

Equality and Democracy. The Use of Universal Kindness



THE MOTTO

In a French comedy of the 70's big letters flash through the screen: *Freedom, Equality, Fraternity*. As the camera moves back, encircling a wider view, it reveals the setting: "The Municipal prison". The scene seems to symbolize that democracy is a nation's prison. Despite appearances it is our creed. An appropriate motto for a more serious debate would read: people are unequal. That, however, does amount to acceptance of inequality suffered in a democracy from the state, law and men of power. Another motto could read that in modern times the global market has imprisoned the democratic equality and that any restraint of equality is evil. John Mill, for instance, thought the evil of husband's power over his wife (in his essay *On Liberty*, 1859) could be removed by granting women the same rights and legal protection.



A FEW PHILOSOPHICAL REFERENCES TO EQUALITY¹

The imperative of equality, apart from freedom and participation in government is usually perceived as the essence of democracy. The desire for equality ranks as the core of democracy. The meaning of equality gave rise

¹ See also: J. Oniszczyk, *Filozofia i teoria prawa*, Wydawnictwo C.H. Beck, Warsaw 2008.





to various interpretations since the ancient times. It was a principal subject of philosophical thought. The need for equality occupies a special place in the history of mankind. The demand for equality has always been associated with the progress of civilization, with development of the form and substance of a state as human organization, dominated by a vision of liberal-democratic state of law.

The first attempts to explain various phenomena by reference to nature, causality or rationality are attributed to antique Ionian thinkers studying the human nature, society, the exercise power through law. They discussed the relationship between man, law and justice. Instead of unilateral dependence, philosophy offered a vision of nature (*physis*) as a system of interdependencies where various parts of Cosmos remain in equilibrium, where the order of the Universe is based on equality and symmetry. The rule of equilibrium and reciprocity is of fundamental importance, since it did not apply only to nature, but also to a city-state (*polis*). The idea of self-determination was born (the culture of self-determination), and the principle of equality in law (*insomia*)². The idea that the order of the universe might have been set by law came into being (Anaximander) and that the concept of a just man is human creation and the product of nature (Archelaos). However, their man appeared as an element of the universe and had not been brought to the foreground (which was only done by the sophists). Equality as a basis of (populist) democracy was criticised by Platon in "Laws". To him the equality-based order was unfair (although, he was for equality of rights of men and women in an ideal state). He pointed to the inequality between the wise and the stupid. While disapproving a system where power served the rulers only, he did not think of it as a state in the sense of *politeiai*; laws created not for the common good were not really laws. Rules benefiting some people only (*stasiōteiai*)³ were not law and were not the source of justice.

A Roman thinker, Cicero, pondering the meaning of equality, justified diversity by stating that "the so-called equality is in fact very unjust; when outstanding people are treated in the same way as mediocre ones (and both are found in every society) we get a parody of equality". In Cicero's

² S. Filipowicz, *Historia myśli polityczno-prawnej*, Gdańsk 2003, pp. 14–15.

³ The term *stasis* means faction.



vision a state (*res publica*) is a product of a people united by recognition of law and the benefits derived from common existence. Law and common interests are the elements binding people in a state formed to guarantee happiness, justice and protection of property. The thinker believed that freedom relates to equality as the fundamental condition of freedom. In assuming that law is the most important bond in a civil community and equal for all he asked “what law would succeed in preserving social bonds if citizens’ rights were not equal? If we do not wish equal distribution of goods, and if talents are distributed unequally among men, at least let them have equal rights. What is society if not a community united by law⁴.

In the Middle Ages political inequality was explained by the necessity of royal sovereignty over all people in order to preserve peace (Ph. de Beau-manoir), equality being reserved for kingdoms (W. Ockham). Differentiation in private ownership of land was criticized in line with Plato’s idea of communal property (*communism*). Later, the traditional Christian equality was reconciled with political subjection of people: it was reasonable to elect an authority (a king). To Wycliffe “Every man, by nature, desires freedom, which would not take place, if it was not part of natural law”⁵. It was argued that human nature requires a society, which, in turn, needs power to maintain order (Vitoria), or that authority should be accepted by its subjects voluntarily, for human beings are free by nature (Vitoria). Acting on the premise of natural law that people are equal it was stated that “No one, without regard what he is or could be, can lawfully become subject to the jurisdiction of another man without his consent; obviously, he can become a ruler’s subject by a voluntary act of subjugation, the only source of subordination to the will of another man” (quote from Fernando de Vázquez, and also Domenico de Soto). Departure from natural equality was possible not only through people’s consent (presumed), but also by divine order (Luter, Hooker), although it was noticed that both nature and people themselves allowed some men to become the masters⁶. The 16th century proposal by Andrzej Frycz-Modrzewski to make all inhabitants of a state equal

⁴ M.T. Cyceron, *O państwie, o prawach*, Antyk, Kęty 1999, pp. 26, 28–30.

⁵ In his argumentation Wycliffe referred to the “golden rule” expressed in St. Matthew’s Gospel, that everybody should act towards other people in such a way as he would like others to act towards him, and he supplemented that thought with a sentence that “Every man shrinks from being degraded to the level of a slave, and for this reason he should not degrade any of his fellow-brothers to such state of slavery”.

⁶ I.M. Kelly, *Historia zachodniej teorii prawa*, WAM, Cracow, 2006, pp. 214–217.



in law and to give everyone a sphere of freedom from the interference of the state illustrated a new concept of equality⁷.

A seventeenth-century thinker, Benedict de Spinoza, considered a democratic state to be an appropriate political system to achieve freedom and happiness (utilitarianism). There equality is characteristic of the state of nature. Democracy creates the conditions for rational living and preservation of freedom since a majority would not decree absurdities. In a democratic state, a man relieved from desires and guided by reason, is free. Freedom becomes the source of happiness. Life is determined by laws both necessary and unchangeable. To comprehend that necessary order of things and act upon the commands of reason is freedom.

According to John Locke, in a state of nature riddled with fear and danger, man wants to redefine freedom by uniting himself with other people in order to save his life, freedom and property. Therefore, individuals pass over equality, freedom and the executive power to the society, so that the legislative authority could use it for the common good. A universal contract (a rule) came to validate law. The legislative is not an arbitrary master of men, their lives and property. He accepted the fact that by birth princes are more powerful than ordinary men but still equal by nature⁸.

