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NEO-DEMOCRACY – NOT DEMOCRATIC

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»How terrible is wisdom, when it brings no profit to the man that is wise.«

Sophocles

“The poor give rich presents. The hungry are good hosts. The ones, on whose shoulders others save, themselves save nothing.«

Bertolt Brecht

NEO-DEMOCRACY

While we can find several types of social organization in the world, this text will attempt to focus primarily on mutual (non)correlation between the democratic political system and the capitalist (neoliberal) economic system, and on the question of their common future.

Capitalism and **democracy** by definition strive towards different goals. Capitalism reaches for economic power, while democracy reaches for political power. Capitalism follows private interests, while democracy follows public interests. The success of an individual in capitalism is measured with money, in democracy with votes. The idea of democracy is “one man, one vote”, while the idea of capitalism is that economically strong individuals become even stronger by forcing the economically weak individuals into economic collapse.¹ It follows that in capitalism, only the most successful make the decisions (de facto), while in democracy everyone is equal in decision-making (de jure). The question who and how decides on the structure and the function of the social system is important for the very survival and further development of society.

History proves that (modern) society does not rule itself, but it is ruled by some **elite**.² The members of

¹ Gorišek, T.: *Kapitalizem v današnji demokratični družbi (Capitalism in Today's Democratic Society)*, graduation thesis, Faculty of Economics of the University of Ljubljana, 2004

² Atanasovski, G.: *Teorije o elitah (Theory on the Elite)*, in: *Teorija in praksa (Theory and Practice)*, Vol. 34, No. 1 (1997), p. 30–38

the elite are not necessary formal holders of authority as well. The elite exploits its high position in the social hierarchy to preserve its well-being, even though holding such a position is meant to care for public benefit. In his work *The Prince*, Machiavelli³ listed the characteristics of a person or persons who strive for power and consequently make decisions on how the society will work. Such a person must be a cynic, a cheater, a liar, and an exploiter. A successful ruler trusts no one, has no personality and no ideology, is as cold as possible or without feelings, and his only pleasures are the feeling of power and manipulation with other people. Adorno⁴ spoke about characteristics of the so-called ruling personalities. He said that these characteristics are shown as tendency towards conventionality, conformity, obedience, subordination, aggression, cynicism, rigid life, and (interestingly) rejection of sexuality. Maybe the reader feels that such descriptions are too dramatic, but the ruler has to possess at least a few of these characteristics or their nuances only to maintain his position of power.

The very **idea of democracy** opposes the rule of the elite and authoritarian individuals. The rulers must or should at least try to implement such policies that “*attract the whole nation to manage and regulate the country*”.⁵ The beginnings of modern democracy indicate a different mindset. The founding fathers of the U.S. Constitution already had capitalist decision-making in mind when they spoke about democracy. Each individual voice was supposed to be worth as much as the wealth of the individual.⁶ Unfortunately, this decision-making process has not changed much since then, it was only perfected. A rich individual has nowadays a much bigger chance to influence some political decisions as well, e.g. with various donations or lobbying, even though he and a poor individual have the same power in elections. It must be taken into account that the richest 1 per cent of the population has as much wealth as the poorest 58 per cent⁷, and this difference is constantly growing. An individual who has

³ Niccolo Machiavelli (1469–1527), Italian philosopher and the founder of modern political science, one of the first, if not the first, to have dealt with the question of political ethics.

⁴ Theodor W. Adorno (1903–1969), German philosopher and sociologist, known for his critical theory of society.

⁵ Cerar, M.: *Osnove demokracije (The Basics of Democracy)*, Društvo Bralna značka Slovenije, Ljubljana, 2012, p. 65

⁶ Thurow, L.: *The future of capitalism: how today's economic forces shape tomorrow's world*, London, 1997, p. 247

⁷ Soros, G.: *Globalizacija (Globalisation)*, Učila International, Tržič, 2003, p. 9

economic power can swiftly obtain political power as well, whereas this is almost impossible for a poor individual. Subjects who have economic power are able to force political decisions that are favourable for them. Good examples for this are Volvo and Ericsson in Sweden who threatened to move their production elsewhere if the government would increase taxes⁸ The example of Greece proves that bankers and public officials publicly dictate which decisions the democratically elected and supposedly sovereign parliament must make.

On the contrary, in democracy it *“is necessary to develop a culture of behaviour in which every individual allows the same rights to all other individuals as he himself possesses. He can also demand from the other individuals to respect his rights.”*⁹ If democratically elected representatives of the people endanger such a state, the people must replace such representatives. This can be done in a democratic way with **elections**. With elections, the so-called *political boomerang*¹⁰ should sweep away the politicians and parties that diverged from the will of the voters. This is sometimes more difficult to achieve than theory suggests. It is hard to replace the political leadership in a proportional system, because only the candidates on the top of the party lists come into the parliament. These are left with no possibility of political victory only if the party completely collapses. The greatest irony of democracy is that the people can elect their representatives but have no (legal) leverage to remove them.

