

6

A Continuity of Silence in Serbia: From the Irrelevance of Human Rights to Collective Crime, and Beyond

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I. Setting the stage: Rights silence and mass killing of innocent people

This text explores the reasons for the continuous violation of human rights in ex-Yugoslavia and in one of its successor states, today's Serbia. I will argue that this continuity is made possible due to the ideological and practical status of silence about rights in three types of regimes that have followed one after another: communist authoritarianism, nationalist authoritarianism, and transition to democracy. These regimes have been marked by the fundamentally same type of cultural and political silencing of human rights, which will be identified here as the rule of words. I will argue that the relationship between words and silence in authoritarian contexts is distinguished by a peculiar interplay rather than incompatibility: authoritarian, unquestionably binding words create and reinforce silence about rights.

Those words that reign and whose cacophony produces deafening silence about rights, we recognize as the official, and the only allowed, ideology. I will argue that the *differentia specifica* of this ideology is not merely its exclusivity in the given societal and political context, but rather its *capacity to produce reality*. In this context, both the act of silencing and silence itself amount to more than the repression of the voice of individual moral autonomy. When discussing 'the act of silencing', I will refer both to the processes that deny autonomy of voice, and to the forceful creation of a new reality. 'Silence of rights' will be understood as a communicative pattern, or a social rule, which regulates both relationship between the regime and its subjects, and relationships among subjects.

I focus on the continuity of silence as a necessary explanatory variable for the comprehension of the contemporary Serbian condition. The case of Serbia demonstrates the difficult interplay between the past and the present in a post-authoritarian context marked by extraordinarily difficult legacies. For the purpose of this paper, a distinction will be made between two types of transition-relevant legacies. The first type is common to all transitional

regimes, and is comprised of the economic, socio-cultural, political and legal remnants of the old regime. This is an obvious obstacle to the process of democratization – it is the existence of these legacies that has brought to life the practice and theory of transition to democracy.

The focus of this paper, however, is on another type of legacy, which I identify as ‘the legacies of the evil past’. The term ‘evil past’ refers to a specific set of features, values, attitudes, and actions under the old regime, as well as to their consequences found after the regime change. My analysis of mass, regime-sponsored crimes is led by the intention to grasp the essence of the moral and political condition of the post-criminal society.¹ I will claim that the legacies of mass crimes are distinguished by the character of the requirements they pose on such a society and its members.

The gravest typical element of mass crimes is mass murder, often guided by the intention to annihilate whole groups. These groups are identified and their members are chosen to be killed on some ideological basis, be it racism, nationalism, or class belonging. So, the targeted victims are the people who are ideologically proclaimed as enemies or as less worthy human beings. Mass murder is complemented by other forms of violence. Those who are not killed, or those who are not killed yet, are denied the status of citizens, and they are forced to live in a condition of constant humiliation and fear, deprived of any security. One of the most important features of this condition is denial of the protection of the state. The provisions of legal, political and social protection the modern state guarantees to all of its citizens, and which citizens in normal situations take for granted, cease to apply to targeted people. The police do not protect them, and the judicial system does not recognize them as equals. Their property, together with everything that comprises the normalcy of their lives, can be freely taken or destroyed. They are often deprived of the freedom of movement, they lose their jobs, they are denied access to education, proper social and health protection. Such people become outcasts, living or dying at the mercy of those who named them enemies.

This summary description of the regime-sponsored mass crimes accurately applies to the period of nationalist authoritarianism in the history of the former Yugoslavia and Serbia. Given that in this case the time of mass killing stands between the period of communism and today’s stage that resembles democratic transition, one may ask (1) whether, and if yes, how, killing of innocent people in the name of the nation was influenced by the preceding communist rule, and (2) whether, and if yes, how, legacies of the crimes affect today’s individual and collective identities, and the process of democratization. I will defend affirmative answers to both questions of the existence of causal relationship, and then explain how these processes worked. In a nutshell, I consider mass crimes committed in the recent past as the empirical point at which analytical and normative considerations about the past, the present, and the future of Serbia meet. I refer to the

126 *Silencing Human Rights*

empirical point, and not to a mere difficult element of the society's past, because the criminal past, strictly speaking, has not yet passed. The old economic, political, cultural, and ideological patterns of crime may have ceased to be determining features of the new present, old criminal elites may have been removed, crimes are perhaps unlikely to be repeated, but they are all in a specific sense still living and powerful. It follows that we cannot simply disregard them. We need to understand the role they played in the recently delegitimized past. We need to comprehend the exact manner and shape in which they are present today. And we need to form a clear normative stance about them so that we can prevent resurgence of the founding values and practices of the old regime.

In the following three sections I analyse different variations of violent silencing of rights, as they have appeared in the three above identified periods of the recent past and the present of ex-Yugoslavia and Serbia. The abbreviated exploration of the communist and nationalist regimes serves to prepare the ground for a more nuanced analysis of the present-day predicament. The dynamics of the relationship between the rule of words, silence about rights, and violence will be explored. In going from one period to another, I will ask roughly the same set of questions: who is the author of, and who is the authority behind the ruling pattern of silence; who are its addressees and what is their attitude towards the imposed silence; how is it justified; what is its outcome? In the final paragraphs I offer a combination of analytical and normative arguments about how to overcome the legacies of the past.