The eighteenth century works by Jean Jacques Rousseau declared respect for democracy and equality. He envisioned the reign of universal will, the expression of which was a social contract. Artificial social systems (civilization) with private ownership, destroyed the natural and inseparable freedom and equality of men. To him inequality, absent in a state of nature, evolved from the progress of the human mind and skills. The rise of ownership and laws served the purpose of its consolidation and legitimization. One can say, then, that the progress achieved both through intellectual speculations and experience made men leave the primeval natural state. Rousseau imagined that natural freedom and equality can be restored by law founded on a social contract. Such a contract would address all and bind all equally, where equality – the gist of the contract – was the foundation of freedom. The universal will would reconcile the various individual and general interests and give men back their lost freedom and equality. The contract did not destroy the natural freedom, but only replaced the

⁷ A. Frycz-Modrzewski, *O poprawie Rzeczypospolitej*. Also, see B. Banaszak, in: B. Banaszak, A. Preisner, *Prawa i wolności obywatelskie w Konstytucji RP*, Wydawnictwo C.H. Beck, Warsaw 2002, pp. 4 et seq.

⁸ J. Locke, *List o tolerancji z 1689*, in: *Teksty liberalne*, Vol. 1, DiG, Warsaw 1993, pp. 17 et seq.





natural physical inequality of individuals with moral and legal equality. By contract, men, unequal in talent and strength, obtain equality. Thus the differences conducive to unjust domination in a state of nature were to be removed. In practice, the exercise of the universal will as an expression of the common good could be difficult, therefore the guarantees of its primacy over private interests were needed. Laws against excessive enrichment and impoverishment were to make it possible⁹.

Immanuel Kant proposed the concept of equality as one of the three principles of reason, allowing *a priori* to construct a civil state (a republic). In his vision of equality each member of a community is subject to the same coercive laws. This absolute equality could coexist with “the greatest inequality in their assets manifest in their physical or spiritual superiority and its external attributes: material wealth and rights”. Individuals are equal before the law (“law, as an expression of the universal will, can only be one and the essence of my right is in its form, and not in its substance or object”). This means that “no one may coerce others except by public law (...), and others may oppose him on the same grounds and no one may lose the right of coercion (the right he has in relation to others) other than as a result of an offence committed by himself. He may not renounce it either, that is he may not procure, by an agreement or other legal arrangement, to have no rights, but obligations only. For he would deprive himself of the right to enter into a contract and, thereby, a contract would annihilate itself. Kant decided that equality in a community means that: “each member of a community should have an opportunity to achieve each social position within the framework of such community, (...), which he is capable of achieving thanks to his talent, diligence and fortune”. Then he continues: “law consists solely in restrictions of the freedom of others, under condition that their freedom can co-exist with my freedom within the terms of a universal law; and public law in a community is (...) a reality regulated by law conforming to this principle and related to power, under which the condition of all men of the same nation is determined in general terms by law (*status iuridicus*), and specific terms by an equal right to stand up to lawlessness in accordance with the universal right to freedom (a civic status). This is the birth-right of each individual in such a state (pre-legal state) to assert his rights

⁹ J.J. Rousseau's thought on the role of a legislator acting for the cause of equality, including in ownership, was continued by, e.g. Gabriel Bonnot de Mably (1709–1785). The agrarian reform was to serve the purpose of promoting property.





by coercing others to use their freedom in a way which harmonizes with his own"¹⁰.

A shift from the idea of equality can be found in the works of the twentieth century philosopher Gustaw Radbruch, where it served as a touchstone by which to measure lawfulness of statutes. Law that does not serve justice is denied its status (*unrichtiges Recht*). Radbruch gave priority to positive law enacted and protected by the state. If a conflict with justice has reached intolerable level, then such a law is unlawful and must yield to justice under condition that equality was willfully violated. Unjust content of law makes it null and void. That referred not only to the subjects of law but also to lawyers so that they have the courage to challenge its lawfulness¹¹.

John Rawls, a twentieth century thinker, identified equality in public regulatory systems with justice understood as regularity. It brings about the necessity of impartial interpretation and consistent use of legal norms and similar treatment in similar circumstances¹². The procedural interpretation of equality is not in the way of some instances of inequality. Only the content of justice constitutes the guarantee of equality¹³. For social institutions J. Rawls formulated the following principles of justice: First, "each person has the same claim to basic liberties compatible with the liberties of others". He tied that rule with the principle of priority (of freedom) according to which the "principles of justice are to be arranged in a linear order, and, as a consequence, freedom may be restricted only in the name of freedom. There are two instances: (a) a lesser freedom must contribute to a broader freedom shared by all; (b) unequal freedom must be acceptable to those who have less of it". The second principle provides that "social and economic inequalities must be so arranged (a) as to be to the greatest benefit to the least fortunate members of society without prejudice to fair frugality; and (b) as the offices and positions be open to all on a equal footing". Another was the priority of justice over effectiveness and welfare. Here "the principle of justice takes priority, in the linear order, over the principle of effectiveness and over the principle of maximizing aggregate benefits; and the principle

¹⁰ I. Kant: *O porządku...*, in: *O porządku: To może być słuszne w teorii, ale nie jest warte w praktyce. Do wiecznego pokoju. Projekt filozoficzny*, Comer, Toruń 1995, pp. 20–22.

¹¹ J. Bjarup, *Continental Perspectives on Natural Law Theory and Legal Positivism*, in: M.P. Golding, W.A. Edmundson (eds.), *The Blackwell Guide to the Philosophy of Law and Legal Theory*, Blackwell Publishing Ltd. 2005, p. 297.

¹² J. Rawls, *Teoria sprawiedliwości*, PWN, Warsaw 1994, p. 683.

