, i.e. those cultural changes which resulted in that modern individuals can think of themselves as persons possessing universal rights. For finding the sources of validity, he wishes to present the social situation in which these declarations could bear fruit: as early as when these declarations were drafted, masses of people could already discover in them the expression of their self-interpretation and need for autonomy. In his view, the changes of the European penal culture designate the group of phenomena through which the characteristic features of “deep cultural transformation” can be explored. The starting point of the cultural change was the first half of the 18th century: it was from this point in time that Europe began to see torture as a less and less legitimate method for finding out the truth and coercing confessions. In

parallel to this, torment presented as a public spectacle became a less and less acceptable method of the execution of punishment. The disputes on whether the state legitimately disposes over the lives of its citizens began already before the issuance of the declarations. The establishment of modern Western style prisons as the typical institutions for the execution of punishment was an important step in this process. A result that was achieved much later was the prohibition of capital punishment in most European and North American states (Joas, 2011: 64).

The falling into the background of the method of inquisition is usually mentioned as part of the narrative of the Enlightenment. This is why Joas first of all discusses the 1764 work of Cesare Beccaria entitled *On Crimes and Punishments*: this is the most comprehensive work on the legitimate sources of punishment written in the spirit of the Enlightenment (Joas, 2011: 66). According to the image of society presented in the book, political societies have been dominated by senseless habits for several centuries: both torture and violence allowed by the “criminal procedure” are the remnants of a by-gone age, whose habits have already been transcended and which has not been overcome by humanity due to their laziness. This historical concept also sets the position of the enlightened intellectual. It is the responsibility of the philosopher to explore a method by relying on which the “original”, rational individual, who is not subjected to power relations, becomes visible behind the useless traditions and deep-rooted prejudices (Joas, 2011: 67).

Beccaria describes “prehistoric” individuals as free parties endeavoring to establish contractual relations. The principle that determines the conclusion of such contract is familiar from the subsequent history of political ideologies as the fundamental principle of utilitarianism: we act correctly if we provide “the greatest happiness to the greatest number of people.” (Beccaria, 1967: 53). The option of a criminal procedure is created by the social contract: the exclusive aim of punishment is to prevent the members of society from falling back to the chaotic state in which they feel that their lives and property are threatened by others. Thus, the limitations of legitimate punishment are also determined by this contract. Those punishments which jeopardize the achievements of the contract or the natural freedom of the individual are illegitimate. Beccaria thinks that in this way, the penal laws can be derived from the principles of the contract in a deductive system. He thinks that it can also be quantified to what extent individual actions facilitate or obstruct the enforcement of

the common good. If this is true, the extent of legitimate punishment can be determined in a quantitative system of relations. This means that a society should take action against some of its members with a force (and with no greater force) which is equivalent to the threat that the actions of these members of society pose to the common good and to the extent of the resoluteness of the endeavor of these members of society to commit their crimes (Joas, 2011: 68).

The irrational nature of torture-based punishment and inquisition becomes obvious in this formal system. Beccaria defines an early, peculiar version of the “law of diminishing marginal utility”. According to this principle, a society that threatens its members with brutal punishments in fact gradually makes these members accustomed to tolerating the aggression that is targeted against them. As the members of such a society become more and more immune to pain, step by step after each punishment, political societies must “raise the stakes” higher and higher, and they have to apply increasingly cruel methods to curb criminal activities. On the other hand, Beccaria thinks that the consistent and predictable execution of moderate punishments is much more effective for the protection of the common good than threatening with excessively violent forms of retaliation. Inquisition seems more like a resilience test than a means to find out the truth. Its application in society is absolutely dysfunctional: the hardened and aggressive criminals will usually withstand torture; weak innocent persons, who are the more useful members of society, will break sooner (Joas, 2011: 69).

The illegitimate nature of capital punishment also comes from the nature of the contractual relations. The contracting parties who feel that their lives and property are at risk, have well calculable interests in sacrificing the smallest possible part of their personal freedom on the altar of peace or the common good. Thus, in the contract, they do not relinquish the right to dispose over their own lives. This means that a state which applies capital punishment apparently only acts according to the legitimate penal norms, while in fact it wages a war against its own citizens. Of course, the rare situation in which someone is excessively dangerous for the maintenance of the contractual system is also conceivable; where not even the threat of imprisonment breaks his resolve or organizational skills. If in such a situation, political power is compelled to apply the method of capital punishment, rationality dictates that the sentence should be executed in a way regulated by law, publicly, rapidly and in the least

painful manner possible. It is here that the critical remarks of Beccaria become very sharp, as the practices of executions are not in line with the above-described rational principles even in more developed societies (Joas, 2011: 69-70).