If the situation is not remedied with elections or if it even deteriorates, the people begin to rebel. For a **rebellion**, a state of relative deprivation (withdrawal) is at first required.¹¹ It is followed by dissatisfaction, politicization of dissatisfaction, and finally by actualization of rebellion with violent actions against political institutions and politicians themselves. Gurr says that relative deprivation is *“a perceived disagreement between the value of people’s expectations and the value of possibility for their realisation.”* The expectations and the possibilities are related to goods and livelihoods. Therefore, absolute deprivation is not important, e.g. hunger rate. What is important is the difference between the

expected food and the food that people can obtain in certain social conditions. It is not a question of how much somebody receives, but how much he believes he should receive and how much he believes he receives. If social conditions increase expectations without increasing the possibility to obtain them, this results in dissatisfaction. Dissatisfaction can also be the result of decreased possibilities with no increased expectations, e.g. when the standard of living reduces.

UNDEMOCRATIC CONDUCT

Undemocratic conduct means conduct or operation that is contrary to **democratic values**. The Slovenian Constitution provides that in the Republic of Slovenia the power is vested in the people, and that they can exercise it directly or through elections. Therefore it is not surprising that the main advocate of democracy are the people, while the supporters of neo-liberalism are the global elite, politicians, bureaucrats, managers, directors of international corporations, influential journalists, public relations experts, corporative lobbyists, celebrities from the world of entertainment, and intellectuals who are writing for larger audiences.¹²

The modern society is pathologically inclined to reward and encourage individuals who manage to obtain financial means, regardless of the their methods and consequences. In the year of the crisis, Wendelin Wiedeking¹³, CEO of Porsche, became European manager of the year. Soon after receiving the award, he was let go because of the debts he created when running the company. Even though he managed the company unsuccessfully, he received 50 million EUR when his employment was terminated.¹⁴ This confirms that the people, who are on the top of economic power hierarchy, are rewarded for bad work, whereas it happens increasingly often that the people on the economic bottom do not receive (albeit scarce) payment even though they performed well.

One of the fundamental problems of our time lies in the very **mentality of power**, *“governmentality”*¹⁵ as

⁸ Korten, D.: *Decline of Democratic Pluralism: When Corporations Rule the World*, Kumarian Press, URL: http://www.thirdworldtraveler.com/Korten/DeclineDemoPlural_WCRW.html (last accessed: 26 November 2012)

⁹ Cerar, M., p. 164

¹⁰ Pečjak, V.: *Politična psihologija (Political Psychology)*, Ljubljana, 1995, p. 178

¹¹ Gurr, T.: *Why Men Rebel*, Princeton University Press, 1970, p. 31

¹² Steger, M.; Roy, R.: *Very Short Introduction: Neoliberalism*, Oxford University Press, New York, 2010

¹³ Dougherty, C.: *Wendelin Wiedeking*, The New York Times, URL: http://topics.nytimes.com/topics/reference/timestopics/people/w/wendelin_wiedeking/index.html (last accessed: 23 November 2012)

¹⁴ Do you notice the similarity with Slovenian “tycoons”?

¹⁵ Rose, N.; O’Malley, P.; Valverde, M.: *Governmentality*, Annual Review of Law and Social Science, Vol. 2, 2006, URL:

Michael Foucault named it. It is a way of governance, based on certain premises, logic, and power relations. In neo-liberalism, it is reflected as a focus on individualism, competition, and selfish interests. A self-regulating free market is put in the centre as an example of proper governance. The entrepreneurial logic of profit is pursued instead of public interest, social justice, and development of a civil society. Neo-liberalism is reflected as an economic and a political mindset that follows the DLP formula: deregulation (of economy), liberalisation (of trade and production), and privatisation (of state-owned enterprises). These guidelines are followed by lower taxes (for companies and the richest individuals), reduction and abolishment of social expenditures, creation of flexibility in the labour market, rhetoric against trade unions, and elimination of restrictions for global financial and trade flows. In such an environment, people reject the idea of solidarity because it does not come into account as long as they are tirelessly competing against each other.

The above mentality interposes a commercial logic in almost all facets of life (consumption, protection of the environment, healthcare, education, etc.). All aspects of life are becoming prisoners of market economy, which operates out of reach of democracy. The motive of profit is at the centre, rather than the will of the people.¹⁶ Economy and business itself are becoming an increasingly cruel game (*survival of the fittest*) without a sense of social responsibility, sustainable development, and social justice. This feeling or the lack of it is reflected in other spheres of life, e.g. in education, healthcare, and of course in politics. In the latter, this can be seen in increasingly smaller participation in political decision-making, be it intentional or because of inaccessibility. The human relations are reduced only to the material tendency to increase wealth and profit by forcing the people to think in a market-oriented way, while the importance of health, satisfaction, cultural goods, education, social security, social cohesion, etc. are completely ignored.

