

## **Politics between Philosophy and Democracy**

In the present paper I would like to make some comments on a classic essay of Michael Walzer „Philosophy and Democracy”. The main purpose of Walzer’s text was to consider the position and role of a political philosopher in a democratic state. I will focus however on another aspect of his argumentation, namely the question whether and to what extent should philosophical theory of politics, justice etc. have power over a democratic choice of a political community. The question is especially important in the case of liberal “rights”, say, a right to welfare. Assuming that we have strong philosophical reasons to believe that individuals have a right to welfare, should this right be included in the legal (and constitutional) order of the state regardless of the people’s democratic will? Let us remember that the more rights are awarded to the individuals, the narrower is the scope of democratic decisions.

It is not only a speculative problem; it has its practical dimension. Walzer considers it in the context of American judicial and legislative system and American debates concerning role of the Supreme Court. Of course, the problem is more universal, touching, at least, every country that has a constitution and a constitutional court. It can be argued that in problematic cases, where the letter of the constitution is not clear or precise enough, or it is simply silent, the judges should make their decisions basing on the universal and inborn rights of an individual, even if it is against the will of the people expressed in a legislative act under consideration. But it can also be argued, as Walzer does, that the democratic choice has more weight than liberal philosopher’s argumentation.<sup>1</sup>

Agreeing partly with Walzer, I will present an alternative solution to the problem. But first let me recapitulate his argumentation.

Walzer puts the issue in terms of a clash of two rival claims to power. One is the philosopher’s claim, based on the knowledge of what is right<sup>2</sup>; the other is the claim of the people, based on a deep consideration of the nature of democracy (the best theoretical

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<sup>1</sup> The same problem will arise with any philosophical theory that tells what social and political order should look like, not only the liberal one.

<sup>2</sup> Obviously, one should never trust a philosopher when she claims to know the truth. But for the present purpose let’s assume that she really does – it will make our problem clearer. Let’s remember also that we’re dealing with a particular kind of a philosopher and not every political philosopher would advance such claims.

elaboration of which was given by Rousseau). The people are the subject of law, and if law is to be what it is, it needs the consent of its subjects. Therefore, neither the will of a ruler nor the arguments of a philosopher can legitimate the law, but only the general will of the members of a democratic community.

This doesn't mean that the people can do whatever pleases them (or whatever pleases the majority). Some constraints can be put on democratic decisions. Walzer considers three of them. First, there is a purely formal constraint: the will of the people must indeed be general. No laws can be made that single out particular individuals or groups. This rule prevents any explicit discrimination or illegitimate privileges. Second, there is a constraint of "inalienability of the popular will" and "indestructibility of those institutions and practices that guarantee the democratic character of the popular will"<sup>3</sup>. People cannot renounce their future right to will. Nor can they deny it to any group in the community.

These two constraints seem indisputable; they are the fundamental rules of liberal democracy. The third constraint that can be put on the will of the people is the controversial one and it is on this one that Walzer focuses. "Third, then, the people must will what is right"<sup>4</sup>. The idea behind this is that there is a determinate, objective set of correct and just laws. If the people get them wrong or do not will them, they should be instructed and guided by someone who knows those laws. This constraint is the premise of the philosopher's claim to power. For who else, if not the philosopher, can know the correct laws and instruct the people?

Walzer accepts the first two constraints and goes on to argue against the third one. But before following him, let me first express one doubt. In my opinion it is far from clear what is the essential difference between the third constraint and two first ones (especially the second one). Assuming that we agree on the latter and disagree with the former, we might be expected to say that people have the right to be wrong in some (most?) cases, but not in all of them. Now, what is the criterion? How do we know that there are some things that the people simply must will? That in some cases they have to acknowledge that the law is just and thus indisputable, while in some cases they can vote it down despite its being just?

The answer that suggests itself is that a distinction between procedural and substantive justice is involved. The people have the right to be wrong in matters of substance, but not in matters of procedure. The second constraint contests their right of willing what is procedurally unjust. The third one concerns what is substantively just or unjust.

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<sup>3</sup> Walzer [1981], p. 384.

<sup>4</sup> Ibid.