Critical remarks concerning the contractual concept

Joas thinks that Beccaria, as many other philosophers, overrates the role played by the idea of a social contract in establishing humane procedures. Beccaria himself acknowledges that in many kingdoms of the time, serious efforts had been taken to reduce torture well before the creation of his theory: inquisition was officially banned in Sweden in 1734, while the same was done in Prussia in the forties, under Frederick II (although actual practice many times contradicted these endeavors). In France, the procedure based on torture has been restricted since the mid-18th century. Thus, any such representation that presents the reduction of the misuse of power as a single act is wrong. What we are talking about here is not an “agreement” coming out of the blue but a complex social process that began before the Enlightenment (Joas, 2011: 70).

I assume that Joas does not formulate his simple criticism of Beccaria here, i.e. that the conclusion of the social contract can be denied historically. What he rather does is that he explains that the contract theory carries hidden historical presumptions, so presenting the “real history” as opposed to the theory also affects the normative consequences of the theory. On the one hand, the problem is that in Beccaria’s “history”, a civilized present is separated from a barbaric past by a one-time enlightenment, a fast learning process or a kind of “growth”. But it is also a problem that this history is “told” from the perspective of a norm that is defined as eternal. As most authors of contract theory, he assumes that the protection of human life is a moral command that is most deeply rooted in the human heart. This means that penal law, or even the history of mankind as such depends on the clear recognition of this law. Of course, the historian recognizes that the earlier legal systems do not even tacitly presuppose the priority of the protection of human life: punishing blasphemy and profanity was in fact always a priority over sanctioning the termination of a simple, profane life (Joas, 2011: 72). However, it is more important that the history of law can also be presented more adequately from the perspective of these norms: seen from the perspective of the Enlightenment, the world of the past, which seemed to be homogeneous and confusing, appears in a more logical order. The

image of such societies which attempt to sanction the violation of sanctity and high treason in the most efficient way possible emerges, in accordance with the skills of the society in question, and their view of the order of the world.

The critical remarks made by Joas, however, concern that Beccaria, in the context of contract theory, cannot authentically describe the moral intuitions of the modern individual with regard to punishment. On the one hand, he cannot really understand that suicidal intentions are condemned, what is more, in many cases even sanctioned by the enlightened world as well. This makes no sense in the formal system of the social contract. If the parties in the state of nature do not transfer their right of disposal over their own lives to the society, it makes no sense not to have the freedom to take their own lives. It also causes problems that Beccaria basically argues for the necessity of the social contract by referring to the utilitarian principle. Thus, his theory is ultimately unable to define the normative source of the conviction according to which the lives of all humans are to be protected. In the logical system of the contractual concept, the ultimate normative judgment depends on the benefits to the community or the majority of the contracting parties. However, from this position, it is very difficult to explain why the termination of human life, which may be valuable or valueless for the common good, is equally regarded as a horrendous crime and why penal law is not permissive concerning the termination of “useless lives”. The critical remarks may perhaps be generalized as follows: on the one hand, it is difficult to explain from the perspective of the modern contractual tradition that in modern societies, where individual autonomy has been elevated to the rank of the most important value, the individual is by far not as free to dispose over his own life as over his own property. On the other hand, from this viewpoint, it is difficult to understand how in the very same societies, the universal command of the protection of individual lives has become independent from the value hierarchy dominated by assumed social usefulness, which is basically merocratic.³

³ Axel Honneth regards the parallel “democratization” and “meritocratization” of the values related to a person as one of the key tendencies of the bourgeois capitalist society and modernization, see, for example (Honneth, 2003: 163)

