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Enactment of Legal Rules as a Link to Philosophy and Politics[2]

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Abstract

The choice of the formula of justice is being made by a law enacting body. In a democratic state parliament, or a political body is the main source of formulae of justice, out of the nature of things dominated by political discourse. Here we touch the most significant problem of enacting fair and just law: considerations on the topic of justice reveal a connection of the choice of the formula of justice with philosophy. The compromise of philosophy co-acting in the twentieth century with totalitarian systems refuted then ultimately a myth about a possibility of direct translation of philosophical categories to political categories. The political practice of a liberal democratic state rejects the idea of metaphysics, which would determine the current purposes of the politics. There is a suggestion that democracy faces philosophy in the order of thinking. In spite of such attitude, the author decides to allow for philosophical establishing of the liberal-democratic state, but also allowing for the simultaneous realizing that it is by itself justified as the most reasonable political practice of the state. The philosophy may justify democracy only accepting in turn itself as a variant of a democratic discourse, although the only one which is able to have some distance to mere assumptions of philosophy, without ceasing in this way it is being a democratic discourse. Such philosophy is actually the hermeneutics of politics.

Keywords: enactment of legal rules, justice, philosophy and politics, hermeneutic of politics.

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Stanowienie prawa jako pomost do sfery filozofii i polityki

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Streszczenie

Wybór powszechnie obowiązującej formuły sprawiedliwości dokonywany jest przez organy ustawodawcze.

W państwach o ustroju demokratycznym, źródłem formuły sprawiedliwości – zdominowanej z natury rzeczy przez dyskurs o charakterze politycznym – jest parlament lub inny organ polityczny. W niniejszym artykule dyskusji poddana jest najistotniejsza kwestia dotycząca stanowienia prawa uczciwego i sprawiedliwego: z rozważań na temat sprawiedliwości ujawnia się związek pomiędzy wyborem formuły sprawiedliwości i filozofią. Kompromis wypracowany w dwudziestym wieku pomiędzy domeną filozofii a ustrojami totalitarnymi ostatecznie obalił mit, według którego kategorie filozoficzne można przełożyć bezpośrednio na obszar kategorii politycznych, w niezmienionym kształcie. Standardy polityczne praktykowane w demokracji liberalnej odrzucają koncepcję metafizyki, która byłaby w stanie określić obecne cele i rolę polityki. Sugeruje się, że demokracja konfrontuje się z filozofią na gruncie porządku myślenia. Mimo istnienia tego typu postawy, autor przyzwala na ustanowienie państwa o ustroju liberalno-demokratycznym w konwencji filozoficznej, lecz także dopuszcza jednoczesną świadomość tego, że egzystencja tego bytu jest uzasadniana jako najbardziej rozsądna forma państwowej praktyki politycznej. Filozofia może tłumaczyć demokrację wyłącznie wówczas, gdy zaakceptuje samą siebie jako pewną odmianę dyskursu demokratycznego. Odmianę, która jako jedyna potrafi przyjąć pewien dystans do samych założeń filozoficznych, a utrzymując się w tej postaci – pozostaje dyskursem demokratycznym. Filozofia w powyższym wydaniu to de facto hermeneutyka polityki.

Słowa kluczowe: ustanawianie przepisów prawa, sprawiedliwość, filozofia i polityka, hermeneutyka polityki.

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Enactment of law is one of forms of creating the law along with transformations of customs into the form of law, judicial precedent, or entering social contracts with lawmaking characteristics. Although it has always appeared in the history of law, only in the modern world it became dominant within the natural series of lawmaking acts.

Within the system of statutory law it is presumptively a unilateral act of a competent authority of the state, aware and deliberate, introducing to the law some legal novelty.[3] We are nowadays accustomed to acts of law enactment, which introduce new legal institutions which are not preceded within the given community by any tradition, whose understanding becomes available only within the practice of applying them. Also Poland is a state of statutory lawmaking. It is the second time within the past 70 years of its history when it has implemented legal solutions into its legal order which were unfamiliar to its previous generations. Soon after World War II there were institutions introducing legal orders negating values of private property and free market economy. After 1991 implementation of legal institutions distinctive for the common legal order began. Enactment of legal rules is then a powerful instrument in hands of any state, and also in a democratic state, errors of this kind of lawmaking may become a reason of serious disturbances in the social and economic life.

