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Articles

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Iwona Barwicka-Tylek
Jagiellonian University in Kraków, Poland
ORCID: 0000-0003-4482-9243
i.barwicka-tylek@uj.edu.pl

Law and Lawyers vs "Political Turn" and the "Return of Political Philosophy"

Prawo i prawnicy wobec „zwrotu politycznego" i „powrotu filozofii politycznej"

SUMMARY

The title of the article refers to P. Manent's essay, describing "the return of political philosophy". Using the distinction between science and art, suggested by thinkers such as J.S. Mill, an analysis was made of the possible responses of legal theory to the so-called "political turn" in social sciences and humanities. Attempts were made to show that transplanting such terms as "politics", "the political", "polity" (in the text they function under more theoretically neutral term: "politicalness") into the field of legal discourse leads to the rejection of the so far dominant (referring to the ideal of Ch. Montesquieu) image of the activity of lawyers as "artisans" practicing the art of law and to replacing it with the image of a lawyer-artist or lawyer-scientist.

Keywords: legal theory; social sciences; the political; politics

One of the disciplines most directly connected with politics or the political among the legal sciences is the history of political and legal doctrines. However, its emergence as a separate science was accompanied by doubts from the very outset. They concerned even the excessively long name, which was a concession to the then mainstream Marxist paradigm. The belief that the term "doctrines" is unsatisfying was expressed, among others, by K. Opałek, who proposed rather "the history of views on the state and law"[1]. He also criticized names such as "the history of the philosophy of law" and "the history of political doctrines". The first he considered too narrow, while the other was not sufficiently clear in his opinion. He wrote:

[1] K. Opałek, *Problemy metodologiczne nauki prawa*, Warszawa 1962, p. 348.

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The state there, and the law here, are mistreated […]. The weakness of the "history of political doctrines" is the openness to broad possibilities of understanding the word "political", so it enriches us with threads for which we would rather reserve a place for reflection in other, separate disciplines in the name of order in science. It also shifts the balance in favour of "politicalness" in terms of referring to current situations and the related practical recipes for action, it emphasises the programme and ideological aspects of thought, with less stress on the theoretical side[2].

The K. Opałek's objections to "politicalness"[3] were not coincidental. The history of political and legal doctrines is, after all, a relatively young daughter of political philosophy. To become mature and independent, she had to break these natural bonds in order to find a place for herself in the faculties of law. All the more so since the time of Ch. Montesquieu lawyers began to be required to completely cut off their discipline from politics. Opinions of the author of *The Spirit of Laws* have formed the social perception of the role of lawyers (judges) as "the mouth that pronounces the words of the law", "mere passive beings", whose authority seems to be "invisible"[4]. It is an ideal that still speaks to the imagination. Unfortunately, it produces lawyers that are disabled in public life. They are to be mute (they do not speak with their voice, but with the voice of the legislature representing the general public), but also blind people (they must not see conflicts of interest and power struggles in order not to be manipulated by one party by chance).

Historical perspective allows us to look at this ideal as possible, but not the only one, because serving society, in a better or worse way, depending on specific historical conditions. There are many indications that it has ceased to work in practice. "Politics" and "the political" are concepts that have broken through into social sciences and humanities. We are even dealing with the "return of political philosophy", using the title of P. Manent's millennium essay[5]. This "political turn"[6] recalls the opinion of Aristotle, who used to give politics a "leading and managerial" role, allowing it to rule on which teachings should be practiced in the state and who is to learn them[7]. Since this is such an important role, it should not be surprising that the return of political philosophy also affects the thinking about law.

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[2] *Ibidem*, pp. 321–323.

[3] What K. Opałek has in mind, is described by various terms in contemporary political discourse. These include "politics", "policies", "the political", and finally "polity". I use the word "politicalness" to avoid discussing broader theoretical assumptions embedded especially in the last two terms: "the political" (C. Schmitt, Ch. Mouffe), and "polity" (B. Crick).

[4] Montesquieu, *The Spirit of Laws*, https://socialsciences.mcmaster.ca/econ/ugcm/3ll3/montesquieu/spiritoflaws.pdf [access: 23.07.2020], pp. 174–180.

[5] P. Manent, *The Return of Political Philosophy*, www.firstthings.com/article/2000/05/the-return-of-political-philosophy [access: 22.12.2019].

[6] Zob. M. Freeden, *The 'political turn' in political theory*, "Journal of Political Ideologies" 2014, vol. 19(1), DOI: https://doi.org/10.1080/13569317.2013.871190.