The dictatorship of the commercial logic increases volatility in the society. In such a rapidly changing world, people no longer have security that would allow them to plan for the future. As a result, they are

reluctant to build a family, and relationships are increasingly fragile and material-oriented.¹⁷

Healthcare and medicine serve the interest of the capital, which brings forth several negative consequences. The pharmaceutical industry does not look for medicaments for the most urgent needs of the population. Instead, it produces products that are suitable for the consumer. Due to the lack of income, it is not interested in development of new antibiotics and medicaments for rare diseases. It uses its knowledge and progress to develop the commonly named **lifestyle medicaments** (erectile dysfunction, blood sugar, blood pressure, cholesterol, antidepressants, etc.). Among the top five best-selling medicaments in the world are two medicaments, used in treating depression.¹⁸ Healthcare is more and more forced to provide services that bring money. That is why quality health services are increasingly inaccessible to the poorest.

Capitalism strongly encourages **degradation of environment**. The existence of neo-liberal capitalism model prevents adoption of any arrangements for joint protection of the environment. The world's largest polluters USA and China do not even want to think about signing the Kyoto Protocol, while Canada withdrew after being a member for a several years.¹⁹ We are witnessing the fastest extinction of animal and plant species that is generated by short-term tendency for profit increasing. They have a devastating impact on the environment and in the long run mean the environmental disaster.²⁰

One of the "qualities" of neo-liberal capitalism is also promotion of comparison and hierarchy. The result is a higher rate of racism and interracial conflicts. In times of recession, which are becoming more frequent and longer in the capitalist cycle, the statistics indicate a dramatic increase of crime and drug use.

<http://www.annualreviews.org/doi/pdf/10.1146/annurev.la.wsocsci.2.081805.105900> (last accessed: 17 November 2012)

¹⁶ Choonara, J.: *Unravelling Capitalism: A Guide to Marxist Political Economy*, Bookmarks Publication, London, 2009, p. 17

¹⁷ URL:

<http://www.forbes.com/sites/robertlenzner/2012/11/16/capitalism-is-a-problem-for-the-family-says-david-brooks/> (last accessed: 29 November 2012)

¹⁸ URL:

http://en.wikipedia.org/wiki/List_of_largest_selling_pharmaceutical_products (last accessed: 20 November 2012)

¹⁹ URL: http://unfccc.int/kyoto_protocol/items/2830.php (last accessed: 30 November 2012)

²⁰ A comment by Žižek: "When we are fighting hunger, diseases and AIDS we always take time for further negotiations. But when the financial crisis hit, it was NECESSARY to act IMMEDIATELY and UNCONDITIONALLY. It was URGENT! The appeal 'Save the environment!' can wait, but the appeal 'Save the banks!' can not!"

The current economic system was fatal for the **labour market**. Salary became a market price of labour, which means that you get paid in proportion with supply and demand on the labour market. Therefore, capitalism encourages higher unemployment, because the higher the demand for employment the lower the value. Higher unemployment and more job seekers result in a lower salary. In the atmosphere, where the demand for work is several times larger than its supply, the employers can afford it. A lower salary means lower labour costs, which corresponds to the capitalist dream of generating growing profits.

The media used to be the fourth branch of the government. Today, it is not so since it primarily serves its owners and not the public. A fine example of a media tycoon is Rupert Murdoch, who owns more than 200 allegedly independent media. His corporate wealth is estimated at U.S. \$ 5 billion. In acquiring such wealth he was helped by the politicians who passed media laws that work in favour of free market. His way of thanking them was that all the newspapers and television networks he owns uncritically supported the U.S. invasion of Iraq.²¹

All of the above raises the question: **is democracy in a capitalist society even necessary?** When the tendency towards efficiency, which is measured primarily through the GDP, becomes the main principle of the society, it can be best achieved through centralized, hierarchically oriented management. Therefore, it is not surprising that China's economy is today among the fastest growing ones and will, in the following years, become the largest economy in the world.²² The authoritarian communist rule did not hold back China's development but we can ascribe the fast development to this rule in the first place. This rule in combination with the capitalist system leads to inhumane exploitation of workers, but on the other hand, allows individuals to become exceptionally rich. The richest Chinese²³ has an unimaginable wealth of 11 billion U.S. dollars, while millions of people in China work

for "a bowl of rice per day."²⁴ Let us look at the ratio between the rich (those who have at least one million Euro of personal property) and other Chinese citizens. It is estimated there are around 960,000 rich people, while the total population in China is approximately 1.33 billion. In percentage, the rich represent only 0.07% and the "not reach" 99.93% of the population.

NEO-DEMOCRACY

"Man must stand in the arena, since doing nothing, risking nothing means - to serve!"
Drago Jančar

New ideas are being developed all the time, but new solutions see the light of day only when it is almost too late. The social system in which we live needs a change. However, as there is yet no danger of drowning, the need for change is not that significant.