II. Utopian words that matter: Act of silencing and silence as a social rule under Communism

The claim that ideology produces reality calls for a minimum coherent elaboration before it is introduced as the analytical tool for the comprehension of events in Serbia and Yugoslavia in the recent past. The first question might be that of the social condition in which the rule of words becomes possible. And the answer should perhaps be looked for in the constitution of the communist regime. Yugoslav communism – despite the loudly proclaimed ideological optimism of its alleged 'third way' – did not substantially differ from its more orthodox Stalinist counterparts. This is not to deny this regime's specific qualities, but the character of these qualities was not such that it could question the essence: in Yugoslavia communist ideology was creating reality. This is why the present section is devoted to a – methodically and analytically substantially abbreviated – presentation of the idealistic character of the constitution of the communist regime followed by an overview of the constitutive role silence played in this regime. A summary of Yugoslav specificities will open the next section, where I will try to demonstrate that the main distinction of this version of communism was to be found in the way it was linked to the nationalist ideology.

II.1. Act of silencing

Using the Marxian vocabulary, the real 'basis' of the communist revolutions and regimes was – despite aggressive ideological recourse to historical materialism – the idea. We know that Karl Marx did not mean it like that. Simplified, his stance reads that the communist revolution would come to be when capitalism was no more able to control its inner contradictions, which would happen when the capitalist economy exhausted its re-productive capacities. Once this historical stage was reached, the working class would embark upon constituting a new form of the life production, the main co-ordinates of which would already be developed within the old system (Marx 1964: 67).

But, the constitution of the communist regimes took place within social, political and ideological parameters very different from those theorized by Marx. All the communist revolutions were carried out as radical interventions into the existing world on behalf of something (communism) that existed only as a name for a socially and politically irrelevant projection of the future. Nothing in the given reality would offer economic, political, or social co-ordinates that could serve as guidelines for a positive perception of communism. Confronted with this predicament, Vladimir Lenin came up with an answer the importance of which can hardly be over-estimated: being non-existent, the features and agents of the communist project would have to be discovered and installed. But for Lenin it was equally important to prove that his position was not a voluntaristic lust for power, but rather that the application of Marx's 'objective laws of historical development' (Lenin 1975a: 640). The task was huge indeed and can be summed up as the demand for both ideological and practical-political demonstration that reality as it stood was only a misleading appearance (Lenin 1975b: 24–7). Therefore, Lenin was mostly concerned with finding the ways of demonstrating legitimacy of overcoming the discrepancy between the existence (the given) and the essence (the ideal).

Then, the main problem of the 'transitory period' to communism was found in the fact that only a minority of people – those able to see beyond appearances – mastered the laws of history. The practical consequence was the promotion of the Communist party to the position of the Hobbes-like 'sovereign representative' of the socially and politically immature working class. Whereas, in social respect, the new type of community was essentially a (pre)capitalist structure ruled by communists, the principal normative status was given to the *program of overcoming the given* (Puhovski 1991: 31). The methodical place of Marx's concept of the 'new form of life production' became occupied by an *image of history*, the ideal of society which was still not, but 'which had to be'.

With Stalin, however, the tension between the movement and the order was solved in favour of the latter. The original Leninist idea of permanent radical intervention into reality on behalf of the future was reduced to a

mere ritual dogma, and the main objective became the preservation of the existing power structure. Once the original anti-capitalist program was effectively removed from the agenda, the principal means of survival of the regime was found in the voluntaristic constitution and defence of *its own reality*, understood as 'a reality [that] deals with the concept of society as a work of art, with society as a medium of theory and not of practice' (Puhovski 1994: 205).

II.2 Silence as a social rule: Words that create reality

In such a condition, beyond the boundaries of the party-state there is nothing of relevance – the ruling ideology does not allow for an independent societal sphere of individual autonomy. Of course, it is not like that by chance. This ideology, being originally still only a system of ideas, has to dispose of the material power capable of imposing the *chosen vision* as the *only allowed alternative*. If we approached this ideology as a mere representation, or as an after-the-fact interpretation of reality, we would probably have to see it as a peculiar and brutal cynicism, which is ready to chant about harmony, true democracy, freedom, welfare, etc., this all in a condition of blatant denial of human rights, material and cultural poverty, forced collectivization, secret police, and Gulag. But, this would be a wrong approach, for one simple reason: this ideology produces reality, not its false interpretations.

Only two agents are allowed to exist on the stage: the Speaker and the Listener, the latter being composed of atomized rightless subjects.² In the busy context of the ideological clamour, silence acquires the meaning of the social rule that deprives everyone but the Party of an independent voice. Still, silence of subjects does not equal their dumb passivity. On the contrary: a loud voice is expected from the Listener, but the tenor, tonality, and harmony of this voice has to follow both the sheet music and the conductor's gestures. Actually, it is difficult for the Listener to find an appropriate mode of silence. Faithfulness to one's own reading of the ideological words could all too easily be misleading – what really counts is only the Speaking Party's binding representation of the orthodoxy, which is a composite of the production of binding words, their official interpretation, and unquestionably authoritative evaluation of the subjects' behaviour. This was, with painful accuracy, summarized by Bukharin in the show-trial that preceded his execution: 'The logic of our struggle led to the logic of ideas, and to a change of our psychology, to the counter-revolutionizing of our aims... Consequently, I plead guilty to what directly follows from this, the sum total of crimes committed by this counter-revolutionary organization, irrespective of whether or not I knew of it, whether or not I took part in any particular act' (quoted after Merleau-Ponty 1969: 52, 45).

The lesson is clear. Human life is of worth only to the extent it functions as a particle of the Great Unity. The Party should protect communism by

making it apparent to the masses who is right and who is wrong – therefore, the guardian of purity has to exclude traitors from the society, and it has to perform its educational function by making these cases public. This is how the ‘Great Terror’ comes into being.