[7] Arystoteles, *Etyka nikomachejska*, Warszawa 2011, p. 78.

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The question of whether law is a scientific discipline seems to be a joke. After all, we have law faculties in universities, where various "legal sciences" are taught, and although there are many legal practitioners among the people of academia, for many of us the main area of activity is to conduct "scientific research" and publish "scientific" articles and monographs. And yet, the question is not a joke at all. Since antiquity, there has been a need to distinguish between "scientific" knowledge ("true" one, which philosophy cared about at the time) and practical knowledge, characteristic of "art". J.S. Mill briefly explained this difference, writing that science and art differ like understanding differs from the will, or how the indicative mood differs from the imperative mood: science is dealing with facts and is a set of truths, while art deals with a set of rules and guidelines of action[8]. This does not mean, of course, that art has nothing to do with science. On the contrary, art would not have been possible if it had not been based on scientific knowledge, so art is the result of science[9]. Therefore, according to J.S. Mill, the division into "theorists" and "practitioners" is misleading, if it were to mean separating general theoretical knowledge from always a specific experience. As he argues, both "theorists" and "practitioners" constantly theorize, building their knowledge on facts and experience. What divides them, is only a narrower range of questions asked by "practitioners" interested in solving specific problems. "Theorists" set themselves more broad goals – not only do they look at the facts more broadly, but also generalise the information flowing from them, look for principles to be applied to various problems, and then return to the level of specific issues to check the accuracy of their explanations[10].

There are at least a few arguments supporting the opinion that it would be more appropriate, adopting J.S. Mill's criteria, to classify law as an art, not science. According to K. Opałek, this is evidenced, among other things, by the always clear and inevitable advantage of legal dogmatic disciplines, which "is easy to explain for practical and social reasons", because:

> There are many areas of law, they abound in a lot of details, due to the complex nature of relations in modern society, legal regulation is increasing even more quantitatively, and hence it is no wonder that there are still new ones, and the older ones often split in separate disciplines[11].

The second argument, though perhaps not so obvious, is related to the ongoing reform of science. Its principles of scoring the journals and publications promote large-format theorists who conduct studies that are general and universal enough

[8] J.S. Mill, *On Definition of Political Economy*, [in:] *Collected* Works, ed. J.M. Robson, vol. 4, Toronto 2006, p. 312.

[9] *Ibidem*, p. 313.

[10] *Ibidem*, p. 325.

[11] K. Opałek, *Problemy metodologiczne…*, p. 201.

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to be internationalised. In this respect, our discipline presents itself, at least for the time being, quite modestly. However, if we draw conclusions from Mill's distinctions, this modesty does not have to be a cause for shame. Many legal publications have (and should have) a practical value – they theorize, but on the basis of specific problems, specific to the Polish legal system. It is difficult to seek widely and consistently the formulation of conclusions that could influence the development of science on an international scale. If these, even the most impressive, practical achievements do not lead to granting the scientific splendour to a discipline today, maybe it would be fairer and more reliable to limit one's own scientific aspirations? We have enough work to do as academics who are required to improve themselves in legal profession and to teach students – in line with, of course, the anticipated market demand for legal services. A similar trend is conceivable, feasible, and defensible.

Finally, there is a third argument. Even as early as in the thought of Marsilius of Padua we will find a conviction that law is not a record of an objective state of affairs: whether just or desirable, but a record of the lawmaker's will. Thus, it cannot be an object of understanding what, in Mill's categories, actually crosses out its relationship with science. This idea was further developed by legal positivism, which reduced the activity of lawyers down to the effort to implement the will of lawmakers as effectively and economically as possible. This, in turn, is the essence of art, which is satisfied with gathering enough knowledge to put someone's will in practice. Such thinking about law and the activity of lawyers is still topical. In a similar way, one can understand the words of L. Gardocki who reserves, when justifying his own proposals to amend the Code of Criminal Procedure, as follows:

> The situation would be slightly different if it was about a change in the provisions of the Criminal Code. These are usually associated with certain values, and thus with political views and programmes […]. But as for the procedure, I have no doubt that we have the right to demand that our opinion on the subject be taken into account. I would compare this to the situation of a carpenter, who, when not asked, should not speak about whether the cupboard is to be large or small, shiny or dull. But he can certainly have a lot of interesting things to say about the tools he uses in his work[12].