However neat, this answer is not satisfying. Few paragraphs below<sup>5</sup> Walzer argues against the procedural/substantive distinction as much less clear than it seems: “what is at stake in discussions about procedural justice is the distribution of power, and that is surely a substantive matter.” What’s more, “no procedural arrangement can be defended except by some substantive argument”. As he says, not only do people have the procedural right to make laws, but – on the “democratic view”, i.e. the view that rejects the third constraint – it is also (substantively) right that they make them. Even if they sometimes make them wrongly.

If Walzer is right about the procedural/substantive distinction, as I think he is, the distinction between the second and the third constraint that he considers gets equally vague. I find it an important weakness of his argumentation, even though it surely does not make it worthless. I will come back to it later, after presenting his arguments against the third constraint.

These are two. The first one I would call the pluralism argument, the second one – the sovereignty argument. Both resume on an observation that the traditions and laws of a particular community are “the result of historical negotiation, intrigue, and struggle”<sup>6</sup> whereas the knowledge of the philosopher originates from theoretical speculation that abstracts from any particularity (and from history as well).

The pluralism argument says that the particularity of traditions and laws of a given community is itself an important value. Therefore, people have the right to favor their historical legacy over the philosopher’s knowledge. If pluralism is indeed a value we cannot wish the philosophers to be kings, says Walzer, because they would make every community exactly alike<sup>7</sup>. From the abstract, speculative point of view there is only one good tradition and one set of correct and just laws. A philosopher may find the ideal society she designs much better than any existing community, but in fact it is the existing communities, their plurality and differences between them that matter.

That is why people may be expected to value their imperfect traditions and laws over the perfect justice brought by the philosopher. And here starts what I call the “sovereignty argument”. If the people do not want to submit to the philosopher’s prescriptions, and we can assume they do not, it would be a violation of the very principle of democracy to force them to do it.

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<sup>5</sup> Ibid., p. 386.

<sup>6</sup> Ibid., p. 395.

<sup>7</sup> Ibid., p. 393.

This is, in short, how Walzer argues against the third constraint on the popular (general) will. As I mentioned above, I do in general agree with this argumentation, but I have some reservations, one of which I've already raised. I will now try to express the rest of them and then to propose a slightly different answer to the problem. An answer that will be at the same time more moderate and more radical than Walzer's.

One of my reservations is of a rather formal nature. The sovereignty argument says that to accord with the philosopher's claim to power rather than the people's claim would be a violation of the democratic principle. The problem is that the very content of the principle is the subject of the discussion. As long as we do not decide whether the popular will must always be right, we do not know what democracy is. If we said that people do not have the right to will and act wrongly, then we should conclude that they do not have the right to oppose the philosopher's claim to power.

This makes the argument look like a sophism. It can be defended, however, even if we have to agree that it is not as convincing as it seemed in the beginning. First, it is not at all obvious that it is right that the people obey the philosopher. If we accept the third constraint, it is, if we reject it, it is not. Second, if we accept the constraint, then one could doubt if there is any democracy left in the "democratic principle". For the scope of democratic decisions will be very narrow and probably nothing of any importance will fall within it. If so, rejecting the constraint and accepting the argument is required to make the democratic principle consistent and meaningful, which is plausibly a necessary condition of calling it a principle at all.

Thus Walzer's argument is saved: democracy in which people have no right to be wrong might be a philosophically acceptable or even desirable regime, but it surely isn't democracy<sup>8</sup>.

The objection I have already raised to the procedure/substance distinction and, what follows, second/third constraint distinction is graver. It is not only a problem of the formal structure of the argument, but, let me say so, a matter of substance. We do not have a criterion to judge in which cases the people can be wrong and in which they mustn't. So who is to decide? The people? It would be very naïve to believe that they will always care about preserving the institutions and practices the second constraint forbids them to destroy and that they will never give their sovereignty away. History tells us the contrary. Should we, then,

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<sup>8</sup> That we should not renounce democracy is a tacit assumption of both Walzer's considerations and mine. A philosopher does not have to conform to this assumption. In such case, however, she appears as a partner for quite another discussion.

leave the decision to the philosopher? But why should the people obey her? We already argued that they should not. And why should they trust her judgment?