III. Tribal words that matter: Silence of rights under the nationalist regime

III.1. The end of Yugoslavia

The Yugoslav model of ‘socialist self-management’ tried to establish its legitimacy largely by emphasizing its substantial differences from the Soviet regime. True, there were some differences. Still, despite the ideological claims to the contrary, those differences failed to challenge the core of the Soviet-type construction of reality. Although the institutional and ideological picture of the regime of self-management was astonishingly complex, the position of the Communist Party remained unchanged: like its Stalinist counterpart, it never ceased to act as the possessor of exclusive and binding historical knowledge.

Self-management in Yugoslavia did, however, produce a greater diversity of compulsory ideological patterns of social roles. Every individual was bound to simultaneously belong to several ideologically formulated groups and sub-systems, which were allegedly designed to follow the logic of the ‘authentic socialist interest pluralism’. In this design, separate ideological names and organizational forms existed for economy, politics, culture, local government, and the state organization. Teacher and pilot, miner and violin player, pensioner and pioneer, were required to loyally accept and work toward making real the ideological designations of their respective social status. Hence, the prior ideological answer to the question of who the individual was functioned as both the fundamental constituent feature, and as the ultimate limit of one’s existence in the community. The same holds good for the global constitution of society, the self-management quality of which was both imposed and exclusionary. Any idea or action that would point beyond the concept of community outlined by self-management was judged as opposed to the historical interests of the working class, the state, and communism. Consequently, proponents of such ideas and actions had to be marked as enemies.

The existence of communist Yugoslavia was contested by the Party’s ideological turn to the nationalist right in the late sixties and the early seventies. While toying with nationalism was far from being an exclusive feature of Yugoslav communism, this case stands out through its formal recognition and institutionalization of the primacy of ethnic sovereignty in a multi-ethnic communist state. With the benefit of hindsight, it could be argued that the Party tried to combine two types of the rule of words, in an effort to re-legitimize and further strengthen silence about rights. This

130 *Silencing Human Rights*

move was staged with the adoption of the 1974 Constitution, which effectively legalized the ideological, political, economic and cultural homogenization of the Yugoslav nations within member states. It is important to point out that the 'working class sovereignty', which remained officially the central ideological principle, was not allowed to reach beyond the borders of ethnically defined member states: each federal unit had 'its own working class' led by its own, ethnically legitimized, branch of the Party.

The Party was able to seemingly easily perform this ideological and institutional turn to the right by re-presenting nationalism as the inherently communist principle of equality of nations. In this way, the Party imposed itself as the only legitimate agent of the Idea in its 'dialectically changed' form, i.e. as the agent capable of harmoniously integrating the radically leftist idea of Yugoslavia as a workers' state with the co-existence of ethnic sovereignties within that same state. Nationalism was conceptualized in the same way as self-management, i.e. as an idea that is established and imposed with the aim to produce the desired reality. At that time, this looked like the achievement of an important goal: a deep ideological change of the legitimation basis of the regime had been accomplished without challenging either the regime's smooth reproduction or the privileged status of the Party as its embodiment. However, this was a Pyrrhic victory: in 1974, the Yugoslav communist regime paved the way for the advent and stabilization of anti-Yugoslav and post-Yugoslav nationalisms.

The peculiar combination of the communist and nationalist exclusivity lasted for several more years, thanks principally to the charisma of the President of the Republic. But immediately after Tito's death, the disintegration processes came to the foreground. During the eighties, the political and social crisis was continuously deepening, and Yugoslavia was gradually falling apart at the same speed at which the Yugoslav Communist Party was losing its legitimacy. These were exceptionally noisy years. Countless Party conferences, long reform documents painfully assembled only to be immediately forgotten, partisan speeches of political leaders, and partial commentaries in the increasingly ethnicized media faithful to 'their' communist parties, warned of a possible catastrophe. The ruling voice was singing hopelessly out of tune. The concept of 'totalitarian consociationalism' that called for the consent of the elites of the ethnic branches of the Party, proved only to be an efficient means for the destruction of the last remnants of the federal authority. It was becoming increasingly obvious that the words produced by the Party could not rule anymore. Something had changed: the official voice had none of the authority of old, nor was silence identifiable as a harmonious chanting of the prescribed truth. Instead by subjects' loyalty, proclamations of the organs of the federal Party were met by ever louder voices demanding a clear nationalist stance.

It was only a matter of time before the masks with the ritual remnants of the communist ideology would start to drop – the central question was

actually who would dare to formally break the ruling pattern of silence, and to say that communism was dead. The Serbian communist party led by Slobodan Milosevic was the first to publicly embark upon establishing a new type of the rule of words and a corresponding type of silence.

III.2. Act of silencing: Establishing the nationalist rule of words

Using the perspective of the so-called 'Serbian national question', Milosevic's regime promoted a distinctive populist strategy centered around the myth of the national unity and supported by the continuous fabrication of 'enemies' against whom 'we must unite'. The complex machinery of nationalist indoctrination was set in motion in order to produce the basis for the massive ethno-political mobilization and homogenization. The ruling elite, supported by unprincipled nationalist intellectuals, embarked upon the construction of a new powerful Voice, a discourse that would be capable of ruling in the same way the communist ideology used to. A suitable discourse was found in the form of 'resentment nationalism', an ideology centred on the analytically meaningless but ideologically powerful concept of the Serbian martyrdom in Yugoslavia. Serbs were presented as the victims of a conspiracy inspired, carefully planned, and carried out by the coalition of their traditional enemies (other Yugoslav nations) hidden behind the communist mask. This inherently chauvinistic image of the victimized innocent nation was about to be *presented as reality, in order to produce a new reality*. Orchestration of hysterical mass outbursts of rage (officially called 'the happenings of the people'), aggressive xenophobia and chauvinistic hatred, use of lies and stereotypes, selective presentation and misinterpretation of facts, were all instrumentalized in order 1) to invent and impose a false (that is, non-existent) national identity based on the mythical concept of the nation as the 'natural community', and 2) to create a political, social, cultural, and psychological perception of the present as a state of chaos, terror and fear.