By its definition law enactment is rigorously interrelated with politics. In a liberal-democratic state categories of the rule of law outline only frames of political discourse, which has place mainly within its representative institutions having their competence of determining the legal rules and duties to inhabitants exclusive.

We could say that a relationship between the law and politics manifests itself as a certain set of translations of articulated and agreed political dealings into categories of the legal state and the rule of law. If some political interests cannot be expressed with those categories, they cannot manifest themselves within the law enactment. Legal categories create then boundaries or limits of the political discourse preceding the law enactment.

Shaping of this relationship in Polish political discourse is well illustrated in verdicts of the Constitutional Tribunal, whose many judgments subordinated political

[3] Cf. M. Zirk-Sadowski, *Philosophical Aspects of the Normative Novelty*, [in:] W. Krawietz, J.Wróblewski (eds.), *Sprache, Performanz und Ontologie des Rechts*, Berlin 1993, pp. 159–171.

interests appearing in acts of law enactment to such elementary principles of the rule of law as prohibition of retroactivity, or the protection of duly acquired subjective rights.

At the same time, we could note the fundamental outcome of lawmaking as a form of creating the statutory law. Abstract and general regulations are a result of the law enacting legislative function; they are specifically addressed to regulate classes of behaviors, expressed in the natural language and published in the form of a legal text.[4]

Such text by the nature of things has to be recognized and interpreted. For the natural language is an imperfect instrument of communicating the norm in directing human behaviors. Even within direct communication the instrument may lead to a failure. A legislative in turn is a source of indirect communication, within which the sole language plays a decisive role.

Abstractness and generality of legal norms (following the prohibition of building the law as a set of privileges) strengthens the problems and difficulties of communicating legal norms. In sum there is a lack of possibilities for direct applying legal regulations contained in a legal text. Issuing a verdict, sentence or a decision, and next their enforcement requires prior "fitting" of the text to the examined state of facts through special legal discourse known as applying the law.

We shall reject then any mechanistic perspectives on the law, in which the enacted law, is somehow automatic or without any reflection, based on legal inferences "put on" the judged case. The legal obligation, its boundaries both at the stage of enactment in a democratic state of law as well as in its applicability through law courts is an object of argumentation and discourse.[5]

What we call the law constitutes a certain entity, consisted of mere legal texts as well as their recognition and interpretation made mainly by the law courts. The law in a democratic state of the law is not therefore an instrument of technical governance of the society. It is a way of the society to communicate in relation to the matter of obligations, finding agreements between moral, political and economic dealings based on relevant argumentations.

We might notice a marked difference between two understandings of the concept of the law: one relates to the law as a direct result of its enactment, while the second

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4 See: idem, *Legal Norms as a Pragmatic Category*, "Archiv für Rechts- und Sozialphilosophie", 1979, 65(2), pp. 203–222.

5 See: idem, *Legal Rationality and Legal Discourse*, "Archivum Iuridicum Cracoviense" 1989, 22, pp. 189–198.

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relates to the sense of law, and justice or fairness. Latin expresses this by linking the two concepts: *lex et ius*. In the Polish language this can be expressed as a contrast of statutes or legislations and the law, although it does not fully expresses the original Latin intuition. The conflict between *ius* and *lex*, the sense of freedom and justice, and the content or information included within a legal regulation is a source of a need of philosophical reflection on the law and statutory law.

Of course it is not possible to exhaust this topic with a single outline. The dispute about fair law is one of the fundamental themes of philosophy and philosophy of law. The discussion over this problem till now is to a large extent determined by Aristotelian thoughts. The division into the distributive and commutative justice is till now a main subject of discussion over the fair and just law. The former relates to the distribution of certain weights or burdens and goods between subjects of the law (let's add that in a situation of relative deficiencies of such goods). Abundance of goods usually does not result in posing a question about the principle for distributing them, while too large shortages of goods, their scarce quantity in presence of large demands for them, makes their distribution always to some extent arbitrary. Only in a situation of relative scarcity the question about proportions of the distribution is meaningful.

Another kind of justice is the commutative or compensational justice. Its essence is repayment with appropriate goods for goods and necessary harms for harms. While the distributive justice is related to the problem of proportion in allocation of goods, the commutative justice is related to the problem of bringing back the balance disturbed within human relations, or bringing back the *status quo ante* which had place before the voluntary exchange or harms were caused.