Žižek said that "marriage between capitalism and democracy has ended".²⁵ I personally think it is democracy who will demand this divorce and it will state inability to coexist as the reason for divorce. But the question is, which one of the spouses will receive more from the joint property in the process of divorce. Žižek names at least 4 fundamental contradictions, with which the marriage between democracy and neo-liberal capitalism should deal with to prevent divorce: "ecology, biogenetics, 'intellectual property', and the status of the excluded – from illegal immigrants to millions in slums."²⁶ Solving these problems is contradictory to the very essence of capitalism.

If democracy wants to survive on its own, without capitalism, the first condition is to establish a solid and just **welfare state**. Todorov is convinced that "demolition of a welfare state means demolition of democracy".²⁷ The idea of common good must be re-

²¹ http://en.wikipedia.org/wiki/Media_coverage_of_the_Iraq_War (last accessed: 29 November 2012)

²² It should be emphasized that China's economy mostly follows the principles of Keynesian theory and is only to a certain extent true to neo-liberal principles.

²³ Liang Wengen, a member of the Chinese Communist Party, who earned his fortune with the production of heavy construction machinery. When asked whether there is a conflict between the interests of the Party and his business agendas, he replied: "My wealth, my whole life belongs to the (Chinese Communist) Party."

²⁴ URL: <http://www.dnevnik.si/magazin/aktualno/1042471153> (last accessed: 1 December 2012)

²⁵ URL: <http://www.rtvsl.si/svet/zizek-zakona-med-kapitalizmom-in-demokracijo-je-konec/269520> (27 November 2012)

²⁶ URL: <http://www.mladina.si/47203/> (last accessed: 27 November 2012)

²⁷ URL: <http://www.mladina.si/111761/tzvetan-todorov-poglabitev-krize-je-nujna-za-vrnitev-demokracije-da-bomo-naredili-korak-k-boljsem/> (last accessed: 26 November 2012)

established, as the tendency to escalate the consumer game that encourages individualism undermines the foundations of a just society and hinders its democratic development. This is not about complete subordination to a single ideology or a group of demands, but about achieving balance between the demands. This is the **essence of democracy!** Democratic development encourages conditions in which “free development of each individual” is compatible with “free development of everybody”, while the notion that free development of an individual is possible only at an expense of free development of others is rejected.

Held²⁸ says that three conditions must be met for a democratic society itself:

1. environment in which people can perfect their skills and express their various qualities (taking various skills of individuals into account);
2. protection from misuse of political authority and coercion (respect for individual privacy);
3. participation of citizens in determining the conditions of their integration.

Despite their differences individuals must be free and equal in forming the society in which they live. Therefore they should have the same rights (and the same obligations) in determining the framework for development of the society in detail. Individuals must not extend this framework to deny the rights of others. In such a society, democracy can shine in all its glory. So far, no modern state or society is capable of achieving a perfect democratic system. This does not mean that such perfection cannot be achieved (at least in approximation). Only certain conditions must be met. Robert A. Dahl²⁹, a professor at the renowned Yale University, set these conditions:

1. Equality of voices: every citizen must be assured that his voice will count the same as the voice of another citizen.
2. Effective participation: in the process of collective decision-making, each citizen must have a proper and equal opportunity to express their preferences regarding the final outcome.
3. Enlightened understanding: to be able to consistently express their preferences, each citizen must have proper and equal opportunities to discover and enforce their preferences on matters that they are deciding upon.

4. People must have control over the matters that are to be decided upon: people must have an exclusive option to decide, which matters must be decided upon with a process that meets the first three criteria.

5. Involvement: all adult members of society with operational capability must be included in the decision-making system.

We can not reasonably expect that involving people in decision making process will be enough to perfect the democratic system. The following concerns indicate that the above is only an approximation of a perfect democratic system. People cannot be forced to cooperate in decision-making. If obligation to cooperate would be statutory, this would be controversial in many aspects. In particular, it would interfere with the freedom of an individual. For an actual (de facto) effect of vote equality, the concept of private property should be abolished or there should be a constant surplus of products. As explained before, economic power goes hand in hand with political power. Given the fact that people are different, treating people like they are all the same would cause an impossible atmosphere. Finally, there is the question if such decisions are politically legitimate. It is not necessary that participation of people in decision-making would always lead to consistent and desired political outcomes. It would be imprudent to rely on the possibility that people would become more democratic and in favour of common prosperity just because they had the option to participate. It is true that we learn to cooperate with participation, and just like Rousseau³⁰ established, participation helps educate active and knowledgeable citizens.