Before the mass killing of innocent people would start as the ultimate stage of this process of the re-creation of reality, it was necessary that as many people as possible accept the annihilation of freedom and of individual autonomy as both just and 'natural'. Political propaganda, the creation of stereotypes, manipulation through media, education, science and popular culture were the most important techniques for the interiorization of this ideology by its devotees. In this new reality no relevant individual, social or political existence outside the framework of the Nation was allowed. Secondly, the political obligation of every individual was resolutely framed by the character of 'the historical mission', articulated by the founders of the nation. The mystical nation called for unconditional obedience of all subjects.

A combination of two strategies can be identified here. The first aims at suppressing the individual autonomous ability to judge. The second could

132 *Silencing Human Rights*

be defined as the symbolic return of the people to the state of nature, i.e. as the abandonment of the basic civilizational and moral standards that guide human behavior by distinguishing between right and wrong. I will return to these themes in the following sections.

III.3. Silence as a social rule: Words that kill

The political profile of the mythologized Serbian nationalism was clear enough: Yugoslavia would either be re-constituted in accordance with the preferences of the Serbian political and intellectual elite, or it should be destroyed. *Summa ideologiae* reads: in order to achieve their legitimate and just goal of living in one state, Serbs have the natural right to do whatever they deem necessary. The imposition of the image of a tribal, pre-modern collective identity had started by creating passions, fears and fake mythical memories, which were in turn used to liberate the attitude to 'others' from civilizational constraints, to shape it into the prevailing feeling of hatred, and ultimately to justify aggressive war and mass murder of the innocent people. This is how Serbian nationalism has closed the circle: the intellectual and political presentation of the myth of the nation's honour and dignity wounded sometime in the past, on the one hand, and indiscriminate murder, on the other hand, proved to be only two sides of a continuous process. The murder of 'others' is the concluding stage of the resentment mythologization of collective identity.

III.4. An inference: Politics and culture of silence as the core of the populist criminal regime

The case of Serbia under Milosevic demonstrates something that can be worthy of an effort aimed at theoretical generalization. In the recent criminal past, confronted with admittedly great risks, fears, and enormous moral challenges, many people chose the position of silence, understood as a kind of culture of selfish tolerance of injustice, i.e. of moral indifference in the face of suffering of innocent human beings (Baum 1998: 53). This indifference was shaped by their readiness to subscribe to the institutionalized lie, which had proclaimed evil as good, wrong as right, and unjust as just.³ This phenomenon can be identified as *normalization of crime*, and it has at least two important aspects. The first consists in ideological, legal and political institutionalization of crime: the ruling system of values, political arrangements and legal norms are all shaped in a manner that allows, justifies, and renders routine the killing of those who are arbitrarily proclaimed as enemies. The second aspect of normalization appears as the support of the majority of the population for the regime and its practices. If both criteria are met, a specific sub-type of criminal regime is created, which can be provisionally called a *populist criminal regime*. The essential quality of this regime's relationship with its subjects is not repression, but rather an unforced loyalty of the majority of the population. Most importantly, this

loyalty has to include a certain affirmative attitude to the crime, its targets, justification, scope, and techniques. Thus, I will define crimes committed by this type of regime as *collective crimes*. Collective crime is an act committed by a significant number of members of a group, in the name of all members of that group, with the support of the majority of group members, and against individuals identified as a target on the basis of their belonging to a different group (Radzik 2001: 456). Nazi Germany and Serbia under Milosevic's rule provide examples.

From the preceding analysis of Serbia it can be deduced that in a populist criminal regime 'ordinary people' form a peculiar silent majority, identifiable through specific patterns of attitudes and behavior, which are then materialized in a variety of strategies of support for the regime. Somewhat schematically, one can identify two types of subjects' silence during the time in which the crime takes place. First, a peculiar 'noisy silence' is required, which consists of different subjects' explicit actions of support for the regime. These actions include, for example, voting for the regime, participation in public manifestations of support, obedience of laws and orders (even if such acts are clearly discriminatory or criminal), loyal discharge of one's professional duties in the workplace (even if such duties are obviously linked with the reproduction of the regime – examples range from working in state administration to working in military or military-related industries), etc. The very act of expressing support for the regime through such actions has, for the subjects, the practical meaning of consenting to the irrelevance of their autonomous voice.

The second type of silence covers the crime itself. It assumes different shapes, one of which is plain silence, or the absence of any reaction to the atrocities that are taking place. For instance, there are numerous descriptions and analyses of everyday life in Nazi Germany which demonstrate that many Germans, rather than expressing hatred against Jews, simply rejected the elementary facts of the crime that had taken place before their eyes, often attempting to justify this stance by claiming a lack of knowledge. Still, it was practically impossible for any ordinary man not to know about the moral and political corruption of the regime and the plight it induced on their Jewish co-citizens – even if one indeed did not know about Auschwitz (see e.g. Giordano 2000: 38). As the German and Serbian cases demonstrate, 'not knowing' was a matter of choice. The ideological rationalization of crime was coupled with the individual rationalization of silence and denial: during the criminal regime both rulers and ruled behaved as if no crime had been taking place at all. At work was a specific combination of politics and culture of silence. Relevance of this silence is not limited to the life-span of the criminal regime. In the next section I will focus on the transitional context in the contemporary Serbia, in an effort to explicate the character of the legacies of the populist criminal regime and of collective crime. I will pay particular attention to the problem of the continuity of silence.