Total control and social inclusion

Joas aims to outline a theoretical alternative which grasps the logics of the penal system of pre-modernity and which allows that the illusions of modernity are also highlighted by exploring the premodern roots of penal norms. Thus, it is not surprising that in his theory, he also quotes the work of Michel Foucault entitled *Discipline and Punish*. Foucault, on the level of everyday communication, described the peculiarity of the old type of punishment based on bloodshed from the logics of duels. Just like a duel, a premodern “punishment” in general does not sanction the violation of a formal rule but a “one-time act”, the violation of the moral integrity of an individual, a trauma in one’s life. Foucault studies those types of torture, from the side of the central power, which were elevated to the rank of a public, festive event by the absolutist regimes. Thus, torture is presented as a ritual during which the ruler restores his sovereignty violated by the perpetrator. Torment and physical pain appear as the unavoidable elements of punishment in this system: the “natural” order of power can only be restored if the perpetrator “burns in the flame of the power” of the sovereign. Thus, contrary to the typical interpretation of the Enlightenment, punishment based on torture cannot be interpreted as a remnant of barbaric tribal retaliation. In fact, it is the logical and indispensable element of a peculiar rule of law. In this system, all violations of law can be interpreted as a direct attack against the sovereign (the source of law), i.e. as high treason. The capital crime, i.e. open rebellion against the ruler is the absolute point of reference for minor crimes. Thus, minor physical pain involved by the punishment is ultimately meant to remind the perpetrator of the pain of death, i.e. the ritual restoration of the power of the sovereign (Foucault, 1990: 66-67; Joas, 2011: 78). However, (in this work of his), Foucault does not pay attention to those correlations which arise from the changes of the foundations of sovereignty. The history of modernity is described from the perspective of abstract *rule* that restructures societies in all circumstances and the transformation of the culture of punishment is derived from the changes in ruling techniques. This is why the description of the history of modern prisons is at the core of his work, from the world of casamates through the modern prisons that aim at “the rule of the intellect” to the *panopticon* that allows total observation.

Joas’s criticism of Foucault is based on the observation that Marcel Gauchet made on another important piece of work of Foucault entitled *The*

History of Madness. Foucault thinks that in the Middle Ages, insanity was regarded as “a normal part of creation”: this view of the world had led to a high extent of social acceptance from the side of the other members of society. However, with the advent of the Enlightenment, i.e. the creation of “the culture of rationality”, this approach changed radically and those in power ensured that the insane “are kept away” and excluded from society by the establishment of total institutions (mental hospitals, asylums). However, Gauchet thinks that the theory of Foucault rests on a mistake: it is in fact the most radical form of keeping distance that is manifested in the medieval “tolerance”: an insane person is not a part of the human race, he occupies a totally different place in the order of creation, so he requires little attention. This approach basically changes as a result of the absolutist social organization (this is already regarded by Gauchet as an important part of modernity), which intends to transcend the richly differentiated society of the Middle Ages by making everybody a subordinate of absolute power, and thus, a part of society.

In Joas’s view, there is an analogy in the situation of an insane person and a criminal. One can recognize that in Western societies, it was only after modernization that the need for “reintegrating criminals into society” as the equal members of society emerged. From this, he draws the conclusion that the endeavor of prisons, and in general, of the new institutions, to control behavior was preceded by a more deeply-rooted process: a challenge that can be identified from exercising absolutist power through the homogeneous nation states and the citizens’ nation states to the welfare states, i.e. that a unified society should be formed; that those individuals who were earlier regarded as unintegratable should increasingly be involved in the social processes (Joas, 2011: 79). From this position, the plans that point to the direction of growing observation, intellectual control or the calculation of action are not the indispensable elements of modernity. What they can rather be interpreted as are inadequate, sometimes antihuman responses to challenges that seem to be unsolvable: as an answer to the question how the gap between man and man, arising from the difference of socio-cultural backgrounds, socialization, as well as mental or physical differences can be bridged during social practices.

The concept of sacredness

Joas strives to reconstruct a new type of social integration mechanism, in creating which he relies on Durkheim's theory but interestingly, his work on the sociology of religion gets more attention than his analysis of the division of labor in society. Joas's starting point is Durkheim's famous definition of religion: „[A] religion is a unified system of beliefs and practices relative to sacred things, that is to say, things set apart and forbidden — beliefs and practices which unite into one single moral community called a Church, all those who adhere to them” (Durkheim, 1915: 47). According to a plausible critical remark, the key problem in this definition of religion is that it places another hazy concept requiring definition in the center of his argumentations on religion, which is the concept of the *sacred*. Thus, essentially, he shifts the problem of definition.⁴ Joas emphasizes that Durkheim most of all refers to an experience when he defines “sacred”, according to which, even in very different social formations, individuals experience the presence of power when they meet an object that is considered sacred. This power may be “transplanted” by the profane individual into himself, and he feels that he partakes in something pure, as an impure person. Some of Durkheim's critics think that what underlies the wording “the migration of forces and energies” is the intention to ultimately describe the social movements as the game of forces and counter-forces, without a more in-depth study of social subjects, built on a scientific analogy. However, in Joas's opinion, in Durkheim's line of thoughts, the views of pragmatist philosopher William James can be discovered (Joas, 2011: 93). According to this view, there is nothing in the cognitive convictions of religious individuals and their religious dogmas explained in a theoretical form from which the social scientist could understand the deeper reasons for their actions and cooperation in a religious community. The reasons can only be explored through understanding its peculiar dynamics, i.e. by recognizing that the members of religious communities spontaneously, i.e. not consciously build a system of rituals and common actions around certain “objects”, joining which the power of the community may be experienced as the source of their own vitality. The phenomenon that the members of a community may have a common world view, in the context of which the chaotic world appears to be in order and the individuals find their own roles in this world, is due to