To conclude, we should keep in mind that democracy is a two-sided phenomenon³¹ that requires governmental reform as well as restructuring of the civil society. Just like it is impossible to merge state and society, it is equally impossible to separate them completely. Neo-liberal capitalism has very little (if nothing) in common with democracy. They are too different to exist at the same time. The question therefore arises by itself: with whom of the spouses do we wish to remain after their inevitable divorce?

²⁸ Held, D.: *Modeli demokracije (Models of Democracy)*, University Conference ZSMS, Ljubljana, 1989, p. 254, 255

²⁹ URL: http://en.wikipedia.org/wiki/Robert_A._Dahl#Democracy_and_polycharchies (last accessed: 22 November 2012)

³⁰ Mansbridge, J.: *Does Participation Make Better Citizens?*, The Political Economy of a Good Society (PEGS), URL: <http://www.bsos.umd.edu/pegs/mansbrid.html> (last accessed: 30 November 2012)

³¹ Keane, J.: *Public life and late capitalism: toward a socialist theory of democracy*, Cambridge University Press, 1984, p. 64

POLITICAL CHALLENGES AND REACTIONS

Martin Dolinar

»IN THE BEGINNING WAS THE WORD...«

Man has always admired the power of words. "The word," "speech" and "language" co-created man's incarnation, famous speakers ignited revolutions and tried to build a better tomorrow, while the power of words embodied the power of the argument. With the use of words we try to convince someone; those who don't want to use words would rather use their fists. That is why the word is the original symbol of coexistence and tolerance among people. The word had a special place even in the ancient cultures. The Bible says "the Word" existed before the creation of the world; for the Dogon people in Africa the word was a seed which was dropped into their ear and created an embryo; the Old Greeks called it "logos" and it represented reason.³² Apart from different traditions, the word generally symbolized reason and was what distinguished man from savage.

In the past, the ability to speak was considered to be the clearest distinction between man and animal³³ and without it we could not imagine Aristotle's labelling of man as a political and social being (*zôon politikón*) driven by the instinct of community he carries within

³² Jean Chevalier, Alain Gheerbrant: *Slovar simbolov (The Dictionary of Symbols)*, Mladinska knjiga, Ljubljana 1995, p. 54, 55.

³³ The famous Slovenian natural scientist Fran Erjavec explains this on page 11 of his work *Domače in tuje živali (Domestic and Foreign Animals)*.

himself.³⁴ **With the development of democracy**, which would take the authority from the individuals and give it to the majority, the ability of clear communication and persuasion became crucial for the success of the individual in climbing the social ladder. The fate of the community often depended on it as well. Even in the democratic Athens, it was known that one required **rhetorical skills** in order to have a political and social reputation.³⁵

However, it was this very skill that bothered some people in the ancient times already. Plato illustrated his vision of the situation in the Athenian democracy with a metaphor of a ship, on which sailors as a metaphor for politicians do not care about managing the ship (the country), but praise those who can control the ship owner (people) with drink or force, so that they can do whatever they want.³⁶ Today, the political platitudes are deeply rooted in our consciousness, but many are starting to realise that wasting words, which many people do not even understand, leads to profound consequences. The European debt crisis and the obvious failure to deal with it are largely a consequence of the **incompetence of politicians**, who still hide their failure behind the veil of optimism and see the crisis as an opportunity that will make us stronger.

Arnold Toynbee, an English historian who tried to explain the reasons for the rise of civilizations in his monumental work "*A Study of History*"³⁷,

³⁴ Karl Vorländer: *Zgodovina filozofije I (The History of Philosophy I)*, Slovenska matica, Ljubljana 1977, p. 132, 133.

³⁵ Vorländer, p. 61.

³⁶ Plato: *Zbrana dela (Collected Works). Volume 4. Prevod in spremna beseda Gorazd Kocijančič*, Ljubljana, Logos in Mohorjeva Družba, 2009, p. 1141.

³⁷ It was published between 1934 and 1961 in 12 volumes. Several abridgements are available, such as: Arnold Toynbee: *A Study of History (The One-*

made a very good point. He argued that any improvement is the result of a **challenge** that demands an appropriate **response**. Challenge and response are not in a cause-and-effect relationship. It is not possible to conclude what man's reaction to the situation will be solely on the fact that man is subjected to difficult circumstances. However, in accordance with Toynbee's thesis we can always identify a challenge that forced a group of people to adapt to it. For example, the dry and barren land forced the Athenians to find a different way of self-sufficiency, which led to the development of oil and pottery trade and consequently to monetary exchange and the expansion of the Athenian merchant fleet. The residents of Boeotia, a fertile landscape north of Attica, did not encounter such problems and therefore had no need for progress. In comparison to Attica, Boeotia was considered a non-advanced region.³⁸

The idea that the current crisis is an opportunity becomes clearer if we apply this knowledge to our time. When our material (and perhaps even spiritual) situation is deteriorating and the path we walk narrows, it is necessary to quickly adapt to the new circumstances before our path reaches a wall. However, it seems almost self-evident that the solution and progress **do not lie on this path**. When the Athenians exhausted their soil, they did not continue their old habits but focused on the new things that were not impeded by the infertile land.