Through many centuries the problem of distributive justice was almost absent in the law. What dominated was a view, that the commutative justice is the main domain of the law. The distribution of goods was done on the basis of charitable and market related activities. Only the occurrence of the problem of social justice in the 19th century, and later active participation of the state in the distribution of goods and abandonment of the doctrine of the exclusiveness of the free market as the distributor of goods caused a social need for evaluation of the law in categories of distributive justice.

Such evaluation was formulated usually while using the concept of "social justice". The requirement of the evaluation of the statutory law from that point of view is also contained in our Constitution, which is probably a manifestation of some influence of the so called German ordoliberalism on the Polish constitutional

thought. We could therefore state, that our law contains a requirement for evaluation of the statutory law from the point of view of the distributional justice.

However a problem could be found that the full accomplishment of such an evaluation or an assessment requires solving a series of very complex from the philosophical point of view problems. Given that justice is opposite to arbitrariness and randomness, we have to be able to justify our decisions, preceding determining a certain legal solution in the discipline of distribution of goods to be fair and just or unfair and unjust. "Only after determining two unavoidable dilemmas of justice: a – whether goods should be equally or unequally distributed between the subjects, b – if unequally, then which criteria should be used to group the subjects or distinguish some classes for their membership; In that case a third problem emerges: c – which rules should be used to determine the way in which the goods need to be divided within already differentiated categories, subcategories etc."[6]

The rules mentioned above are most often a source of the largest disputes. The rules most frequently referred to are: everyone to receive given their birth status, everyone to receive given their work (effort), everyone to receive given their contributions, everyone to receive given their position and status. The problem of choice of one of these rules as a rudimentary basis of justice has happened to be the reason of revolutions. They are the so called meritary formulas, taking into account some feature or a set of features of a subject that the distribution of goods is to follow from.

Sometimes egalitarian rules are formulated, which demand equal treatment of all subjects. If an assumption is taken that justice is an assessment undertaken under conditions of relative scarcity of goods, then taking the egalitarian formula is impossible to come true. According to Ch. Perelman, equality appears as a value important after the choice of rules of justice, when we demand its consequent application for a differentiated category of subjects, without administering any privileges.[7] Only equality as a meta-value cooperates with justice.

Among the formulae of justice there also appears a formula 'everyone to receive given the law', though Aristotle differentiated that rule as a third kind of justice besides the distributive and commutative. It is rarely expressed in a strictly legislative framework suggesting that the law is the only measurement of justice. However more commonly it is assumed that the law itself may be a source of justice, but may also be assessed as just from the point of view of other sources of justice

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6 J. Nowacki, *Sprawiedliwość a równość w orzecznictwie Trybunału Konstytucyjnego*, [in:] M. Kudej (ed.), *W kręgu zagadnień konstytucyjnych*, Katowice 1999, pp. 95–97.

7 Cf. Ch. Perelman, *The Idea of Justice and the Problem of Argument*, London 1963, ch. 1.

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than law. Statutory law may then support social morality, and even develop it or advance it, introducing new concepts of justice. Abolition, prohibition of capital punishment, legislative leniency of penalties, are processes which have had place against the social morality and through enacting of enlightened law.

The choice of the formula of justice is being made by a law enacting body. In a democratic state parliament, or a political body is the main source of formulae of justice, out of the nature of things dominated by political discourse. Here we touch the most significant problem of enacting fair and just law: considerations on the topic of justice reveal a connection of the choice of the formula of justice with philosophy. These are however the substantive content formulae, in which it is indicated what content of the statutory law is just and which one is not. It is not possible to justify the choice of these formulae, to prove that one of them is better from others without commitments in philosophy. Our civilization does not stop at treating values in a way as if they were a form of superstitions. It requires for them a thorough justification, checking from different points of view, presenting as a part of an overall vision of the world and social reality. Some of these philosophical syntheses refer us to ontological basis of justice (tomism), other attempt to recognize a formula of justice within the epistemological dimension, within the structure of transcendental consciousness (Kantianism).[8] In this way the choice of the formula of justice which we would like to apply within the enactment of law depends on both politics and philosophy.