We cannot let the philosopher decide where the border line is, for she will most surely be inclined to say there is none. She believes the people should do what is right – in every case. We cannot leave it to the people for the same reasons. They believe they can do what pleases them – in every case.

One more problem arises when we allow a democratic community to act wrongly, even if we can somehow maintain the distinction between the first two and the third constraint. In a democracy not every decision (almost none, in fact) is made unanimously. Let us imagine that the people pass a law that a philosopher would judge as wrong and unjust. As long as all who can be harmed by the law vote for it, it can be plausibly argued, as Walzer does, that they have a right to do so. They have a right to be mistaken and they have a right to harm themselves (to some extent, one could add). But what if the majority passes a law that harms the minority that voted against it? Does the majority have the right to do harm to the minority? I am sure that they do not. But how to stop them?

One could appeal to the first constraint and say that it prevents any unjust discrimination and privileges. But it is too weak. It says only that the people cannot single out some group, say, an ethnic minority, and make a law that would concern only that group. Whereas there are many more sophisticated ways of discrimination, especially (but not exclusively) economical discrimination.

Democracy is a great value, but it is also a great risk. Therefore, we should not agree as easily, as Walzer does, that philosopher's knowledge of what is right has no more weight than an opinion of any member of the democratic community<sup>9</sup>.

Those are the reasons why I do not find Walzer's solution fully satisfactory. We need some proposal that would save the value of democracy, but reduce the risk, and allow us to determine the limits of democracy. In other terms, we need a solution that would make the philosopher's vote have a substantial weight against the vote of the people, but without making her the supreme Legislator.

There is, it seems to me, only one way of solving this problem. Politics. The political way is the only way of dealing with problems of this kind. This answer may seem trivial at

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<sup>9</sup> The philosopher in this context can be replaced by whoever has any justification for her knowledge claims and any intellectual or moral authority. In other words, anyone who can be believed to follow what she takes to be right and not what pleases her and can give reasons why she takes it to be right.

first sight, but it is not so at all. To show this, I need to clarify what exactly this answer means.

First of all, I would like to make sure that we see the problem on the right plane. In (not necessarily philosophical) discussions about politics we are likely to find ourselves quite often in a situation in which it is obvious that no theoretical arguments can solve a given problem. In such a situation it is natural to appeal to what we might call “a political solution”, i.e. to say that, since theoretical debates are fruitless, we should just wait to see how the problem is resolved in real political practice. In other words, we should give up our hopes for a theoretical answer, and accept instead a practical one.

Our predicament now is different, though. In the present case politics is not only a poor substitute for a theoretically justified solution. Politics is the theoretically justified solution. If we ask whether political philosophy or democratic voting is the good way of deciding on the laws of a community, my answer is: neither of them; politics is the good one.

Before I go on to argue for this, I need to explain what I mean by “politics”. The conception of politics that I would like to propose is based on the work of Bernard Crick<sup>10</sup>. Let me start with definitions.

Crick gives a couple of them<sup>11</sup>. First of all, politics is the activity of free men in the public space. From another point of view, it is a way of reconciling conflicting interests and opinions in a complex and heterogeneous society. In still another respect, it is a way of governing such a society without violence and without making the society artificially homogeneous. Politics is a complex, purposeful, deliberate, public activity.

It would be difficult to forge all these characterizations of politics into one consistent and short definition. But I believe Crick’s vision of politics is intuitively comprehensible. In any case, politics is, more than anything else, a way of dealing with social, ideological, economical conflicts without violence.

Politics is also, let me stress it, a matter of freedom. There is no politics without freedom, because people cannot engage in political actions, if they are not free. But freedom needs politics too. Where there is no possibility of resolving conflicts without resorting to violence, there is no civil freedom. Politics is the only way of ruling that allows the subjects to be free (this we know from Aristotle).

As we see, Crick’s notion of politics is very narrow. Not every regime or government is a political one. A fight for power is not politics, it is just a fight for power. There can be no

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<sup>10</sup> Crick [1992]. Page numbers refer to Polish translation (Crick [2004]).

<sup>11</sup> Cf. Chapter I, p. 19-45.

politics in a completely homogeneous society (not that it is needed there). Politics can appear only in very specific circumstances.