WHEN THE RESPONSE IS LIMITED TO VERBIAGE

Political reality is different. The politicians who lead us along this path say we have to tighten our belts because the path will soon become

wider again. But is there any opportunity in this at all? This is obviously the right path, only our tasks differ. I have to tighten the belt to fit through the needle's eye and the politician will help me with a well-aimed kick. This brilliant plan has only one problem: I was not the one who created the needle's eye. Insolence of politicians, who attempt to pass their self-made problems to the people, almost reminds me of a man who burned his field with a carelessly dumped cigarette butt and now wants to drive the fire wagons over my field under the guise of emergency, destroying my yearly work in the process. Therefore, I almost cannot avoid asking this question: what kind of an opportunity can someone offer us if he is obviously part of the problem?

The economic crisis, which some perceive as a **challenge of our time**, did not occur in the political sphere and the blame for it can not be attributed only to politicians. It is clear that in order to progress it is necessary to first **identify the problem**. The flood of the economic crisis can surface problems, that have been safely hidden in the mud for many years. Failure to pay the social security contributions, management buyouts of companies, granting bank loans to people with dubious cover and some other controversial practices have not received excessive attention until the outbreak of the crisis, because their negative consequences have not yet been fully revealed. After the outbreak of the crisis, the legislature reacted nervously to some of these practices. The most revealing is the case of the commonly named Kramar Act,³⁹ with which the legislature retroactively taxed manager bonuses with a 49 percent tax rate. The Act is currently in the review procedure for its constitutionality and legality due to its

volume Edition), Oxford University Press and Thames and Hudson Ltd., London, 1972.

³⁸ Toynbee, p. 115, 116.

³⁹ Act on additional taxation of a part of managers' incomes in the period of financial and economical crisis (ZDDDDČPNO), Official Gazette of the Republic of Slovenia, no. 78/2009.

retroactivity.⁴⁰ Such spontaneous and random responses of the legislature to excessive individual cases, which look like a “big mess”, are primarily a reflection of poor legislative policy,⁴¹ which says a lot about the **political ability of the state** to effectively cope with the recession and other challenges that time brings. The current practice largely confirms the point that economic and political crises are closely connected.

In saying so, I do not mean only the absence of a stable government, caused by a chronic lack of confidence of citizens in the political leadership traits. On the contrary: the very existence of political power with its incompetent and contentious mode of governance contributes significantly to the social unrest that paralyses the country and prevents the necessary measures to be carried out. A thesis, according to which it would be possible to escape the debt crisis so that “everyone contributes something” can not be realized in such a situation of distrust. Even the protesters, who have in some cases been opposing the austerity measures of European governments, have apparently never opposed the restoration of domestic debt as such. What is troubling them is an uneasy feeling that they have to, as rightless common people, repay everything that they themselves spent, and much more of what the elite spent on their behalf. The Greek public, for example, was stirred by the fact that despite the austerity craze that fell mostly on the common people the privileged political current managed to “drive” at least 25 billion Euros abroad in the last three years

⁴⁰ <http://www.rtv slo.si/gospodarstvo/ustavno-sodisce-absolutno-prednostno-odloca-okramarjevem-zakonu/266385>. (Last accessed: 17 November 2012)

⁴¹ Igljčar: *Zakonodajna dejavnost (Legislative Activity). Viri, nomotehnika in zakonodajni postopek (Sources, nomotechnics and the legislative process)*, GV založba, Ljubljana 2011, p. 22.

alone.⁴² Needless to say, such embezzlement would not be possible without a tacit political approval.

Negative effects of political management of the country are reflected in at least two ways. Due to political rivalry between the parties, the decisions of every ruling coalition are driven primarily by self-preserving motives, which leads to short-term decision-making. In practice, this can also mean they enthusiastically make pacts with the “oppressed” and oppose “the unjust government actions” when the party is in opposition, and defend these same measures when they are in power and suddenly have no alternative. Because of the fear of losing power such party is constantly looking for new “niche markets”, into which might it extend its influence before their political opponents manage to do so. The politics is also increasingly burdening those areas that should be left to the profession or autonomous pressure groups. The insistence of the politics to maintain dominant influence over the appointment of judges and prosecutors speaks for itself.⁴³ On the other hand, it is this very interference in the professional decision-making that causes loss of confidence in the institutions of democratic rule of law, which ultimately leads either to mass apathy or public expression of discontent in the form of demonstrations and strikes.