IV. Post-authoritarian Serbia: Immorality of silence

The significance of the Serbian regime change of October 2000 can hardly be overestimated. This event created the promise of a break with the structural and normative patterns of the authoritarianism of the preceding decades. Democratic transition, which in the context of the present topic can be read as the process of transformation from political regimes based on the rule of words to a political regime based on the rule of law, was at order. The situation immediately after the ousting of Milosevic was extraordinarily complex. Besides 'standard' economic, legal, or political challenges posed by the legacies of the old regime, the task of transition acquired yet another dimension in Serbia, given that its immediate past was marked by mass crimes as well. The basic question, identifiable in all post-criminal contexts, was simple: does the new political community, legitimized by its democratic intentions, need to reckon with the crimes of the previous regime? Dilemmas that are brought up by this question span legal, practical-political and moral considerations. This should come as no surprise, given that most often at issue are the crimes perpetrated in the name of a whole political community, or in the name of a group constitutive of that community. The possible choices lie between the poles of politics and culture of an open and multidimensional confrontation with the past, on the one hand, and politics and culture of silence, on the other hand.

I start this section with a general exploration of the politics and culture of silence after the criminal past. Then I will try to present the manner of the establishment, main features, and consequences of silence about crimes in Serbia after Milosevic. Finally, I will argue that this silence has to be overcome for the sake of the establishment of a decent society based on the primacy of human rights, and that meeting this goal requires addressing the question of collective moral responsibility.

IV.1. The politics and culture of silence after the crime

After the overthrow of a criminal regime, we feel liberated from the past. But as soon as we explicate our preference for a better future in the form of democracy based on human rights and the rule of law, we realize that it can be neither defined nor built as an absolute novelty, which would be independent of our perception of the crime and of its legacies. Even a cursory look at histories of post-criminal transitional regimes will reveal what seems like a wide range of possible choices for coming to terms with the evil past. To start with, we can promote official memory based on the officially established truth about the past, or we can endorse the officially established politics of oblivion, followed by the corresponding ideology of a new beginning. We can reduce the problem to a policy issue, where a question would be about the practical measures appropriate for removing

those aspects of the crime that are identified as obstacles to democratic transition. We can even seek to tailor the image of the past in a manner that we find appropriate for our present political, social or cultural purposes (Schlink 2002: 89). Alternatively we can argue that the problem affects not only the choice of the future-oriented policies, but that it also confronts us with moral issues, of politically relevant memory and responsibility. We can opt for a comprehensive legal mastering of the past, which would be based on a systematic and broad identification, trial and punishment of the individuals found guilty for the past crimes. Alternatively, we can opt for some form of amnesty. We can limit criminal justice to perpetrators of the most terrible crimes, while at the same time additionally institutionalizing the issue of responsibility in the form of truth commissions. We can mourn, build memorial sites, compensate victims and try to reconcile with their community, or we can victimize ourselves by blaming our victims. Finally, we can – and most probably we will – quarrel over all these issues.

We know of cases where the culture and/or politics of silence have been chosen. The term ‘culture of silence’, in a transitional context, denotes a pattern of values, beliefs and attitudes that gives a distinctive shape to a group’s stance and actions towards the past regime, mass crimes committed, and their consequences (Moody-Adams 1997: 83–6). This pattern consists of the empirically observable rejection of the majority of the population of confronting the elementary facts of the crimes, and it includes different modalities of emotions, evaluations and behavior related to the crimes. The culture of silence is relatively independent from the politics of silence. The term ‘politics of silence’ refers to political actors, and to policies designed and implemented by authoritative decisions, which aim at removing discussion about the past from the public sphere. On the other hand, the culture of silence, at the initial level at least, mostly applies to the predicament of ‘ordinary people’, i.e. to their beliefs and attitudes about what happened. These are patterns of action and evaluation whose temporal and formal points of establishment cannot be identified, patterns which – although based on certain conventions – are not legally and politically authoritative.⁴

We may ask why both political elites and ordinary citizens engage in such practices, why for many post-criminal societies and their members it is apparently so important to substantially reduce the relevance of the past atrocities, or even to deny their criminal character. I believe that any effort to understand silence about crime should start by observing its continuity: silence after the change is closely linked to silence under the old regime. Both silence regimes can be seen as forms of denial and relativization of crimes and of its consequences. Still, their sources, the forms of their (self-) justification, their features, functions, the character of their relationship to the regime and, finally, the type of their relationship to the crime, do not entirely overlap.

136 *Silencing Human Rights*

The motivations, justifications used, and practical forms of silence applied after the change can be of different nature. Very roughly, there is first silence based and explicated in different statements and practices of denial, revision, or relativization of crimes. Second, preference for silencing the past can depart from acknowledging the fact and the moral weight of crime, but can still argue – for either moral or political reasons, or a combination of the two – that silence is a preferable strategy in a transitional context. The two strategies will often be combined, especially among those politicians, ordinary people, or scholars, who actually try to minimize the gravity of the crime, but who prefer to disguise this intention as a principled concern for moral and political conditions after the regime change.

Preference for silence after the change is sometimes explicated as the argument that the elementary institutional stabilization of the new democracy is a necessary precondition for systematic dealing with the past. This statement defends the view that people immediately after the regime change are ‘still not ready’ to confront the past. The claim is that a certain time has to pass first, during which democratic institutions would be built, and democratic practices would take hold. This would have a double positive effect. First, people would learn that to live in democracy implies not only enjoying the good things that this type of the regime provides, but also learning to accept its built-in constraints and requirements. Second, the passage of time would help people to look at the past in a more detached way, enabling them to reflect upon sinister practices without defensive attitudes (Grunenberg 2001: 119–22). At stake is the elementary psychological condition of longing for normalcy, which after years of repression develops into a kind of cultural group attitude. People who under the old regime preferred the state of self-imposed ignorance, or those who were supportive by-standers, as well as those who realized the magnitude of evil but chose passivity and ‘inner emigration’, are all after the change confronted with the naked truth. This truth is not only the record of the regime’s wicked practices. It is also the truth about individuals themselves. If exposed to it, many people would simply break down.