¹³ *Ibidem*, p. 687.



of equal opportunities takes priority over the difference principle. There are two instances: (a) the inequality of opportunities must increase the opportunities of the less fortunate; (b) an excessive saving-rate must on balance mitigate the burden of those bearing the hardship. This is part of a theory that all primary social goods – liberty and opportunity, profit and wealth, and recognition that gives citizens the sense of self-esteem – must be distributed equally, unless an unequal distribution would benefit the lesser privileged¹⁴. J. Rawls's theory became a widely discussed topic. R. Dworkin, for instance, when interpreting it, describes the fundamental right relating to justice as "the right of equal concern and respect"¹⁵. In criticizing utilitarianism the philosopher points to equality and subjective rights taken seriously. For their moral significance those rights must not be ignored. Taking subjective rights into account is justified by human dignity and political equality. He believes that equality is "the right to equal treatment, that is to an equal distribution of opportunities, resources, burdens, or to be treated as an equal. The latter means being respected in the same way other are in making political decisions relating to the distribution of goods". The original (fundamental) right is "the right to be treated as an equal, which is the right to equal protection and respect. It justifies the subjective rights derived from it and legitimizes them, however, being a fundamental right itself, it does not need to be justified"¹⁶. In turn, the right of an individual to an equal treatment, to the status of a constitutional right by the equal protection clause, can be understood as two separate rights: as a right to an equal treatment and the right to treatment as an equal. The former is about equal distribution of opportunities, resources or burdens like the right to equal vote. The latter is the right "to be treated with the same respect and concern as anyone else but not necessarily to share equally in burdens and benefits"¹⁷. To Dworkin "the right to treatment as an equal is the primary right while the right to equal treatment is derivative".

According to Chaim Perelman, different formulas of concrete justice (to everybody according to their merits, needs, position, achievements

¹⁴ J. Rawls notes (p. 209–210) that it requires that „all social goods are to be distributed equally, unless unequal distribution would be to everyone's advantage (...). If certain inequalities in the basic structure improve everyone's situation as compared to the original equality standard, why not let them be? (...). Inequalities are permissible where they maximize or at least contribute to the improvement of long-term expectations of the group of citizens that is worst off". For more see M. Błachut, *Postulat neutralności moralnej a konstytucyjna zasada równości*, Wrocław 2005, pp. 66–70.

¹⁵ R. Dworkin, *Biorąc prawa poważnie*, WN PWN, Warsaw 1998, p. 12.

¹⁶ More M. Błachut, op. cit., p. 58.

¹⁷ R. Dworkin, op. cit., p. 407.



and according to law) are incompatible. Furthermore, there are many versions of these formulas. He invoked the concept of formal justice as an “equal treatment of people”. Men of equal merit, needs and social status should be treated equally. Then, justice amounts to an equal treatment of individuals only from a certain point of view. They must share the same characteristic feature to be taken into account in the measurement of justice (an essential feature). Only then they belong to the same category. Formal justice has been eventually defined as a rule “according to which those in the same essential category should be treated equally”. The theory does not define essential categories and allows for some discrepancies in shifting from the general principle of formal justice to various “formulas of concrete justice”. Reflecting on the demand of equal treatment in the same essential category as proper justice, Perelman assumed that this demand is founded “on the definition of a manner” of treatment within the group. To him equal treatment was “a logical consequence of the fact that we find ourselves vis-a-vis members of the same essential category”. Acting by the rule meant giving an equal treatment to everybody who was not perceived as different under that rule. Hence, “in terms of formal justice equality in treatment is the right implementation of the principle of concrete justice”. His view that that justice is founded on equality was contrary to the *communis opinio*. He held that justice is based on “the fact that one rule applies to all members of an essential category. Equality in treatment is a logical consequence of compliance with this rule”. In the concept of formal justice “all subjected to the same rule must be treated equally (...). The rule is the equality itself and presupposes a complete interchangeability of its subjects. The rule, regardless of its origin (a statute, common law, judicial precedent) applies to similar cases (*stare decisis*). Importantly, a rule “must be unquestionable and clear in all cases of (...) application”¹⁸. Formal justice, reduced to proper application of rules, is common to all concepts of concrete justice, which prefer various rules, but accept that justice is based on the proper application of a universal rule (positive or negative). Such a rule requires “that all human beings in a specific category be treated in a certain way”. Formal justice understood as operating principle allows to recognize the justness of an act, but not of the rule itself. Nor does it provide a theoretical criterion that would allow

¹⁸ Ch. Perelman, *O sprawiedliwości*, 1959, pp. 22 and 35, 37 and 38, 72–74, 117, 118 and 120.



to recognize just rules (the value of a rule). It fails to produce justice as “proper observance of just rules”¹⁹.

As a condition for a due discourse equality appears in Jürgen Habermas thought. A discourse in which a consensus is to be achieved must not be accidental, but should satisfy a number of prerequisites (an ideal setting for communicating). Above all, the discourse must be free of pressure. Then, the participants must obey the rules of a discourse, a precondition for the common language of communication, and the proceeding should guarantee equality to all participants in expressing their interests and presenting the supporting arguments. Contemplation of the fairness of norms (practical discourse) consist in choosing, by consensus, of the most universal norm “the direct and indirect consequences of which are likely to be accepted by all participants of a discourse in view of their common needs as well as their individual needs. Next, with this agreement in mind, detailed rules for satisfying individual needs of the participants will be hammered out” (J. Habermas, R. Alexy)²⁰.

In a structured, positivist concept (e.g. Kelsen), norms and facts are different entities, therefore the validity of law is embodied in the formal validity of norms in a system. As regards legitimacy, which is an element of validity, the latter is a product of a defined and geographically specific human activity, such as the adoption of a constitution, electing representatives or exercising rights. In this context, G. Haarscher raised the question of a relation between the hierarchy of norms and the principle of equality of citizens under the rule of law. Haarscher held that there is a contradiction between the concepts of hierarchy and equality, but also that the essential political pursuit of contemporary societies lies in a struggle for a free and equal individual. He pointed to different definitions of the idea itself and to the relation between freedom and equality (for instance in the liberal, liberal-communitarian, socialist, liberal-republican, libertarian approaches). Equality is generally treated as an end expressed by law or public policy. Progress was achieved by eliminating the elements of dominance. “Negotiated” law quickens the process of equalization, and “a network” is more egalitarian than a hierarchical approach and, in consequence, more modern, democratic and civilized. It would be naïve,

¹⁹ Ibidem, p. 85 and 86.