Within the legal discourse about the relationship of philosophy to politics lawyers usually talk about three situations. First, when they discuss the problem of world-outlook related neutrality of the state or ideological neutrality. They try then to answer a question, how a state could protect the pluralism of views on the reality and whether it could achieve this without committing itself into any of them. Second, when they consider the topic of effects of moral judgments on politics. If the current politics is amoral, whether effectiveness of political actions has to be breaching the autonomy of morality and its requirements? Contemporarily the third dimension of this relation is contemplated, namely, the actual presence of metaphysical beliefs in political views. Do our political beliefs have to be justified by philosophical concepts relating to the reality, does the politics inevitably have to be alluding to ontology? If political parties and their political plans are a subject to this

[8] See: H.E. Allison, *Kant's Transcendental Deduction: An Analytical-Historical Commentary*, Oxford 2015, pp. 243–253. For a broader legal discussion on this topic, see: M. Zirk-Sadowski, *Wprowadzenie do filozofii prawa*, Zakamycze 2011, part I.

set of queries, then naturally the third aspect of the relation of philosophy and politics is of chief interest. Given that political parties in their legislative project plans offer purposes for the society and promise that they have perspectives on the future of the society, then the most important problem relates to the rejection of a supposition that those plans are in fact derived from utopias and that political parties do not propose legislative project plans grounded in the current tangible surroundings of communities. The mere scholarly assessment of those plans appears to be insufficient to detect their utopianism. The political legislative plans are only in part prognoses linking purposes and means on the basis of scholarly predictions. In a large part they are opinions on the topic of basic social values such as justice, happiness, human dignity, towards which scholarly research does not have in fact much to say directly without any bias except for a description of their social or individual ways of understanding. One would not find direct guidance within scholarly research on the topic of normative power of such political programs. And here we enter the domain of philosophy where we can find answers to questions posed in relation to associations of those values with the tangible direct surroundings of individuals. Therefore only from the philosophical perspective we could make an ultimate assessment of political programs which prefer to support those values and make them come true.

In the 20th century, that we shall be mainly discussing, it was the first time in the history of philosophy when a belief got well established on a very large scale that a relationship between ontology and politics does not really tangibly exist. For existence of anything called the natural order of the social world, what actually was a supposition about continuity of the order of nature and the social order, experienced negation and exclusion. Metaphysics was considered, at least, as a view of an individual philosopher, who offers within the philosophical discourse a concept of the nature of reality and its related list of ultimate values derived from it. Sometimes, as it was done by the Vienna Circle, what was negated was even the correctness of the mere philosophical discourse, claiming that it is a consequence of ordinary linguistic errors, categorical shifts or lacks of clear definitions.

It was accepted that politics belongs to the public world being constructed as a derivative of social discussions or imposed social conflict resolutions. It then develops through conflicts to achieve consensus; this process however lacks an internal order, being a result of ad hoc coincidental circumstances and social situations. Anyone can bring into this his or her philosophical beliefs offered as a certain market of ideas. Philosophy in this situation could only provide politics with arguments or methods of discussion, but could not become an ultimate basis for conclu-

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sions. Given that all the world-outlooks have equal rights on the public level, then obtaining decisive advantage by one of them and somehow creating a philosophical stance of the state or the public philosophy, could not appear without strengths or charisma of the leader. With the way of the public discourse society cannot rationally choose the ultimate metaphysical view and its related version of the politics.

Twelve century noted an interesting paradox. A reaction to reject metaphysics as a basis of social order was linked to a few attempts to eliminate the separation of philosophy and politics with attempts of political implementation of philosophy. Similar to Plato in ancient times, philosophers by themselves became politicians or directed the latter, responding to social desires to create some new social order. Metaphysics was becoming for them the real world, philosophical ideas were becoming ideologies. It means that philosophy was turning into an instrument of indoctrination, assigning the politicians a status of people better understanding the reality than an ordinary person from the street and in that way allowing for justification of the largest crimes against humanity through alleged knowledge about the nature of the world, known only to those who love wisdom. Massive projects of totalitarian organizations of social life (communism, facism) had their sources in metaphysical discussions of philosophers or politicians.[9]

The compromise of philosophy co-acting in the twentieth century with totalitarian systems refuted then ultimately a myth about a possibility of direct translation of philosophical categories to political categories. Plato became the first victim of this illusion in ancient times; he also believed that he had available a holistic view on the reality, which could directly offer some practical tips. The ultimate victims of that platonic delusion were philosophers of the twentieth century, despite of the Kant's warning, who in a Secret Article attached to his *Perpetual Peace: A Philosophical Sketch* wrote: "That kings should philosophize or philosophers become kings is not to be expected. Nor is it to be wished, since the possession of power inevitably corrupts the untrammeled judgment of reason."[10]

Could this failure of the marriage of philosophy and politics, though, which was noted by the history of the twentieth century, be a basis to reject a thesis about necessary relations between philosophy and politics? It appears that it could not. An error was probably located in the kind of the relation, attributing this way of thinking to politics and philosophy.