On the basis of this insight, Hermann Lübbe argues that society and its members after the crime need the time of ‘communicative silence’, understood as a consensus not to open the question of crimes: dealing with the past immediately after the regime change could only result in forcing people to exercise ‘political rituals of remorse’, which would effectively equal imposition of the political culture of guilt (Lübbe 2001: 41–2). A more general claim follows: only if we agree to remain silent, will it be possible for us to re-construct the fundamental continuity with our better past and its genuine traditions and values. This better past, as the repository of the true answers to the question of who we are, appears in turn as the bridge that integrates our group loyalties and cultural identities with new democratic patterns (Lübbe 1983: 585).

The conclusion of this approach reads that in the particular historical moment of the transition from evil, the truth and knowledge about the past cannot be perceived as absolute requirements, independent from the contextual considerations. After the sinister past citizens, cultural and political elite lack the capacity to integrate the knowledge about the past into a liberating narrative and practice. In such a condition, rather than promoting desired values, dealing with the past would only inflict injustice, deprive the whole society of its better past, and ruin the prospects of democratic consolidation.

This argument suffers from two major flaws. First, the claim of a 'return to a better past' amounts to a conservative idealistic position which, in glorifying 'genuine traditions' and 'true identity', argues for an ideological engineering the main task of which would be to choose a usable past. What really happened in the recent past would be selected for oblivion, at the expense of an ideologically prepared image of higher-order continuity of the group identity. Second, this ideologically historicized argument refuses to see that at stake are actually important elements of continuity between political cultures before and after the regime change. Numerous empirical surveys reveal that there exists a set of values developed in the previous period that cannot, after the change of regimes, be reduced to a mere remnant of the past, something that would spontaneously disappear with a dynamic proportional to the institutional (political, legal, economic) reforms (Golubovic *et al.* 2003: 99–161).

IV.2. Serbia revisited

Thus far, democratic transition in Serbia has suffered a failure. This failure is not primarily a consequence of the poor choices of institutional design, or of incomplete, or biased implementation of that design. The case is rather that justice and civility, embodied in the concept and practice of human rights, continue to be victims of the dominant attitude to the past, which is exemplified by the continuation of the culture and politics of silence. We in Serbia are incapable of meeting the requirements of human rights universalism because we are incapable of overcoming silence about crimes committed in our name yesterday. The current attitude towards the past – towards its ideological basis, institutions, actors, and political culture – remains the fundamental obstacle to the establishment of a liberal political identity. At a practical-political level, this can be labeled the opportunistic pacification of the past or the strategy of continuity with nationalism. The ideological core of this strategy was formed by the calls for the defense of national identity and dignity, explicated through minimization or complete denial of the war crimes committed by the Milosevic regime, through insisting on the balance of 'our possible responsibility for war' and the 'responsibility of the other side', and through further affirmation of the old stereotype about the Serbian nation as a victim.

In short, politics and culture of silence about the crime in Serbia function as the collective refusal to acknowledge what is known to have happened. The wall of silence that has been built around the recent past only maintains the political and cultural condition in which there are too many people who remain incapable of distinguishing between right and wrong. The line between the truth and lies about the past is unclear, and lies are thus easily translated into a manipulative political discourse. In consequence, the worst legacies of the past have re-surfaced: denial of any involvement of the Serbian regime in the crimes in Bosnia, Croatia and Kosovo, preservation of the destructive core of Serbian tribal nationalism, disguised as an affirmation of 'genuine traditions' and 'true identity', promotion of war criminals into national heroes, and a rise of xenophobic attitudes among population. Of course, hardly anyone from among the ruling elite would explicitly support the old regime and the outcomes of its rule, but analysis of prevailing value orientations and political processes reveals a practical engagement in preservation and further re-production of essentially the same ideological patterns. The present is based on retrograde, anti-civilizational attitudes to the past, which can be summed up as the avoidance of any responsibility for the crimes committed in the name of the nation. Moral responsibility has been vehemently denied, the question of political responsibility has not been opened at all, while the refusal to accept the criminal responsibility of the perpetrators accused before The Hague Tribunal has become the measure of patriotism. Public discourse is colonized by the authoritarian friend – foe pattern, foes being those individuals and organizations who argue that the book of the past should not be closed, and who insist that the road to democracy for Serbia requires both explicit renunciation of the legacies of tribal nationalism and condemnation of the crimes.

IV.3. From silence about crime to human rights: Collective moral responsibility and moral universalism

In the remaining part of this paper I want to lay the ground for an alternative strategy, which can be named comprehensive transitional justice, or the strategy of legal, political and moral coming to terms with the past. The starting claim is that pressure of the criminal past is such that both the future-oriented practical-political concerns of democratic transition and ultimate moral questions (which include forward-looking issues of practical morality, and backward-looking reflection on the moral status of those in whose name the crimes were committed) should be addressed from a backward-looking perspective. Analytically, the character and the magnitude of injustices done are such that they *cannot* be willfully erased, either from our memories, or from our present. Normatively, what happened is of such a nature that it *ought not* to be forgotten. If we, in whose name the killing was done, claim that the book of the past should be closed, and that we

should look only forward, focusing on the difficult imperatives of democratic transition, then we are not merely saying that we live under circumstances that justify rendering the criminal past publicly irrelevant; we are also saying that injustices committed in our name are irrelevant as well (Kukathas 2003: 172). Ultimately, remaining silent today is tantamount to implicitly agreeing with what happened yesterday.