⁴ See the consistent explanation of the counter-argument in: (Spiro, 1966: 89).

the intensive experience that they have when they become involved in this action.

After reviewing these considerations of sociology of religion, Joas draws attention to those contemporary approaches which also explain the formation of the various “secular” world views by the process of sacralization. According to these, secular nationalism, Marxist socialism and combatant liberalism became a unifying power because they created their own sacred “objects” and ritual forms of action. In my opinion, what one should think of here are the belief in a “sacred homeland”, the “party”, “the revolutionary labor class”, or “unalienable human rights”, national or workers’ movement pantheons, the festive processions organized around these, as well as the national and international holidays, taking oaths and credos, which appear besides the religious holidays. These are the examples that have shown Joas that the traditional definition-related correlation of sacredness and religion can be reversed. The concept of sacred cannot be derived from religion, while sacralization is a process that determines the evolution of each culture. Of course, sacredness is also constitutive for religion but a religion will only be established if the credos and practices built around the sacred become systematic and determined by a dominant social institution. However, seen from “the level of social organization”, it would be hard to say why French nationalism, Soviet-type communism or mainstream liberalism cannot be called a religion in the sense of the definition given by Durkheim. From Joas’s interpretation of Durkheim, however, the conclusion can be drawn that the dichotomy of sacred and profane cannot be matched with the dichotomy of religious and secular (Joas, 2011: 94-95). The formation of modern societies can also be presented from the perspective of such sacralization processes which take place more and more independently from the religious institutions in the traditional sense of the word.

Cultural transformation and the logic of punishment

For now, let us return to our original question: how can the transformation process examined by Joas be interpreted? From his criticism of Beccaria, what follows is that the adequate story of how a Western person thinks about the punishment of the other person can be properly told if one assumes that the violation of sacred things has always been considered the gravest sin. We could see that offending or killing profane persons has generally not been a grave sin all through history. On the other hand, Joas

concluded from the analyses of Foucault's works that through studying the absolutist regime of punishments, it is possible to explain the logic of the Western penal system. Thus, the transformation under review can be described as the "individual person" having gradually taken the place of an infrangible sovereign who ruled from the grace of God, in the modern rule of law and public morality. The attacks against this sovereign, which are manifested by word or action, should not simply be described in terms of the rational-legal model of causing material damage but rather, by using the analogy of high treason. Thus, it can be concluded, that in its original sense, modern punishment should be interpreted as an activity during which the members of society ritually restore the power balance built on individual persons.

This grows into a more general image of society seen from the perspective of the above-described interpretation of Durkheim. This means that the expression "sacralization of the person"⁵ refers to a typical process of the evolution of modern society, during which various prohibitions, beliefs and common practices are built around the individual person, in order to unify the members of society into a broad moral community, in line with the moral challenges of the period in question. According to the Durkheimian analysis presented above, Joas should create such a reconstruction of modern society in which the modern system of institutions can be modeled as a form of joint action built around and using the "power" of this sacredness. Also, he should prove the assumption that there is a comprehensive "world view" underlying the particular beliefs of the members of society, the cornerstone of which is the individual.

We may critically remark that ultimately, Joas fails to reconstruct such a comprehensive view of society and the world. He only examines to what extent it provides an adequate explanation for the changes in the history of penal law and disciplining. However, he shows it very convincingly that several phenomena that made no sense in the theories of

⁵ Durkheim usually speaks about the sacralization of the individual or the cult of the individual. Joas thinks that it is more accurate to talk about the sacralization of the person: in his view, the concept of a person or a personality makes a stronger reference to the social restraints of the individual and it expresses the social relationality of human life more clearly, so it can be juxtaposed with the image of the individual who follows egoistic preferences. (Joas, 2011: 83-84; Dirscherl-Dohmen, 2013: 71)