One thing that makes Crick's ideas useful for my present purpose is that politics, the way he sees it, is not identical or reducible to democracy<sup>12</sup>. Democracy is, at least in modern Western societies, a necessary condition of politics, but not at all a sufficient one.

There are three points to make here. First, democracy consists in weighing votes, politics – as I interpret Crick's conception – in weighing interests and opinions, but also reasons. That is possible because the process of taking political decisions relies not only on arithmetic, but it involves also authority and knowledge. Political knowledge might be of a different sort than philosophical knowledge (cf. Walzer [1981], p. 393), but it is a knowledge and not just an opinion. Thus, politics can make place for an inequality of votes that is not only legitimate but also necessary in a democratic community. What makes it necessary should be clear in light of my considerations above. What makes it legitimate is that the political authority comes only from the consent of people who have been persuaded by its owner. It is not given to anyone; it can only be gained in a fair political competition<sup>13</sup>.

Second, democracy needs institutions, whereas politics creates them. In most cases democratic choice is not direct and not unlimited, it takes place through and in the boundaries of an institutional order of the state. But this order comes from a historical development and political struggle, in which methods other than strictly democratic were used. Thus, in a sense, politics is more direct than democracy and comes before it<sup>14</sup>.

Third, in a representative democracy decisions are made in a strictly democratic way only occasionally, mainly at the time of elections. Meanwhile, political processes are almost always present. Between the elections most of decisions are made by the deputies. People can rarely influence them by voting, but they can often do it with purely political methods: petitions, demonstrations, strikes etc. Quite often situations like those are perceived as symptoms of some important problems (the government does not satisfy the people's expectation or some social groups set up illegitimate pretensions etc.). In fact, at least in light of Crick's conception, they are symptoms of health and sanity of the political community. They should be the norm, not the exception.

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<sup>12</sup> Cf. Chapter III, p. 76-99.

<sup>13</sup> Not always is this competition fair, of course. But it's worth to take the risk.

<sup>14</sup> On the other hand, as I already mentioned, politics cannot appear anywhere. Some conditions need to be fulfilled. One of them is that people must have the freedom necessary to engage in politics. This freedom is always at least partly of a democratic nature.

I think it should be lucid now why Crick's concept of politics can be a better solution to the problem posed by Walzer. Politics can be an answer to the worries I have raised. First, in a political process, which is something much broader than just voting, the philosopher can hope to have much more influence on the decisions made by the people than she would have if all we did was counting votes. In politics arguments and knowledge matter, in a purely democratic voting they do not.

This is how politics reduces the risks of democracy. The majority can always pass a law that discriminates the minority. But that is not the end of the political process. The minority can still find ways and methods to fight for their rights, even though they cannot vote over their opponents. That is the greatest value of politics: the minority can sometimes win.

In this aspect my solution is more moderate than Walzer's: in a way, it leaves less to the decision of the general will. In another aspect, as I said, my solution is more radical. It should be clear if we remember another reservation I have raised and see how this vision of politics can give us an answer to it.

I have argued that, as long as we are bound by the opposition between philosophy and democracy that was sketched by Walzer, we have no way of deciding where the line goes between realms of the former and the latter. Politics is a way of doing it for two reasons. First, it is the only way of weighing and reconciling conflicting reasons. Both politics and democracy set up pretences to power over the entire public sphere. Only a political process can bring them to compromise. Second, only politics can be expected to limit itself. Neither philosophy nor democracy know restraint. In a political process, however, we can decide which things fall under a political decision and which do not. Therefore, politics can rule the realm that Walzer designed for democracy and at the same time demarcate its frontiers. Thus the radicalism: politics is both the solution and the way of reaching it.

There is one more thing I need to say at the end. The conception of politics that I have proposed is both descriptive and normative. It is descriptive because it theoretically elaborates a particular way of dealing with "public" (not to say "political") problems that is actually employed in Western societies. It is normative because it tells us to care about this particular way and not to follow the temptations of philosophy and democracy. Both are in an important way authoritarian. Only politics can save our freedom.

Crick Bernard [1992] *In Defense of Politics*, London.

Crick Bernard [2004] *W obronie polityki*, trans. A. Waśkiewicz, Warszawa.

Walzer, Michael [1981] "Philosophy and Democracy", *Political Theory*, 9, p. 379-399.