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9 Cf. T. Buksiński, *Filozofia w polityce*, [in:] idem (ed.), *Idee filozoficzne w polityce*, Poznań 1998, p. 7 ff.

10 I. Kant, *Perpetual peace: A philosophical sketch*, New York 2010, p. 30.

As it appears such a relation became a result of concluding the question of normativity of metaphysics. Namely, it was presumed that the nature of reality could provide us with ethical sanctions for particular politics that in any being certain moral standards manifest themselves, and then metaphysics may have a power of direct sanctioning certain actual solutions.

The necessary relationship between philosophy and politics was a result of normativity which was attributed to metaphysical categories. That normativity was able to attribute a special sub-individual meaning to political actions. An individual, a citizen was not able to contrast that normativity with his own understanding of his own rights and duties, which from that perspective was always particular and invalid, even if it was presented in the social discourse. Philosophy (especially including areas offering some a priori sense of reality) was able to impose or offer such picture of the world, which still did not exist, but which should, and which could not be contrasted with a picture of the world obtained in practical discourse.

A good example of such reasoning, which played a significant role in the twentieth century, might be linked to Hegel's philosophy (Hegelianism).[11] The world and every existing matter permits its understanding as a manifestation of the spirit, whose history including all the courses of events is the subject of Hegelianism. These are not however acts in historical sense. The spirit goes within them through a process of becoming more aware of itself or the process of becoming self-conscious. The history of mankind is just a moment within the development; and the process or self-recognitions of the spirit could also be noticed in that history. The essence, the basis of the reality is an ideal, spiritual factor. Depending on the context the factor was designated by Hegel as "the spirit" or also as an "idea". The development of the spirit relies on expressing externally and re-unifying with one-self, or returning to one-self. The ultimate stage of this return is the absolute, or a moment of obtaining the identity by the spirit (identity of the identity and lack of identity).

The spirit, whose abstractly catchable plan of development is an idea, goes through three essential stages of realization. The first is an idea, existing in a logical form. It permits its different-being or counter-being to emerge from it as an antithesis, or the nature. Nature in turn is the reality, based on which the spirit occurs, or humanity. And in the history of mankind, more precisely in the history of human "culture", there is a process of realization of self-knowledge of the absolute spirit, or the process of realizing its existence in the ontological sense. In the Hegelian concept the existence of absolute spirit has a meaning equal to realization of self-cognitions. The process of existence is a process realized and fulfilled in the history, the history of mankind, the history of human knowledge. The spirit is reasonable. It is the reason

[11] For a broader discussion see: Z. Stawrowski, *Państwo i prawo w filozofii Hegla*, Kraków 1994, part I.

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taking a form of still developing knowledge. It means that the development of the world happens accordingly to rational regularities, that all the events have their fixed place within the structure of the rational entity. In this sense actual, i.e. consistent with its essence is only what is reasonable. The process of reaching the moment, in which the absolute awareness or knowledge identifies itself with the awareness of the absolute happens then ultimately in the history. The ideal and socio-historical dimensions remain again connected with each other. At the same time their development has markedly evaluative characteristics – it is not a type of ordinary motion, it is the progress.

Under such a framework any reasonable, rational politics has a duty to reach the same what is the principle of the world, the philosophy becomes a source of purposes and substantial values for it. The state and politics fulfill philosophical contents and in this way protect the society against the chaos.

Philosophy becomes then "the thinking from this world", which loses its superior position in relation to the practical reflection and often turns into an instrument of indoctrination; the predominance of philosophical thinking in the area of political power next introduces some confusion regarding the mere nature of politicality that here the rulers are able to and wish to honestly love wisdom.[12]

The above discussed belief regarding a direct relationship between metaphysics and politics, leading to pseudo-instrumentalization of philosophy, was refuted by the failure of totalitarianisms based on it. At the beginning of our considerations we have mentioned that just in the same century, the 20th century, it was the first time in the history of philosophy when a belief was established on a very large scale that the relationship between ontology and politics does not tangibly exist. At the current stage of our contemplations we should add that this relates to a direct relationship, to a direct applicability of metaphysical categories to political solutions. It should be stated here that significantly, the dominating response to the establishment of a belief about an absence of direct relationships between philosophy and social practice, the undermining of sensibility of philosophical argumentation, bringing it to the value of problems of linguistic errors or mistakes, sometimes led to the complete negation of the role of philosophy in constructing politics.