Beccaria or Foucault can be explained from the perspective of Durkheim's theory. It was difficult to explain from the perspective of Beccaria's theory why those persons who attempt suicide are morally condemned – if one of the discoveries of modernity was the very idea that the rational individual freely disposes over his or her own life. The key, in Joas's opinion, is that the basis for new modern morality is not self-determination according to personal discretion but the faith, unjustifiable on a rational basis, that one's body and one's person are "sacred", so it also deserves respect and protection from one's own arbitrary interventions.⁶

It is also from the perspective of this deeply rooted cultural characteristic that the logic of the modern penal and disciplining order can be explained. The modern individual is a part of an order of action, in which he recognizes himself and the other person as an untouchable "sacredness". However, thus he will encounter an important dilemma when he has to decide on a punishment of appropriate weight. As a result of the cultural changes that took place at the beginning of modernization, we are now more sensitive to the physical abuse of other persons, so finding an efficient and deterrent punishment becomes one of the most important public affairs. Paradoxically, however, the same process results in that the members of society become more sensitive to the suffering of criminals as well - even to the suffering of those to whom the gravest sin, i.e. a brutal attack against the "untouchable" human body and human life is attributed. The creation of the institution of the modern prison answered this dilemma. The "deprivation of liberty" as the typical form of punishment serves the purpose that any attack against an individual person should not be sanctioned at the cost of a new violation of this "sacredness" (Joas, 2011: 98).

This means that as an empirical observer, Foucault is right in that the evolution of the new system of punishment did not only go hand in hand with the pushing into the background of torment and inquisition but also, with increasing control over the body. He is also right when he says that these control mechanisms later served as examples for the perfection of the oppressive mechanisms of various institutions. However, the driving force of change was not the abstract rule that institutionalizes the new forms of oppression but the formation of such a social integration process which is

⁶ Joas later traces this idea back to the view of "life as a gift" that has taken root in the Western culture and the Judeo-Christian world (Joas, 2011: 232-233).

somehow built on the idea of individual inviolability. From Joas's perspective, it can be assumed that there are adequate and inadequate methods of enforcing the expectations related to the sacredness of the person in society. Thus, Joas's theory, as opposed to that of Foucault, ideally also makes it possible that repression for its own sake be pushed into the background. It is a question how we can move on to the reconstruction of Joas's normative theory from here.

Historical sociology and philosophy

Joas's historical analysis was built on the assumption that, by examining the history of punishment and disciplining, a change that took place in the early 18th century can be shown, in the course of which torture targeted at causing suffering to the human body has become a less and less legitimate tool of punishment and disciplining. He proved that the point of this change was most convincingly expressed by the social theory of Durkheim, according to which it was the challenge of the integration of extensive, complex societies that was underlying this change. Joas thinks that in accordance with the Durkheimian assumption, the basis for the development of each society and culture is the presence of sacredness (churches, dignities, sovereigns, sacred objects, etc.), around which the system of well-coordinated actions may be built spontaneously. According to the assumption, this is the same in modern society too, the only difference being that the individual person has become the "sacred core" of the operating societies (Joas, 2011: 81), replacing clerical or secular dignities.

In the spirit of Joas's theory, we can say that the basis of the validity of human rights norms is not a fundamental principle that can be rationally proven but a basic experience of the members of well-integrated societies. On the one hand, the individual is faced with the diverse forms of offences and humiliation. These experiences are structured by a system of institutions that is increasingly built on the formal acknowledgement of equality. Thus, the individual, as part of the modern system of actions, may recognize himself and his antagonist as a person with equal human dignity again and again. This means that the human rights doctrine is somehow the theoretical rendition of the basic experience constituting this important source of inspiration and its normative consequences (Möllers, 2011). However, it is a problem that Joas shows the significance of these norms from the perspective of their social functions. But in such a way the question

remains whether one can state anything about the validity of the norms from the perspective of the Durkheimian theory. It creates further tension that Durkheim and Joas explain the bases of the validity of human norms from a perspective of the sociology of religion. From this viewpoint, though, different from the intentions of Joas, the distance between the theoretical viewpoint and the norms that are in principle worth identifying with will grow. At first sight, this approach suggests that the examination of the evolution of human rights norms should emotionally not touch the researcher in the same way as if he examined the functional role of the religious practices of the distant past or distant worlds.