²⁰ S. Wronkowska, in: S. Wronkowska, Z. Ziemiński, *Zarys teorii prawa, Ars boni et aequi*, Poznań 2001, p. 77. See also: J. Stelmach, in: J. Stelmach, R. Sarkowicz, *Filozofia prawa XIX i XX wieku*, Wydawnictwa Uniwersytetu Jagiellońskiego, Cracow 1998, p. 167.



however, to enthusiastically assume that the horizontal approach is more conducive to creativity, flexibility, pluralism, continuous learning, politeness, sociability, peaceful co-existence of often conflicting values, rational ontology, pragmatics, communication, etc. In the “network” approach, contrary to the classical positivism, norms and facts are intertwined. The process of negotiation and implementation of law includes legality (complex norms within the system) and effectiveness (the role of society in making and control of law through individuals and groups who do not formally represent it and do not participate in the state-run process of validation of norms). Haarscher questions this approach. He makes a reference to the distinction between norms and facts to be found in the 19th century criticism of strict Kantian classification for example in Hegelian dialectics. Pointing to the persisting conflict between the two thinkers, Haarscher observes that great philosophers such as Rawls and Dworkin are Kantian in a way. Distinguishing between socio-political and legal-hierarchical matters, he asserts that inequality is a valid problem from the socio-political point of view. It is gradually removed today as inconsistent with democratic values. And yet, there is the issue of economic inequality perceived as normal in democracy. At the same time, such uninhibited pressure on equalization may bring a progressive idea to the point of absurdity. The hierarchy of norms in a positivist concept turns out to be indispensable to the rule of law. The idea of unambiguous, clearly defined law, free of inconsistencies or lacunas rests on the legal certainty underlying the proper functioning of the legal system. According to F. Ost and M. van de Kerchov, the 19 century debate on validity of law, focused on systemic legality or social effectiveness, or natural law legitimacy, remained within the realm of the rule of law. The above issue arose at an age of a weakened state, not capable of performing its functions, and unable to guarantee the rule of law. The free market and civil society, both increasingly international, are among the most significant factors defining a negotiated system. These forces are linked to the equality-driven globalization. Hence, for equality they are more important than the state. However, as Haarscher emphasized, the principal thought in the critique of Marx, relating to the market shows that the egalitarian “surface” of the market conceals the “vertical” process of exploitation. “The invisible hand of the market” only occasionally transforms individual interests into the common good, and the “civilizing” of market effectiveness is done mostly by the state’s ability to represent the common interest. At the same time



the international civil society is criticized for lack of proper representation of people and for its inability to settle disputes in way respecting the rule of law and due process. Therefore changes necessitated by the new assumptions should take into account such criticism. Haarscher observed that people tend to see the society as a sum of negotiations and interactions between free, equal and voluntarily associated individuals. In democracy the law should regulate these interactions but not issue orders coming from a sovereign “nation” embodied in state authorities, orders that should be observed as they supposedly represent the common interest²¹. Nevertheless, the mechanism of making laws by negotiation does not guarantee a continuous progress of democracy, freedom and equality.

3

UNIVERSAL KINDNESS (AND HUMAN DIGNITY) AS A GUIDING PRINCIPLE OF PERFECT DEMOCRACY. THE USE OF KINDNESS

3.1. The recognition of the importance of equality in democracy, inspired by Kant, and even more, by the utilitarians (e.g. Bentham) is vivid in the Znamierowski’s concept of universal kindness. He presented universal kindness as one of the justifications of democracy. He presumed that the contemporary democracy should serve justice and that such a noble system must be founded on the best moral motives. In reality, democracy and its institutions developed amidst conflicts and struggles rather than because of good deeds. Its development includes standing up to tyranny or absolute power, more often than not by means equally ruthless and cruel. Therefore, the question of usefulness and effectiveness of a “generally kind” human being is basically theoretical. In such circumstances a man could prove helpless and utterly incapable of acting aggressively. And yet, democratic equality was effected by fighting for one’s own interest, by wrenching the rights from the privileged class. Then, the guiding force was not kindness but the “hate of the privileged wrongdoers and flaming rage resulting from the harm done”. According to Znamierowski, there is no antinomy in that

²¹ G. Haarscher, *Some Contemporary Trends In Continental Philosophy of Law*, in: *The Blackwell Guide to the Philosophy of Law and Legal Theory*, Wiley-Blackwell 2004, pp. 304–306.



“equality before the law and equality of rights, the core of a democratic system, are effected to the benefit of the community not by the universally kind but by those who do not even know the feeling. Those who stand up for their interests may inadvertently benefit others”. An egoistic feud between conflicting interests might bring about a more equal structure of power. Such new reality is not a product of universal kindness, but it has its blessing. Thus, the universal kindness has been born as a normative (moral) vision accepting the basic features of democracy, provided that “in a formally democratic state it materialized in pursuit of common happiness”. Moreover, democratic institutions, born “sinful” circumstances, are deemed to democratize human attitudes and actions. Equalized, individuals respect one another as if they were guided by universal kindness. The importance of egalitarian approach is visible not only in the functioning of various public institutions such as schools, but even in technical contraptions (traffic lights, timetables) or the press. When it’s clear that egoism does not pay, at least people render themselves not driven by greed, but by general kindness for they act for the common good. It is the question of democratic attitude. Those who follow the idea represent democratic attitude. This is because, as Znamierowski holds, the universal kindness has inspired the ideal democratic system accommodated to the yearning for equality, freedom and fraternity²².

Having pronounced the exceptional importance of kindness, equality and freedom in democracy, Znamierowski traces the idea of equality and freedom to religious feelings. In God’s eyes all men are equal and the commandment of love only magnifies the importance of equality and freedom. It is in such religions of love that the philosopher finds an ally of democracy. Furthermore, he asserts, “people have the same right to be happy and are equal in pursuit of happiness”. In such benevolent kindness there is room for the greatest treasure of man: to “to act freely by his own will”. Then, man can “succumb to someone else’s will only by his own volition”. Universal kindness becomes one with democratic attitude because “only such man has the democratic spirit who, driven by universal kindness, wants all men to be equal in their rights and chances for happiness and equal share in making community laws”. Znamierowski arrives at the conclusion that “the question of democracy as a social and political system

²² Cz. Znamierowski, *Szkoła prawa. Rozważania o państwie*, Oficyna Naukowa, Warsaw 1999, pp. 502–504.



is morally significant because democratic attitude is a moral attitude". To make it more precise, he argues that "a man of a moral attitude cannot help but wish that people enjoy equal happiness and have equal right to self-determination, therefore he must be a democrat by conviction and belief"²³. As for exercise of power, a democrat perceives it as "a serious and onerous obligation rather than a personal privilege" and is more willing to verify it through the election which is characteristic of democracy. At the same time election, not even election law, however perfect, is the instrument of selecting and bringing to power of people representing democratic attitude²⁴.