First of all, E. Husserl's phenomenology, exerted unexpected influence on the attitude of philosophers to language. One of the main advantages of phenomenology and its achievements was the separation of the dimension of the meaning from

[12] For a broader discussion of:this association see: M. Szulakiewicz, *Filozofia i polityka XX wieku*, [in:] idem (ed.), *Filozofia i polityka XX wieku*, Kraków 2001, p. 12.

the dimension of psychic phenomena. Emphasizing the intentionality of acts of consciousness, or the continuous directing awareness at something, allowed for a statement that also a meaning is a particular intentional object. There are no acts of perceptual awareness; the desiring awareness because an act of awareness is always a form of perceiving something by something, or the desire of something. Similarly, when we study awareness directed at understanding of a sign we are able to state that it directs itself towards something external of itself, what we call the meaning. The consciousness appears to be a field of meaning attribution, while a being and reality are particular units of meaning.

There is much evidence to indicate that such radical separation of the meaning from the dimension of psychic phenomena which happened in the phenomenology was an important stimulus in the development of the current philosophy of language. The meaning as a separated object was not simply a psychic phenomenon, but it may have been studied with special methods of linguistic analysis. It was possible to begin studying the meaning as they manifest themselves within language, for instance, that which we talk with, to eventually state that for we always think with means of some language, then the world appears to us through the language, through the meaning.

A linguistic turn which occurred in philosophy relied among others on recognizing independence and autonomy of language. A thesis emerged that it is not possible to tell a difference between the content of awareness and linguistic expressions or utterances, within which they appear. We perceive the world by means available in a given language to such an extent that also the language we use decides about the form of the perceived world.[13] If so, then the cognition of the world may happen through cognition of the language. A possibility has been sketched then to change the function of philosophy and abandon the traditional metaphysics on behalf of the studies of linguistic constructions and meanings, in which this world is expressed.

One of the most radical theses on the relationship between philosophy and language was formulated by neopositivistic philosophers, rejecting the recognition of sensibility of metaphysical considerations. They believed that propositions regarding ontology, the theory of cognition, but also norms and evaluations do not make sense. For sensibility of an utterance was identified with a possibility of stating whether they are truthful or false.

Anti-cognitivism of the neopositivism led to establishing a belief in the philosophy of the 20th century that by using norms (evaluations) we do not learn about

[13] Cf. M. Stambulski, *The Concept of Law In the Analytical and Post-Analytical Theory*, [in:] A. Bator, Z. Pulka (eds.), *A Post-Analytical Approach to Philosophy and Theory of Law*, Berlin 2019, p. 57–63.

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the reality. Interrupting the link between philosophical argumentation and metaphysics became mostly perceievable in just that thesis. For from that moment a loss of objective criteria occurred for choice between different values, including also political values.[14]

The result of strengthening of such views was a loss of a traditional role of philosophy in culture. The new form of culture, or massive culture based on models created and proposed by media and taken from them, obviously could not adopt philosophy and its category as a model of argumentation, while it appropriated political argumentation, which willingly took advantage of the media, treated them as a way to influence the voters. After interrupting the connection between politics and metaphysics the relationship between politics and massive culture was already very easy. For there were no theoretical obstacles to accept forms of discourse and argumentation of the massive culture targeted at casual ad hoc social effects by the politics.

A question could be posed then, if we are condemned to a contrast of these two stances, of which one strictly combines metaphysics and politics, and the second separates it or even contrasts the two? Is it possible to save the role of philosophy in politics, but without appropriating the politics by philosophy?

Obviously finding the answer to this question must be connected with certain philosophy in itself. From this paradox related to the lack of meta-philosophy there is no escape. We could however refer to the evolution of mere politics and political reasoning, which somehow points out such relations with philosophy, which would be acceptable. What predominates is a political thought that it could not be responsibly stated, that the perceived order of the reality in metaphysics determines paths for our actions. Only thomists would dare today to express such a proposition. There is however a predominance of the Kantian view that the domain of free will, the domain of actions and cooperation is essentially an autonomous dimension – and depends on our beliefs about what is good and what is wrong (only for this reason talking about responsibility – including political responsibility – has sense).