In order to be able to outline a possible solution, it is worth considering the historical context in which Durkheim's theory evolved. As Joas also points out, the direct motivation for the generation of the idea on the sacralization of the individual was provided by the Dreyfus Affair. The position taken by the official propaganda and the army was that the intellectuals who stood by the Jewish officer disregarded the interests of the homeland, that they were anarchists who believed in nothing but who elevated the individual to the rank of the sacred. It was originally this argumentation that encouraged Durkheim to explore the duality inherent in the concept of individualism. He juxtaposed the position of "appropriately interpreted individualism" with that of "egoistic individualism", i.e. such a deeply rooted set of norms which is the basis of the moral that rests on modern social integration and the acknowledgement of individual autonomy. It is of critical importance that Durkheim shows this normative system in a religious context. Thus, the charge that those who took the side of Dreyfus elevated the individual to the rank of sacredness loses its negative connotation. Individualism as seen by Durkheim openly appears as the "religion of modernity", and Durkheim can articulate his elevated standpoint as the follower of this "religion", according to which the violation of the integrity of an individual is a sin of the same gravity as dishonoring sacredness (Durkheim, 1986).

It is perhaps from this perspective that the position of Joas is also outlined. In his analysis of Durkheim, Joas turns against the enlightened position (which, e.g. appears in the works of Beccaria) according to which the validity of the norms is decided in a rational philosophical dispute and which makes the validity of the rights dependent on the sacralization of the enlightened lawmaker. For establishing validity, we have no other ultimate criterion but concluding that certain norms constitute a comprehensive

source of inspiration for the members of society, the mechanisms of constraint-free cooperation are built on these norms and they fundamentally structure the individual's view of the world. Thus, the criteria of the validity of the norms are rooted in a thorough social process, on which a theoretician can only exert a limited effect. However, Joas's Durkheimian analyses of sin, punishment, individualism and human dignity also show that a theoretical expert is not only capable of giving an authentic account of the critical norms but he can also highlight the adequate and inadequate interpretations of these norms. The aim is to show how a human's desire for freedom or justice can be fulfilled in certain historical-cultural conditions.⁷

Sacrality and rational discourse

At this point, however, the critical remarks concerning the ideas of Joas should be reconsidered. As we have seen, in Joas's opinion, the validity of norms ultimately depends on the non-conscious, social acceptance of certain "sacred" things. This idea fundamentally contradicts the assumptions of modern moral and political philosophy, according to which the validity of norms should rest on voluntary, sensible and public consent. In order to be able to outline a possible answer, it is worth paying attention to Joas's brief observation about Jürgen Habermas. At one point of his work entitled *The Theory of Communicative Action*, Habermas calls the transition to modernity the "linguistic transformation of the sacred (Versprachlichung des Sakralen)" (Habermas, 2011: 331-332). He describes a process in the course of which "language increasingly takes the place of religion". Our common symbols are formed less and less during the experience of sacredness and more and more in the course of communication aimed at mutual understanding. Later, it is this very thought that leads to the elaboration of Habermas's theory on legitimation: while in traditional societies, religious rituals played the key part in the crystallization of the values that determined action, modernity is built on the presumption that the validity of norms can only be clarified in an unlimited, rational discourse (Joas, 2011: 95). Thus, in the works of Habermas, one of the most

⁷ Closely related to this idea, Joas, in Chapter 4 of his book, quoting Ernst Troeltsch, encourages the elaboration of a concept the normative viewpoint of which is tied to the identification of tacitly presumed "ideals" by the members of the society of a certain period rather than to "eternal norms" (Joas, 2011: 156-164).

radical theories of secularization is outlined: one of the most important basic conditions of modern legitimacy is that the participants of a discourse should not be able to refer to alleged “sacred” things and that the discourse situation should be fundamentally liberated from the effect of ritual actions. Sacrality and discursive rationality are concepts excluding each other in this context.

In Joas’s opinion, Durkheim also accepts that the gaining ground of the norms of communication and the spreading of the culture of rational argumentation have radically transformed the world view and ideals of the modern human (Joas, 2011: 96). Durkheim analyzes those institutions at several points which are the safeguards of the spreading of the new culture: the modern Parliament, the political debates, the courts that ensure formal procedures. Probably Durkheim would also agree that in these institutions and at these forums, the participants of the debates expect each other to accept the norms of “communicative rationality” (by using the later Habermasian term). As compared to the later Habermasian approach, however, what is much more emphatic is that the problem-free maintenance of these rests on a deep emotional relationship which ties us to the different practices and procedures. Not even the formation and operation of scientific debate groups that seemingly work purely on the basis of formal rules can be explained merely as the institutionalization of the standards of communicative rationality. For their survival, it was primarily the taking root of the *scientific ethos* that was necessary, which motivates the parties to intensively take part in the debates in the course of quasi-ritual common actions.