As the first step, it is necessary to acknowledge that the past is unambiguous in its ultimate simplicity. Grave injustices have been committed in recent years, which can be identified as the crimes committed by Serbs, in the name of all Serbs, against the non-Serbian population, and on the grounds of their non-belonging to the Serbian ethnic group. This is certainly a very painful and humiliating insight for each and every member of the Serbian nation. More often than not it generates defense mechanisms, ranging from refusal to know or to care, to false justification or relativization of crimes. Advocates of silence then insist that it would be counterproductive to 'open old wounds', because this would allegedly only lead to a further schism in a society still seeking a fragile democratic consensus. I can agree that confrontation with the past involves serious risks, most prominent being further political destabilization. Still, I believe that these risks do not call into question the necessity of dealing with the past, but that they rather require careful consideration of the right approach to it. The process of reflective coming to terms with the past would aim at obliterating the active ideological pattern that has presented the recent crimes as the 'legitimate defense of Serbian national interests'. The task of the new approach would be to demonstrate that the old regime had never protected Serbian national interests, but that it had actually engaged in a serious, massive and systematic violation of human rights. The unmasking of the ideology of 'care for the nation' as an administrative massacre could act as a strong incentive for a viable dealing with the past, because it would release the ordinary people from the moralistic pressure of collective guilt, opening at the same time the possibility for everyone to face his or her own moral responsibility for supporting the old regime.

The strategy is focused on collective moral responsibility. The idea of collective moral responsibility rests on the radical thesis that all members of the group in whose name the crime was committed should be held accountable.⁵ Here we need to recall that, in a conventional reading, responsibility is faculty of an agent without which there can be neither praise nor blame for what is done. It is a category that determines the causal relationship between the subject, his/her actions, and the consequences of those actions. Thus, responsibility is a subjective feature which consists in accountability for actions one performs and for the consequences those actions bring about, for which an agent can be justifiably rewarded or punished. From here follows the obvious line of critique of collective responsibility for mass crimes: how could someone who did not take part in wrongdoing, who did

140 *Silencing Human Rights*

not support them, who cannot be held accountable even for inactivity, i.e. someone who did nothing legally punishable and nothing morally wrong, be still held morally responsible?

An answer will have to lead to the context-specific concept of *responsibility beyond causality and control*. The claim is that there can be situations in which each member of a collective can be held morally responsible, regardless of whether he/she contributed to an action and its consequences, regardless of his/her attitude to that action, and regardless of whether he/she was able to influence that action. The argument may depart by pointing to several insights, all of which concern the way in which the collective crime became integrated into the individual identity of each member of the group: 1) the collective crime was committed by some members of a nation, in the name of all members of that nation; 2) this crime was justified by reference to the core of national identity: the nation's basic values, customs, norms, traditions, interests; 3) this a grave falsification and practical compromising of national identity; at stake is the fall below a certain civilizational minimum, which in the practice of life together used to be known and accepted prior to the crime, i.e. which the vast majority of the members of the group had already interiorized at the time of the crime (Cooper 1972: 90). In the recent past we made a 'contract of mutual indifference'; we agreed, or at least we witnessed to a publicly made and implemented agreement that our world would start anew and that it would be based on two pillars: voluntary self-exemption of our group from the civilizational constraints, and the forced exclusion of the targeted group from our community, which was at the same time meant as their exclusion from the moral community of human beings (Geras 1998: 27).

This fall below the civilizational minimum directly targets the moral integrity of each member of the group, independently of one's personal attitude towards the crime. The foundation of my responsibility then becomes simply the identity I share with the perpetrators. It is only by coincidence that I am a member of a nation, but the crime was consciously and systematically committed in my name. From here it follows that the contingent nature of my national identity is revoked by the intention and action of those who proclaimed my national name as the very reason for killing the people of another name. The ideological foundation, character and scope of the crime are such that it penetrates my individual identity. The fact that my inclusion in the ideological pattern of the crime rested on ideological manipulation and an institutionalized lie, which I perhaps consistently opposed, is not relevant in the face of what has been done. Once the innocent people were killed, the lie expressed in my name ceased to be a mere lie: it has become a fact. This is why the mere fact of my group identity yields my duty to acknowledge the injustice done, as well as the victims' right to demand from me an unambiguous, public demonstration of rejection of the crime.

If this holds good, collective moral responsibility could be understood as the duty of all members of the group to take a moral stance towards the crime that was committed in their name. This is what theory sometimes identifies as a 'duty to respond' (Radzik 2001: 465). This duty has two aspects, or two addressees. The first addressees are the victims and their community. The second addressees are we, the members of the group in whose name the crime was committed.

First, it is our duty to speak to the victims and their community. In doing this we publicly acknowledge the fact which we privately know very well: that the killing of innocent people was done, and that it was carried out in our name. It is the victims' right to expect this public utterance from all of us, and not only from those causally responsible for their suffering. Why? Because evil was inflicted on them, and their human integrity was violated in the name of all of us. I may have been distanced from it, I may have resisted, but the victims and their beloved ones do not know this, nor do they have a duty to know. Hence, my moral burden is neither individual guilt, nor my share in collective guilt, nor moral blame, but a sense of duty towards the victims and their community. At stake is not a symbolic, one-time act, but rather a process of addressing the victims.