According to Znamierowski, the greatest visions of democracy were feeding on universal kindness, for it rejects "any discrimination among people and handicaps based in law". Kindness calls for democracy for people disinterestedly, "for the sake of the well being of every individual and not because it benefits the community as a whole". And since every member of the community would thus have a better and happier life, the community itself profits by it, for its existence in turn, is indispensable for every individual. Kindness internalizes democracy. By acknowledging that people "are equal in their rights, free and spiritually fraternized" an individual materializes this belief through his life. Znamierowski sets high the standard of compliance with democratic principles²⁵. He can set the pattern for the way of life in democracy, so that democracy be internalized as "the best of all possible systems simply because in democracy the masses can attain the maximum of individual happiness. A mass where no one is distinguished by any exceptional spiritual gift or fortune"²⁶. Other descriptions of democratic attitude seem to be narrower. Especially, when they refer to freedom, fighting racism, intolerance, clericalism, any forms of national or religious stereotypes, past or present"²⁷.

Experiences shows that an ideal democratic system based on universal kindness is unattainable. Znamierowski perceives the question as an asymptote, "never to be touched by a curve, no matter how close it gets", for such an ideal sets the demands impossible to fulfill in the light of human

²³ Ibidem, p. 397.

²⁴ Ibidem, p. 510.

²⁵ Ibidem, p. 504.

²⁶ To Znamierowski in the eye of a democrat, to be taller, better built, stronger, more talented does not give the right to demand "a bigger share of happiness", for "these gifts of nature themselves are a share of happiness, as they offer possibilities of consuming goods which are not available to the less gifted".

²⁷ P. Śpiewak, in: interview Alain Finkielkraut/Paweł Śpiewak, *Kto wygra wojnę o lustrację?*, in: *Idee z pierwszej ręki*, antologia najważniejszych tekstów Europy – sobotniego dodatku do "Dziennika", Warsaw 2008, p. 358.



experience. An ideal democracy requires that the common good be the principle motive behind actions in public affairs. In his opinion, democracy builds and develops in people's lives gradually. Most of the pro-democratic changes were unintentional, some of which influenced by nature and economy. Only a handful were conscientious human efforts dictated by universal kindness aimed to ensure an equal share of happiness, guiding the progress towards democracy, sowing the "seed of democratic values"²⁸. He foretells survival and development of states where a democratic system is the product of evolution rather than revolution. This is so because democracy managed to instill kindness "into the nature" of every individual.

Democracy is best justified by the idea of universal kindness demanding equality, freedom, justice and observing the principle of common good in public life.

Znamierowski observed that the desire for equality in its cliché form, both as a thesis of and a directive for democracy, is unclear. It did not prevent him from saying that it was reasonable to draw on the vision of universal kindness, possibly a source of radicalisms. The strongest of desires is "that everybody has the same opportunity to satisfy his wishes, provided that they does not collide with the interests of others. For satisfying the needs brings happiness, and kindness wants equal share in happiness for all. Then, actual distribution of happiness is not a product of universal kindness, because equal opportunities may be used differently by each individual. As a result, it is impossible to develop a system providing everybody with an "equal share of happiness". And it is true that "one cannot be forced to be happy, however, sometimes one may be forcefully prevented from being harmed". Another element in the philosopher's reasoning is the reference to man's freedom as a condition for happiness so that he "can freely do what he wants and peacefully satisfy his desires". As for authorities, they should aim at bringing happiness to all. Yet, the philosopher acknowledges the difficulties in providing happiness due to social differences (class, status). Equal opportunities are difficult to offer where there is not enough goods to go around and most of them are taken by a few, which leaves a reduced stock of goods to be distributed. Hence, authorities face the problem of how to distribute happiness among the citizens according to their deeds. He is not an idealist,

²⁸ Cz. Znamierowski, op. cit., pp. 460–461.



however, for he knows it is impossible to distribute goods (e.g. an equal portion of soup) according to the same measure. He walks the beaten path where the authorities provide equal opportunity, so that every man “generates on his own as much happiness for himself as possible”. The authorities are there not only to arouse needs, but also to inspire that people get “enough means to satisfy them” for unsatisfied needs only increase the “masses of hungry and pent-up people”. If authorities care for material goods only they bring the abundance of goods, but not prosperity. Since prosperity “does not only depend on the quantity of goods in possession of men, but also on how much pleasure is taken in these goods”. Unsatisfied needs mean lack of equal external opportunities to attain the sum total of happiness. Universal kindness of authorities can manifest itself in trying to increase the amount of goods to distribute, and, as a result, in increasing the sum of happiness. The quest for equality means that attention will be paid to those unfairly privileged, who “increase their sum of happiness at the expense of others”²⁹.

It is not easy to say when the exploitation of human beings takes place, because, as Znamierowski observes, it is difficult to establish what a man deserves for his work, when he sells it on the market at a price determined by demand and supply. It takes a firm view to evaluate “mutual performance in consideration for work”. The “universal kindness” able to formulate different levels of demand, can be that point of reference³⁰.

In the light of Znamierowski views, the justification of democracy by failure to invent anything better or its relatively few flaws, sounds awkward as compared to the arguments referring to the concept of universal kindness.

3.2. There appear new and varied references to the value of kindness. It is estimated that kindness serves social relations without much investment. The case in point being is the popularization of the World Hello Day³¹. The source of kindness is the key. At the beginning of the 19th century, kindness had been associated, in a rather elitist way, with a social class, being “in some circles part of the etiquette” (Tomasz Sobierajski). In other

²⁹ Ibidem, pp. 450 and 128–130.

³⁰ Ibidem, pp. 235–249.