It is even more important that the problem-free operation of the Parliament, the courts and the scientific community is based on such social conditions the creation of which is independent from the conscious intentions of the persons who take part in the discursive process. Maintaining them presumes the evolution of a historically unique situation in which the parties become more sensitive to the suffering of the other person than earlier, i.e. they become capable of identifying with the perspective of the other person, independently from the social status of the other party. Earlier, it was this very transformation that was explained by the sacralization of the person, the evolution of the quasi-ritual system of actions that is built around him. Thus, from Durkheim’s perspective, it is worth reviewing the idea according to which a normative system based on sacrality and one which is based on communicative rationality appear as

each other's rivals. If the method of establishing validity built on rational discussion pushed the significance of sacral-ritual actions into the background with a final effect, then we would not be able to identify the source of the cohesion which allows the coordination and reproduction of "discursive" institutions. Thus, following Durkheim's reasoning, Joas formulates the hypothesis according to which the coming into the foreground of the norms of communicative rationality does not mean the suppression of sacrality but rather, it is the unique "linguistic expression" of a modern sacralization process, i.e. the sacralization of the person (Joas, 2011: 96).

For this assumed Joasian interpretation of a rational discourse, it is perhaps worth noting the analyses of two Regensburg-based theologians, i.e. Erwin Dirscherl and Christoph Dohmen. They argue for relying on the concept of sacrality used by grace theology in order to be able to understand the concept of dignity as used by Joas. In their analysis, the nature of "sacredness" shows itself in the experience of grace. We can partake in an experience of grace irrespective of our merits: what we are talking about here is a gift from God, the purpose and function of which remains hidden from human thinking, which strives to explore the causal relations, merits and utility relations (Dirscherl-Dohmen, 2013: 73). According to the analysis, on the one hand, the "quality of sacredness" is associated with the idea of "subjective evidence": we can reach a solid understanding without being able to rationally identify the source of understanding. What is more, the experience of "sacredness" does not mean cognitive certainty but rather, an intensive emotion that boosts action or thinking without our being able to indicate the source of inspiration.

From this image of sacredness, one can approach the concept of human dignity analogously. This means that human dignity appears as something "obvious" for the actors in certain social circumstances: the validity of other norms is derived from it but the source cannot be rationally identified. The individual, as an arguing member of a well-functioning discourse community, may intensively experience that both he himself and his antagonist have equal dignity. What we are talking about here is a source of inspiration, which encourages the members to participate in the debate, and a deep conviction, which is the prerequisite for conducting a sensible debate with each other on practical issues. Joas would also agree that after the norms of human dignity take root in society, the norms and the laws have to be justified in a basically rational and free

debate. However, he thinks that such a comprehensive discourse on the reasons which also identifies the ultimate source of the validity of the norms is unaccomplishable (Joas, 2011: 72). The justification procedure will inevitably stop at reaching certain subjective and irrationally accepted evidences, which will be spontaneously accepted by the participants of the discourse but in support of which they cannot bring up any arguments.

Joas does not mention what these evidences are. Anyway, it is plausible to think that without the expectation of tacitly accepting the other person as equivalent in a situation of debate, as one who is able to formulate a better argument than us, irrespective of his social status, it is impossible to conduct a wide-reaching rational debate. It may also be discussed how this expectation can be represented in the different institutions of society which would provide an appropriate framework for conducting such debates. However, it is not in the discourse that the expectation of “equivalence” within the debate gains legitimacy: it becomes an expectation that fundamentally structures our lives and way of thinking through an unconscious social process, which is independent from the discussion.

In Joas’s interpretation, there are such normative expectations which evolve independently from the members of society or the participants of the discussion. What derives from this is that the perspective of social criticism cannot be purely tied to the theory of discourse, or to calling the norms of discursive rationality to account. There is a more deeply-rooted historical perspective, starting out from which the theoretician can map the differences in the Western type of social development, as well as the successful and pathological versions of individualization. In principle, by this, such social circumstances can be disclosed which may be responsible for the repeated failure of the possibility of a rational discourse in certain societies, despite organizing forums for such discussions. Such societies may be pointed out in which the organization of the institutions takes place on the basis of a Western example but the possibilities of constraint-free action are still not available. For instance, because the members of society do not recognize the individual equivalent to them in the other person; or they do not see the dignified and inviolable person in themselves either.