The political practice of a liberal democratic state rejects the idea of metaphysics, which would determine the current purposes of the politics. For it is the state of the states accepting the neutrality of the world-outlook as their role, treated today as the best of the known and reliable forms of reasonable practice of the authority,

[14] A. Aarnio, *The Rational as Reasonable – A treatise in Legal Justification*, Dordrecht 1987, ch. I; R. Alexy, R. Dreier, *The Concept of Jurisprudence*, "Ratio Juris" 1990, 3, pp. 1–13.

the state and politics.[15] The thesis follows political practice of the twentieth century, and not any philosophical justification. The liberal-democratic state staying somehow outside of disputing philosophical contentions rejects social practice of politics based on substantial, content-driven values, whose essence is the choice of a "better" outlook. Substantial thinking replaces here thinking about forms of political practice, indicating conditions for implementing all social contents and judgments about potential and optional prohibition of implementing certain aims.[16]

Such common acceptance of the concept of power and politics of the liberal democratic state which plays today a role of an ideal of political ordering of the state matters suggests that democracy faces philosophy in the order of thinking.

Many philosophical streams would accept such a thesis. In the concept of the philosophy of J. Rawls' liberalism, democracy could be seen as a procedure for solving conflicts and agreeing interests overtaking any other stances, which may be taken in relation to the distribution of goods.[17] Similarly, R. Rorty believes that democracy guaranteeing a series of important laws and possibilities to people in fulfilling needs is itself sufficiently well established and does not require any philosophical view of the human nature.[18]

It is however difficult to accept such a stance. The modern democracy inspires its rudimentary ideals with the discourses of the past, in which philosophy played the fundamental role. Abandonment of mythical, irrational reasoning became the fundament of democracy, preceded by philosophy. Athenian democracy strictly collaborated with philosophers of the Greek enlightenment. Without any philosophical reflection democratic societies are not also able to achieve coherency in constructing vision of the world and they lose the feeling of sense and security.[19] Denying democracies the right to look for their philosophical fundaments also creates a danger of lacking immunity to anti-democratic philosophically grounded attacks.

So we decide to allow for philosophical establishing of the liberal-democratic state, but also allowing for the simultaneous realizing that it is by itself justified as the most reasonable political practice of the state.

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15 Cf. M. Kaniowski, *Państwo liberalno-demokratyczne*, [in:] E. Nowicka-Włodarczyk (ed.), *Neutralność światopoglądowa państwa*, Kraków 1998, p. 35.

16 Ibidem, p. 37.

17 J. Rawls, *A Theory of Justice*, Harvard 2003, ch. 1.

18 Cf. R. Rorty, *Consequences of pragmatism. Essays (1972–1980)*, Minneapolis 2003, ch. 11.

19 Cf. R. Dahl, *Democratic Theory and Democratic Experience*, [in:] S. Benhabib (ed.), *Democracy and Difference*, Princeton 1996, p. 338.

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Combining the two theses provides us with a right to state that philosophy remaining in such a relation to democracy alone has to be a part of democratic discourse. There is no possibility of justifying democracy with philosophy from outside, externally. Accepting the earlier mentioned anti-cognitivism, philosophy may justify democracy only accepting in turn itself as a variant of a democratic discourse, although the only one which is able to have some distance to mere assumptions of philosophy, without ceasing in this way its being a democratic discourse.

It is philosophy which supports democratic politics accepting a thesis that a man or a woman as a citizen is put in the world of liberal-democratic politics and does not ever begin his or her thought from the null starting point, if only because that his thinking is always mediated by language, which is always social and never private. Such philosophy is actually the hermeneutics of politics.[20] It does not provide political prescriptions, but just the opposite: it unmasks simplified diagnoses and recipes of ideologists, and also politicians (especially those who are more ideologized). We could use here a popular today travesty of a known philosophical thesis that philosophers to date have changed the world however in order to interpret it. In other words philosophy is important for the politics because it allows us to better understand ourselves and the human world, thanks to which we may widen the area of public discussion, introduce new, closer to the common intuitions points of view, and challenge categories of discourse which has been undisputed.

A vision of homogenous Europe built against differences in national traditions is here the best evidence for an existence in the liberal-democratic culture a continuous demand for the hermeneutics of politics.[21]

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[20] Cf. S. Rosen, *Hermeneutyka jako polityka*, Warszawa 1998.

[21] M. Zirk-Sadowski, *Democracy as hermeneutics*, "Archiv für Rechts- und Sozialphilosphie" 1985, 71(2), pp. 159–172.

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