³¹ The *World Hello Day* celebrations began in 1973 in relation to the Israeli-Egyptian conflict. Later, these celebrations took an apolitical form of showing mutual kindness and giving regards.



words, exemplary kindness is a derivative of a high culture. As for the levels of kindness, common wisdom has it that people who do not offend others rarely get offended. The level of kindness depends, to a large extent, on the standard of living, whereby there is “more kindness where living is easier” (Konrad Maj). Whereas the level of animosity is linked to differences in the financial status, employment, and, especially, to superiority and subordination at work. As for the sources of mutual animosity, they are mostly found in anxieties and frustrations³².

4

EQUALITY AS THE BASIS FOR DEMOCRACY. INEQUALITY IN DEMOCRACY. IMPERFECTION OF THE MECHANISM FOR REDUCING INEQUALITY

The attitude towards equality is characterized by different approaches to the society and human beings. For instance, while the classical leftist ideas promoted social equality, even at the expense of freedom, the conservative or conservative-liberal doctrines recognized the natural origin of inequality. In consequence equality could be attained only by force. The inglorious experiences of the past with various ideologies have made the attitudes toward equality more pragmatic. Today equality is not a very good tool to identify the difference between the left-wing and the right-wing ideologies, between progressive and conservative movements. Now the traditional creeds of left-wing programs demanding a more active role of the state in pursuit of social equality, can be also found in a conservative ideology.

Unlike the rule of man, the rule of law, so characteristic of a modern democratic state, use general and abstract norms to ensure equal treatment. It is believed that to exist a modern social democracy must provide an “equal measure” of means of subsistence to all. It does not mean an absolute equality. It is being emphasized that there is no democracy where the principle of

³² According to the OBOP survey of 2009 Poles are “less kind to each other in work places and public places than several years ago”. See: M. Janusz-Lorkowska, *Deficyt uśmiechu, nadwyżka niechęci*, Rzeczpospolita 2009, 18th November, p. A22. This article includes an interesting thought expressed by a poet, Julia Hartwig that “kindness is a truly beautiful form of existence. It gives us a lot of spiritual comfort. It gives peace. It creates an internal disposition to be good to people even if we think they are not worth it. It is a positive attitude. If one does not want to talk in terms of feelings, one should consider that being kind pays off. (...). Kindness helps in contacts with others. Perhaps it should be taught at schools? (...). However, it is our inner warmth that disposes us best to the world”.



equality is not applied to everyone. Deprivation of certain rights by a judgment of an independent court is an exception. Equality is often understood as a demand of a particular treatment, addressed to an authority, and not only to a public authority creating and applying the law. It includes various authorities formed under private law contracts (e.g. an employment contract). Inequality underlies all power. Moreover, it has been observed that material equality can be imposed only in some form of despotism.

Despite many doubts over equality (as with Friedrich Nietzsche³³) it would be hard to assume that restricting the principle of equality is the condition for a well-functioning democracy. Inequalities give rise to different dangers for democracy, especially when they concern financial relations, political discrimination, access to work, information, knowledge and education. Despite the many years that have passed since the recognition of the equality principle and despite leveling many social inequalities they still tend to resurface by classifying people into better or worse or by discriminatory deprivation of rights and liberties for political, religious or ethnic reasons. Quite often equality is denied to the “others”.

Among the different determinants of equality one can point to nature. It is usually linked to earthquakes, fires or floods. Nature, untamed by conscious human activity, serves equality by lowering the standard of living. Even a victorious war, like any other disaster, impoverishes both the winner and the defeated. In the long run social equalization favors democratization of the state political system.

Equality can be viewed as a class compromise whereby the poor agree “not to seize property by force and the rich promise to share the profit”. Even if reformism, by serving the interest of employees, makes them accept democracy, it has failed to prove itself as the best mechanism of wealth redistribution. It is estimated (e.g. Thomas Piketty) that nowadays in Western democracies the situation relating to the level of inequality is similar to that of a century ago: a narrow group of oligarchs has the majority of wealth at its disposal. Explanations pointed to the lack of awareness of exploitation of

³³ As F. Nietzsche estimated (*So says Zarathustra*) the project of egalitarianism is the source of imperfection of democracy. For the vision of equality in a democracy respects neither mental nor physical individual differences between people and by presenting, for instance, the equality of sexes it ignores psychological differences between them resulting from different experiencing, while aiming at equal and common education hinders the formation of conditions which would favor the development of creative individuals. What is important is that the same objects and phenomena will be differently perceived by particular people. There is also the question of the conflict between equality and many important values and rules that democracy is based on, namely equality and freedom. Therefore, it seems obvious that equality as a general call of democracy is not only vague but can also be delusive (demand for equal income for the reason of equal stomachs, guaranteed by equal human dignity).



the poor, or to the “ideological domination of the possessing class”. The reproduction of inequalities has been further analyzed by A. Przeworski who went beyond the government’s attempts to curb the process. He pointed to the lack “appropriate technology”. When land was still the principal good and easy to divide, it underwent the agrarian reforms. Nowadays, when “land property plays a marginal role in creating inequalities, it is not clear what can be divided”. He examined a supposedly popular idea of levying more taxes to finance public and private consumption. But, as he rightly observes, such financing “does not help making more money – the poor keep coming back to the starting point”. Neither is there enough knowledge on how to provide people with “appropriate material means or the so called human capital” to prevent re-pauperization. Education failed too, for as a means of equalizing it is slow and people educated “in the same schools have different income depending on their social provenance”. Finally, also the market facilitates the reproduction of inequality. Actual inequality and its reproduction in democracy led Przeworski to a position that it is probably impossible to drive inequality below a six to one ratio (for example Spain, Belgium, Finland, South Korea). However, “social inequalities must not translate into political ones”. It may be that the law and financing of state authorities or political parties renders them “clean”, but the parliaments are in the pocket of business³⁴.



GENDER EQUALITY AND THE INTER-GENERATION BALANCE IN DEMOCRACY

5.1. Discrimination of women is a particularly important issue in the debate on equality³⁵. Here equality is viewed as a necessary absence of differences and of the gender criterion. A significant contribution to the understanding of this problem came from feminism, which brought into light various examples of discrimination going down to becoming a victim. The feminist movements gave rise to the opinion that they do not serve equality, but rather wage a war of sexes, looking for privileges. Now and then some

³⁴ A. Przeworski in the interview: *Demokracja to nierówność*, in: Europa, addition to Dziennik, 30–31 May 2009, pp. 10–11.