In short, a powerful reason for responsibility of all members of the group consists in the insight that the victims, even if they are not prone to collectivizing the guilt, keep reminding us of the link between our collective identity and the crime. If we understand responsibility in an etymological sense, as a *duty to respond*, then the community of victims becomes the first addressee of the response to the question of how and why the collective crime, an act hardly comprehensible to any normal person, did indeed become a reality.

This does not mean labeling the group, nor ascribing to it collective guilt or collective blame. Moral responsibility is a practical category, which thematizes the possibility of a civilized life in the aftermath of catastrophe. This brings us to its second aspect, where moral responsibility is understood as a special type of relationship among the members of the group in whose name the crime was committed. In its focus should be public reflection not only about the crimes, but also about the widespread culture of tolerance of injustice, which decisively marked the preceding period (Allen 1999: 337). At stake would be the reconstruction of the motivational patterns of behaviour and of the type of condition in which basic civilized values were all of a sudden rendered irrelevant (Waldron 1992: 5). Decent people of today ought to know how it became possible for decent people of yesterday to participate in, support, or tolerate the worst crimes. The practical-political objective of a thus understood process of collective moral responsibility would be to enable the citizens to regain their recently and severely damaged capacity to distinguish between right and wrong, just and unjust. If such a goal were not accomplished, the liberal values proclaimed by the

142 *Silencing Human Rights*

proto-democratic regime change could easily slide into ritual façade without any legitimizing and practical authority. Being citizens/subjects of the state which produced a moral catastrophe, we need to examine that past in unambiguously non-functionalist terms: instead of accepting that selective reading which tries to refurbish history in order to create false continuities and fake traditions, we have to point out that after the crime no continuity is morally acceptable, and that we have to face the task of re-creating both individual and communal identities (Habermas 1990: 21). In other words, it is necessary to make a clear break with the humiliating past, in order to be able to create the room for a new beginning.

In the Serbian case, one important outcome of this reflection may be the insight that the process of building a new polity has to pass the test of moral universalism. The lesson to be learnt is that it is necessary to give up the ideology of the nation-state, and to make a fundamental break in the perception of identities, in order to create conditions that would enable the society to step into an era of democratic normalcy. The old question as to what constitutes polity – blood or contract – cannot be answered in the Serbian condition in any intermediary way. After everything that has been done in the name of the nation, it is simply not possible to create a civilized community on the basis of the pre-political unity anymore. But the question that immediately arises is how a democratic polity of citizens could be possible if denied – due to the sinister past – embeddedness in the nation as the pre-political basis of citizenship.

The general argument is that it is possible to conceptualize the polity by using moral and political choices other than national identity. In the heart of the discourse of civil peace and democracy ought to stand the principle of the morality of freedom. Freedom is understood here both as the core of the individual identity and as the exclusive starting point of the communal identity. After the frightful experiments with collectivist ideologies, the community can be re-constituted only upon the insight that its citizenry of a state is essentially a contingent category, and that life together can be made meaningful only if the slightest common denominator is found that could not be reasonably questioned by anybody. The assumptions are logically simple (and they are to be perceived as being derived from the experience): we *believe* that the very possibility for the binding distinction between the right and wrong way of doing things (which comes, in the final instance, as the definition of law) presupposes shared concepts of fundamental values; we *believe* that prior to, and regardless of, any empirically identifiable social, cultural, political etc. differences, every human being has the equal right to liberty; we *believe* that the principle of the equal freedom for all can serve as the vantage point for the conceptualization of the polity as well; correspondingly, we *believe* that without this presupposed morality of freedom, the state and law, regardless of procedural constraints, tend to end up in the cynicism of power (Höffe 1989: 28). This is the starting point of the strategy of constitutional patriotism.

Notes

- 1 More precisely, I am interested in the precarious moral position of 'ordinary people', i.e. those members of such societies who are not subject to criminal justice, and who are not held politically accountable either.
- 2 The atomization of society is of the enormous importance in this endeavour. To say that the party-state encompasses the whole society implies doing away with all the institutional mediations through which individuals or groups could articulate and aggregate their specific interests and identities. The citizen-worker is directly attached to the state, which has the meaning of destruction of any border-line between individual autonomy and political authority: since everything is political, individual autonomy becomes conceptually impossible.
- 3 In an effort not to violate the scope of this paper, I merely summarize my stance on two points that would require a detailed analysis. First, it would be wrong to assume the capacity of a criminal regime to effectively deny individual autonomy. The severity of the context can deny one's ability to act, but it cannot affect one's capacity to acknowledge deep immorality of the crime and the political corruption of the regime – the latter, usually called the ability to judge, i.e. the ability to distinguish right from wrong, is the faculty inherent to every mature, mentally capable person (see e.g. Arendt 2003: 42–4). Second, it does not follow that the ability to judge is a property of an isolated, a-historically perceived individual. Here I propose a distinction between external conditions and internal features of individual autonomy. External conditions – legal and political system, culture – are capable of denying one's freedom of choice and the ability to act. But this does not mean that individuals can be deprived of the ability to judge, as the core internal feature of autonomy. A populist criminal regime – where law, politics and culture work in concert against autonomy – is capable of depriving people of human dignity and of preventing them from exercising their freedom. Still, the ability to think, to understand the world, and to acknowledge the real character of the criminal regime, remains intact. See Moody-Adams 1994: 307.
- 4 Surely, this distinction is in many regards artificial: for instance, it is all too obvious that between cultural attitudes to the past and politics of dealing with the past there most often exists an interplay that works both sides. Still, the talk is about the interplay, rather than about the conflation of the two categories into one.
- 5 Here I will not aim at a systematic exploration of the problem. I have tried to justify and conceptualize a liberal notion of collective moral responsibility in Dimitrijevic (1999, 2006).