Emerging problems

What we could see up to this point is that Joas fruitfully reinterpreted Durkheim’s theory of society. On the one hand, he explained that the

authentic story of the transformation that has led to the prohibition of inquisition, torture and at many places, capital punishment in the Western world can only be told adequately from a reconsidered Durkheimian position. From this Durkheimian perspective, a possible basis for the legitimacy of human dignity has evolved. This means that in modern societies, such forms of integration and constraint-free joint action became possible in which the individuals can recognize themselves and their antagonists as inviolable “saints”. At the same time, in certain cases, they will be capable of identifying with the other person in an empathetic way, irrespective of the other person’s social status. Human dignity and the system of human rights norms built on it basically do not gain their legitimacy in a rational discourse. However, a theoretical discussion is one of those modern collective forms of action in which a person can discover in himself and in the other person the individual with dignity, in which they can best assert their needs. A rational discussion as a collective action, however, cannot be maintained without the possibility of changing perspectives, without the tacit acknowledgement of the dignity of the other person.

However, in the analysis of Joas, the social-theoretical status of the concept remains unclarified all through. Placing the problem of “comprehensive cultural transformation” in the center suggests that Joas wishes to interpret the narrative about the “sacralization of the person” as a comprehensive metanarrative of Western modernization as a whole (although Durkheim had probably no such intentions). If this is so, then all the tendencies and developments, or antihuman destruction, etc. in Western modernity are in some way related to this process of sacralization, as well as the adequate and inadequate solutions for the related challenge of inclusion. Some other points in the text, however, suggest that modernization should rather be seen as a wide-ranging process of differentiation. This means that modernization made it possible that, “becoming free” from the traditional religious background, parallel sacralization processes be conducted. But thus, the option of an all-embracing metanarrative can be excluded: the “sacralization of the person” is only one of the tendencies whose exploration may create the opportunity for searching for the foundations of a totally different “secular system of beliefs”.

However, as a result of this duality, it is very difficult to say which direction to follow when we wish to present the most serious pathologies

of modern societies, for example, when we wish to grasp the point of totalitarian or other inhuman regimes. In the case of these, are we talking about the wrong turn that the “great Western transformation”, i.e. the sacralization of the person has taken? The situation is that the establishment of these systems does not seem to be exceptional or transitional. Is all this about the misunderstanding of the expectation of an increasing inclusion, execution by the “equivalent party” with the wrong means, which will ultimately backfire and end up in inhuman acts (as we have seen in Joas’s criticism of Foucault)? Or, shall we discover the conscious and quasi-ritual violation of sacred things in the mass-scale violation of dignity (as in the case of destroying altars and damaging graves)? In most cases, Joas tends to describe the big social problems as the result of the conflict of opposing processes of sacralization: for example, the ideal of individual morality is threatened due to the process of the sacralization of the race, the nation or the social class. What Joas says about the anti-capital punishment attitude is the following: this is repeatedly faced with the opposition of the nationalistic “civilian religion” dominant in the Southern part of the USA.⁸ However, by using this explanation, we seem to give up the assumption according to which there is a dominant process of sacralization which is the basis of all modern social changes: one of the “modern systems of beliefs” may overcome the other one and may define, in the long term, the world view of acting individuals and it may coordinate their actions (without coercion).

In such a way, however, we come across a question that touches upon the construction of the normative theory. Joas argued for that the activity performed by the normative theoretician is mostly aimed at explaining the history of the normative system that he also accepts, as well as the possibility of the adequate realization thereof. In the case of human rights and dignity, we have seen that the ultimate basis of their legitimation was the “subjective evidence” that cannot be traced back to anything, which is revealed in the course of the right collective action. In the Joasian sense, one can interpret the conflicts of the multicultural societies of our age as the conflict of the opposing processes of sacralization. If, however, in this

⁸ For example, Joas thinks that in the debate on capital punishment, the acceptance of the sacrality of the person gets in conflict with the nationalistic civilian religion that repeatedly gains momentum in the Southern part of the USA (Joas, 2011: 103-104).

situation, there is no theoretical reason for attaching special significance to the sacralization of the person or the related normative expectations, what will explain connecting the perspective of the normative social theoretician to human dignity (rather than to the nation, or any other sacralization tendency that evolves spontaneously)? In our analysis, we could see that Joas assigned an important role to the principled thinking of the philosopher and the social theoretician during the procedure of legitimation. But we could also see that this is ultimately not related to a universal perspective, from which one could decide between the opposing traditions; so ultimately, it will also be doubtful whether it is capable of depicting a comprehensive normative view of society.

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