The biggest victim of politics is the **legal system** and indirectly the people. Incompetence of those who make legal rules, failure to comply with professional recommendations in drafting legislation, and putting party or even personal interests before the interests of the state are

⁴² <http://www.delo.si/novice/svet/grcija-revna-dezela-v-kateri-elita-ohranja-bogastvo.html>. (Last accessed: 20 November 2012)

⁴³ Refer to: *Pripombe Vrhovnega državnega tožilstva RS na predlog ZDT-1*, accessible at: http://www.dtrs.si/sl/informacije_za_medije/73/. (Last accessed: 20 November 2012)

important features of our parliamentary system. However, on a number of proposals on how to break free from the adverse political situation and how to improve the legal system of the state, we hardly wonder about what role politics should have in the management of the country. Identifying the politics with the so-called **political state** has led so far that it is almost reminiscent of the natural law theorists, who were convinced that the major codifications of civil law enacted *Reason*, the eternal and immutable rules, which should be the basis of any positive law.⁴⁴ They completely ignored the fact that the creation of law is dependant on the existant social and economic conditions.⁴⁵ Similarly, it is also possible to determine the role of politics. If we put too much emphasis on its indispensability in the process of institutionalizing the will of the people, we forget the boundaries of this indispensability.

THE ROLE OF POLITICS AND ADEQUACY OF RESPONSE

Danger of such thinking lies in the fact that it begins to equate the question of **what is the will of the people** with the question of **how to apply it**. The role of politics should primarily be to give law overall content and meaning,⁴⁶ rather than trying to attract all the leverage of decision-making and display itself as an agent for the people who have the right to intervene in any, even the most technical subject matter. The tendency of politicians to understand their role mainly in this way is also apparent from the

flood of regulations that are adopted by the legislative body every year. The desire for legislative regulation of every detail reflects the deep distrust that politics harbour towards independent state authorities, while the superficial and insufficiently thought-out laws weaken the legal system as a whole.⁴⁷ I suppose many people feel frustrated when they open the Official Gazette website and see the section Changes under the title of the recently adopted law. Constant changes and updates in laws reduce the transparency of legal resources and introduce a degree of uncertainty in the law. They are necessary simply because the laws are badly prepared and proved ineffective in practice.

There are various reasons for the ineffectiveness of legislative solutions. Inefficiencies are often only apparent and associated with excessive expectations of the legislature. The larger problem is the already mentioned desire of the legislature to make (too) detailed regulations of a certain group of relations. This legislative “editing” leaves us with long and non-transparent laws, that desire to hold water so much so that they cannot avoid constant complementation and corrections when their impracticality is shown in practice. They overlook the fact that every norm is an **abstraction of reality** and cannot be mechanically transferred to facts in the process of application. This is possible only by means of interpretation.⁴⁸ **Excessive regulation** is meaningless, it reflects that the characteristics of

⁴⁴ Igličar, p. 36.

⁴⁵ Thus, for example, the impacts of Roman and canon law, as well as remnants of feudal law, can be identified in the famous Allgemeines bürgerliches Gesetzbuch (The Civil Code of Austria), which was enacted in 1811. More: Vilfan, Sergej: *Pravna zgodovina Slovencev (Legal History of Slovenes)*, Slovenska matica v Ljubljani, Ljubljana 1996, p. 418–422.

⁴⁶ Igličar, p. 47.

⁴⁷ The Office of the State Prosecutor General of the Republic of Slovenia also points out the problem of over-regulation: *Comments of the Supreme State Prosecutor's Office on a proposal of ZDT-1 (State Prosecutor Act)*.

⁴⁸ Furlan, Boris: *Problem realnosti prava (The Problem of Reality of Law)*; edited by Marijan Pavčnik, Pravna fakulteta in Cankarjeva založba, Ljubljana 2002, p. 116.

legal norms are not understood well enough and even denies their outlook.

Excessive regulation introduces a number of particularities and exceptions to legal texts and leads to excessive use of words. This is bad for the legal language, which should be concise.⁴⁹ It is necessary to find an appropriate legally relevant concept for an expression and then keep it. It is hard to understand why the *Code of Obligations*⁵⁰ insists in the use of expressions, such as "exonerated" or "excusable" when it wants to say that something is in accordance with the law.⁵¹ Criminal law theory makes a nice distinction between the concept of "excusability", which excludes guilt, and the concept of "accountability", which indicates that a practice is in accordance with the law, or that it is not unlawful.⁵² This was followed by the amendment of the Penal Code KZ-1B.⁵³ Thus there are at least two different acts in the current Slovenian legislation, that attribute the same expression to two different meanings, for absolutely no apparent reason.

Clear and unequivocal expression is not sufficient for good legislation. The integration of these expressions into a coherent whole is critical. The legislature must take into account the rule of strict linearity of the text, which means that thoughts and phrases follow one another and thus form a semantically coherent

⁴⁹ Igličar, p. 163.

⁵⁰ Code of Obligations, OZ-UPB1, Official Gazette of the Republic of Slovenia, no. 97/2007.

⁵¹ Refer to the Paragraph 3 of Article 167 of the Code of Obligations.