³⁵ J. Oniszczyk, *Równość – najpierwsza z zasad i orzecznictwo Trybunału Konstytucyjnego*, Kozminski University, Warsaw 2004, pp. 397 et seq.



say (on men in Sweden) that, in fact, men are the ones who are discriminated. E.g. women are protected better against violence, mother's rights go further than father's rights etc. On the other hand, men fall victim to violence more often than women; they not equally provided with medical, health (their lifespan is on average 5 years shorter), social and family care. Contrary opinions justify the movements since in many countries women were an underclass. Today in Sweden, the feminist movement, especially its extreme wing, has been described as egoistic and aggressive. The image of martyrdom of women is being criticized by, for instance, Pär Stöm, who argues that public debate has been distorted should be masculinized. According to Stöm, the traditional understanding of equality of sexes has been replaced by the balance between the representatives of both sexes. Consequently, every company and office aims at implementing sex parity, where recruitment is based on gender and not competence. Stöm rejects such an interpretation of equality. He argues equality means that no one can be discriminated in his/her endeavors because of his/her gender. The rejected vision of equality is described as collective justice rather than equality. The criticism of collective equality policy supported by the government found approval in some academic circles. There are opinions that individual men are often subject to discrimination, however there is no such thing as oppression of men as a group (Björn Halleröd)³⁶.

5.2. The intergenerational balance (democracy of the retired)

The progressing transformation in the intergenerational relations is another issue of importance for the equality of sexes. This is the result of increasing life expectancy combined with the retirement-pension systems developed in the 20th century. It has damaged the intergeneration balance due to the significant increase in social liabilities (a growing number of retirees) at the expense those able to work. One of the measures to prevent bankruptcy of some European countries could be raising the retirement age level. The professionally active are interested, as Roger Skruton believes, in preventing the State from bankruptcy. It could be dangerous for the development of a state when the growing number of retired citizens get the upper hand in politics pushing their own interests. This may aggravate the generational conflict³⁷.

³⁶ A. Nowacka-Isaksson, *Mężczyźni wzięci pod obcas*, Rzeczpospolita, 29–30 March 2008, p. A24.

³⁷ R. Skruton, in: *Demokracja emerytów to upadek Europy*, Dziennik, 3 June 2008, p. 14



Since approximately one third of Europeans is expected to reach over 65 years of age in the year 2050 a democracy of the elderly will follow. The wealthy and well educated are not likely to surrender their grip on power. Importantly, this gray and graying electorate is going to dominate the future elections. Therefore, political parties should pay more attention to the expectations and demands of their constituencies, concerned chiefly with social issues and security. Such shifts may harm younger citizens by cutting down education spending³⁸. In a contrasting view the inflow of over 230 million immigrants by the year 2050, mostly young people and future electorate is going to affect the political parties' agendas. In reaching across to them, the parties might increase the financial support for young families, especially ones with many children.

5.3. Inequality as a result of troubles in the global labor market

The world economic crisis of 2008/9 and the slow-down of the development of many economies led to the reduction of employment. According to some estimates, at the beginning of 2010 over 60 million people lost their jobs. The crisis has revealed that the world economy is controlled, to a large extent, by several dozens of hierarchically structured companies, including "about 20 investment banks, a dozen or so central banks and a few giant corporations". According to Richard Sennett, an American sociologist, it had grave consequences, particularly because it destabilized the capitalist system. The crisis can be attributed, in particular, the fact that such centralization has created a very thin crust of the superrich. Such capitalism ceased to perform its basic function of giving everyone a chance to strike it rich. Capitalism in its post – 1980 form paid less attention to the cooperation with employees. The lack of significant improvement of employees' economic situation was the result of the new forms of work organization miss the long-term career paths. In place of stability, short-term contracts proliferated focused on narrowly defined tasks and projects. It altered the entire spectrum of labor relations. The "new capitalism" driven only by stock value and dividend was criticized by R. Sennett as "creating a sort of social desert around it" for employees were no longer of importance. The problems of the labor class have been "upgraded" to the middle class. As he put it "instead of a long-term career

³⁸ A. Ciechanowicz, A. Kondaszewski, *Starym kontynentem będą rządzić seniorzy*, *Dziennik*, 3 June 2008, p. 14.



path in a relatively stable organization, typical middle class jobs were performed as specific, short-term tasks, as once done by factory laborers". The crisis further impoverished the middle class, not by coincidence, but in the spirit of a capitalism characterized by "the end of the inclusion of the masses". According to Sennett, in the West manpower consists generally of many low- and few highly-qualified workers. Masses, emancipated "from the treadmill of the former industrial capitalism", turned out to be "completely useless" of which they are well aware. The collapse of the traditional labor market was a gradual process related to deepening inequalities. The beginning of the 20th century was marked by varied forms of inequality, including the extreme income gaps, with exorbitant salaries of the managerial class and decreasing income of the former middle class, not to mention other social groups. In the USA, for example, differences were buried in a credit policy which, by easing access to various goods such as real estate, gave the impression of equality with the higher classes³⁹.

5.4. Exploitation of a worker-taxpayer

It is common belief today that in a social democracy the source of exploitation, *ergo*, of a conflict, still lies in the greed of capitalism (the conflict between the exploited and the exploiting). A true fault line can be identified in between the most productive group paying the highest, progressive taxes and the unproductive masses (beneficiaries of taxes). Besides the criticism of the thug capitalism, there appeared a vision of exploitation of the productive groups by those living at their expense and at the expense of future generations. The latter challenges the Habermas' concept of the society justifying the welfare state. The new polarization entails a shift in values. Therefore, the traditional conflict between the owners of the means of production and the workers should subside in a modern welfare state, where large numbers of people participate in distribution but not in production. Taxes are the source of their subsistence. Then, tensions grow between the taxed ("welfare sponsors") and the beneficiaries⁴⁰. Such democracy is impotent in terms of equality. Its feeble mechanisms serve unjust discrimination through taxation or the health care system, and in

³⁹ R. Sennett, in an interview: *Niech banki plajtują! A my twórzmy nowe miejsca pracy*, Europa, add. to Dziennik, 28 February–1 March 2009, p. 2.