⁵² Refer to: Bavcon, Ljubo; Šelih, Alenka; Korošec, Damjan; Ambrož, Matjaž; Filipčič, Katja: *Kazensko pravo (Criminal Law). Splošni del (General part)*, Official Gazette of the Republic of Slovenia, Ljubljana 2009, p. 147, 148.

⁵³ Paragraph 1 and 2 of the Article 32 of the Penal Code, KZ-1-UPB2, Official Gazette of the Republic of Slovenia, no. 50/2012.

whole.⁵⁴ When connecting the words and groups of words, it has to take into account proper and limited use of conjunctions and proper placement of punctuation.⁵⁵ The legislature often complicates simple connections between individual statements, which then offer several possible explanations and ignite controversial debates among experts. This could have been avoided with a more extensive use of methods of propositional and deontic logic. Propositional logic enables the legal rules to be written in the form of symbolic language, so that each statement can interconnect with logical operators.⁵⁶ This way, you can check the meaningfulness of the declaration. Rakar and Cukjati used the propositional logic to analyse Article 47 of Regulation on Procedure for Exercising Rights to Family Benefits⁵⁷ and demonstrated that the current formulation allows for multiple interpretations, all of which are logically correct!⁵⁸

WHERE ARE WE

These examples suggest that writing the laws is by no means a simple task. In addition to a comprehensive and in-depth knowledge of the areas to be regularized, it also requires **good**

⁵⁴ *Nomotehnične smernice (Nomotechnical Guidelines)*, Office of the Government of the Republic of Slovenia for Legislation, Official Gazette of the Republic of Slovenia, Ljubljana 2008, p. 60.

⁵⁵ *Nomotehnične smernice (Nomotechnical Guidelines)*, p. 84, 85.

⁵⁶ The standard logical operators are conjunction (and), disjunction (or), negation, implication (A is a sufficient condition for B), and equivalence (A is a sufficient and necessary condition for B).

⁵⁷ Regulation on Procedure for Exercising Rights to Family Benefits, Official Gazette of the Republic of Slovenia, no. 31/2008.

⁵⁸ Cukjati, Domen; Rakar, Iztok: *Razlaga pravnih pravil s pomočjo propozicijske logike (Interpretation of Legal Rules with Propositional Logic). Example of family benefits*, in: Uprava, volume 6, issue 4 (2008), pp 95-115.

command of nomotechnics, a special science that includes methodical, structural, and linguistic aspects of preparing legal regulation.⁵⁹ The requirements of nomotechnic legal provisions are in practice often not taken into account. This is also acknowledged by the National Assembly of the Republic of Slovenia, which in 2009 adopted a Resolution on Legislative Regulations.⁶⁰ The resolution assesses the situation and recognizes cases of excessive casuistic scaling, legal lacunae and only partially regulated areas of law, and inconsistent and incomplete regulations. The resolution also says: “The fact that the provisions are passed by the political bodies does not absolve the proposed and adopted decisions to be in accordance with the rules of the profession, either local or legal.”

This seems almost out of reach under the current political system. The increasingly complex social development makes the rigid legislative process hard to follow, and the legislative decision-making centre moved to the executive branch of the government, but this did not limit the excessive influence of politics. The situation even deteriorated since the government's monopoly over legislative initiative, which was designed to rationalise the rule-making, is in itself not a guarantee for a well-prepared legislation. A relatively large risk is that every ruling political option will use the **lesser transparency** of preparing the legislation in the ministries to its advantage. The Centre for Information Service, Co-operation and Development of NGOs noted in their report⁶¹

that the Government of the Republic of Slovenia violated the Resolution, which speaks about cooperation between the regulation writer and the professional or general public, in 81 per cent of the prepared regulations in the period from 1 March 2012 to 28 September 2012. In such an environment, it is hard to expect the administrative apparatus and appointed professional services to be anything more than mere **executors of political decision-making**.

The question remains as to what extent can the modern democratic state leave the decision-making on the most important issues to the politicians, who are not in contact with the citizens and are professionally unqualified. I believe that we should consider **drawing a line** between **political agenda** based on the will of the people, and the decisions that realise this agenda, but depend on the **professional nature** of decision-making. This is a challenge that was largely highlighted by the economic and political crisis. The response will require more than a few political platitudes about a transparency and the rule of law. It will require political will that strives to self-limitation. Until then, our legal system will be giving the appearance of a never finished house with a leaking roof and covered with the ivy of obscurity.

⁵⁹ Igličar, p. 99.

⁶⁰ Resolution on Legislative Regulations, Official Gazette 95/2009.

⁶¹ *The results of the Counting of violations of the Resolution on Legislative Regulation between 1 March 2012–28 September 2012*, accessed: <http://www.civilni->

dialog.net/stevec2012/images/analizasteveckrsitev_10_2012.pdf. (Last accessed: 21 November 2012)