⁴⁰ P. Buras, *Bunt filozofa, bunt mieszczan*, Gazeta Wyborcza, 28–29 November 2009, p. 24.



many other ways. They have the tendency to persist by inertia. Not being able to get hold of the global capital, they are used “to solve” domestic political problems and the problems generated by global competition, which takes jobs overseas leaving it to the national governments to find the solution.



ON BALANCING MARKET AND DEMOCRACY

The stability of a modern democracy depends on striking a balance between the free market and democracy with its political ways of solving social problems. It is believed that despite the successes of the free market such as increased prosperity, some side effects, such as unemployment, significant inequalities in income, environmental hazards mar the general picture. Democracy was supposed to be the mechanism for constructive problem solving. When capitalism reacts aptly to the ongoing problems of individual consumers, democracy fulfills its mission by defining the “common good and acting in its favor to guarantee both growth and equality”. Democracy is no longer at its best, when the borderline between the economic game (global capitalism) and democracy, moves towards the former. Then, the market and big corporations make public decisions. That creates a situation where conflicting social issues are not solved, because of the impotence of “the economic formations”, and despite their moral qualifications. In any way, the political activity of corporations in a global capitalist market prevents us from “making a compromise between the economic growth and social problems”⁴¹.

The financial crisis of 2008 made us aware that the particular balance between democracy and the market was upset in favor of the market. It is believed that equality and freedom so characteristic of democracy yielded to the capitalistic inequality and deprivation of liberty. It turned out that the state, law and politics became instrumental to finance, especially the global finance. People fell prey to the gendarme of capital, the global financial system. The mechanisms of a contemporary democracy, along with the

⁴¹ R.B. Reich, *Jak kapitalizm zabija demokrację*, Gazeta Wyborcza, 22–23 September 2007.



capitalist mechanics, are blamed for getting citizens indebted in trillions, making them to pay back debts which are not theirs in the years to come. One might say freedom and equality of future generations have become dismantled. To some, the crisis revealed that, as far as the relation between the liberal democracy and capitalism is concerned, divorced democracy from capitalism. In support of this view one could add that many actions to save the financial and economic systems were undertaken outside the democratic mechanisms, or such mechanisms were only a façade. The dominance of capitalism is well reflected by the entire American political class, which, in the face of crisis, decided that “it is not the place and time for a democratic debate. The measures (the rescue plan for finance) must be applied right away” as “absolutely necessary”. The stimulus programs were voted for in Congress, while democracy was suspended. According to S. Žižek, the rescuing of the financial institutions “became an unconditional command, calling for immediate action”, sufficient to say that capital is “the essence of our existence”. Then he asked “is money more important than democratic procedures?”. The philosopher characterized the great complexity of modern capitalism as “intimidating and by itself limiting democracy”, breeding a more effective authoritative capitalism⁴², which has even less respect for liberty, and in consequence, for equality.

Today equality is not only a traditional constitutional imperative demanding of states to treat citizens equally and to guarantee it before courts and by employers. There are many different levels of inequality, discrimination or lack of balance. The various political inequalities and imbalances are identified, including the inequality in levies, sexual inequality, intergenerational inequality between, in access to work, health care and education, ecological inequality, etc. It is generally believed that democracy has never been able to guarantee equality other than political and legal. Economic equality, in particular, has been difficult to achieve. Economy has escaped state surveillance. At the same time tension and discrimination surfaced locally and globally. In a “capitalist democracy” the first element has come to prominence, and, consequently, democracy succumbed to the market and corporations. Its inability to guarantee jobs has led to the imbalance so characteristic of capitalism. Presently, the debate on equality and non

⁴² S. Žižek, in an interview: *Czeka nas miękka apokalipsa*, Europa, add. to Dziennik, 16–17 May 2009, p. 2.



discrimination is about the relationship between democracy (government) and citizens and also on the globalized reality torn between the extremes. It is about a world under the international law and, especially, a world of markets, acting independently of the states.

The idea of equality, especially in its populist form, has been accompanied for thousands of years by criticism invoking injustice or irrationality. It was frequently accompanied by its opposites: pride and posturing. In its simplest form equality refers to satisfying the basic material needs (the "concept" of equal stomachs). Realization of this primitive vision has indeed impaired progress, destroyed human dignity and liberty. The essence of equality should rather be sought in rejecting discrimination of those biologically or mentally handicapped by nature, or by the inhumane mechanisms of capital and labor markets. The experience of the 21st century has proved that philosophical reflection is irreplaceable in identifying the open and hidden tensions, in designing the solutions, not even by the very dynamic and commercialized world of media, or the globally inter-related post-politics.

The idea of equality principally means that unjustified differences must be rejected and that justified privileges are necessary. This was the focus of philosophical considerations, from the oldest, naïve, mythological ones, through the utopias of the Middle Ages, metaphysical searches, to those supported by experiences and results of scientific analysis. Their importance, therefore, lies in making us aware of the sense of equality as a permanent inspiration and a litmus test of how much humanity there is in a human being. The ongoing debate helps to monitor the level of discrimination and increases awareness of the dangers to the idea of humanity and its attributes, freedom and dignity. It also provides the substance for the human rights. Philosophical reflection, present in the material world since antiquity epitomizes the critical observation of the world, including politics and especially the economy escaping from the rigors of equality, justice and fair. Philosophy, free of bounds, could formulate the conditions of democracy and serve as a warning against curbing freedom and the underlying equality. Even the most utopian concepts, have had some positive impact upon reality. It is difficult to imagine a better world without a critical reflection, on the one hand, and projections of a better life on the other without the more or less naïve visions and philosophical representations. One should be reminded that the state is not omnipotent in securing equality and nondiscrimination, for it cannot go beyond what is permitted by





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law. On an optimistic note, in the prevailing concept of legal interpretation, courts are bound by the doctrine of the rational law-maker. The latter knows, after all, the rational philosophical and scientific theories, including the concept of equality and of the “universal kindness”. A state is not to be reduced to the blunt power of laws. It has at its disposal the soft law too. Finally, it is important to look for a new balance between the market and democracy, here the idea of universal kindness could prove useful⁴³.

⁴³ A. Kryniecka-Piotrak, *Teoria życzliwości powszechnej*, in: M. Szyszkowska, *Filozofia prawa i jej współczesne znaczenie*, WZPP, Warsaw 2002, pp. 107 et seq.