If the lawyer's knowledge is to be comparable to that of a carpenter about his tools, the former becomes a reliable craftsman, i.e. a representative of art in its safest form. This analogy is consistent with Montesquieu's ideal cited above. Such a caution of legal practitioners is by any means justified and generally useful. It allows us to speak about them as representatives of a particular profession. And for public functions, as M. Weber has convincingly demonstrated, treating them as "vocations" may not have the best results for society. It happens, however, that professional caution becomes an even worse choice. Sometimes it is judged by history,

[12] L. Gardocki, *Naprawdę jesteśmy trzecią władzą*, Warszawa 2008, p. 39.

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and it gives lawyers a fail mark, making them responsible for a crime committed by omission, or even complicity in destroying citizens' trust in the state and law.

The beginning of the 21st century seems to be one of such difficult moments. On the one hand, there is an intensification of reflection on the political order of contemporary states, resulting from the phenomena described by some as a crisis of liberal democracy[13], by others as a temporary deficiency[14] resulting from the temporary and exhaustion of the formula of democracy, inherent for this system[15], and by another people as an attempt to build a non-liberal democracy[16]. On the other hand, trust in the justice system itself is also declining in many countries[17], although after closer examination of the data, this globally negative assessment turns out to be less clear. Anyway, expectations towards law, the legal art and lawyers are growing, which for several decades has been an important impulse for reviving and developing theoretical debates within the whole discipline. As T. Koncewicz writes, the legal community:

> […] should be ready to reject the current praise of the *status quo*, mediocrity and naive belief in the rationality of the legislature and look boldly to each other in the face. […] The revaluation does not concern the need to make new laws (this would be the most convenient thing for judges), but above all, it is about the state of mind, the question of legal culture and the properly understood ethos of judging in today's complex legal world dominated by conflict, argument weighing and the uncertainty in which a good outcome will never be perfect […][18].

Craftsmen are not enough to make such a broad revaluation. We need artists if we believe that law should remain an art, and/or scientists if we consider that this art should be based on new knowledge of society and the state that better describes the modern conditions. The appearance of both requires the rejection of the narrow perspective of Montesquieu. In a word, it requires accustoming the different concepts of "politicalness" in the legal sciences, which, as one might think from the growing number of publications, including Polish ones, is indeed taking place[19].

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[13] S.A. Ercan, J.-P. Gagnon, *The Crisis of Democracy: Which Crisis? Which Democracy*, "Democratic Theory" 2014, vol. 1(2), DOI: https://doi.org/10.3167/dt.2014.010201.

[14] K. Newton, B. Geissel, *Evaluating Democratic Innovations: Curing the Democratic Malaise?*, London – New York 2012.

[15] D. Runciman, *The Confidence Trap: A History of Democracy in Crisis from World War I to the Present*, Princeton 2013.

[16] A. Antoszewski, *Demokracja nieliberalna jako projekt polityczny*, „Przegląd Europejski" 2018, no. 2, DOI: https://doi.org/10.5604/01.3001.0013.0788.

[17] S. Van de Valle, *Trust in the Justice System: A Comparative View Across Europe*, "Prison Service Journal" 2009, vol. 183, p. 23.

[18] T.T. Koncewicz, *(Nie)ludzki polski sąd*, „In Gremio" 2013, no. 5(84), p. 24.

[19] See, among other things, *Polityczność nauki prawa i praktyki prawniczej*, eds. A. Bator, P. Kaczmarek, „Przegląd Prawa i Administracji" 2017, vol. 110, DOI: https://doi.org/10.19195/0137-1134.110.1.

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T.J. Peretti, in a book titled *In Defense of a Political Court*[20], argues that it is high time to defeat the "fear of politics" dominant in theory and philosophy of law and treat literally the phrase familiar to American lawyers: "The constitution is what the judges say it is"[21]. According to the author, who addressed constitutional theory and the role of the Supreme Court, recognition of the role of political motivation in constitutional decision-making and the perception of judges as an integral part of a pluralistic political system can be beneficial both to democracy and the justice system itself. Democracy, because the myth of an apolitical court makes it an undemocratic body. It places this institution outside society, imposing on judges the unfillable duties of the Platonic wise men: the rational and impartial prophets, protecting the abstract and empty democratic ideal[22]. According to Peretti, the consent to politics, with all its advantages and disadvantages, would also be beneficial to the justice system itself. After all, open involvement in politics and participation in public discourse does not deprive lawyers of the authority of being expert professionals. On the contrary, it makes it possible to link the position of an expert to the position of a committed leader, which in pluralistic societies increases rather than decreases the professional credibility.

Peretti's considerations relate specifically to the American system, but the direction she has indicated about the new political role of courts and judges is much more universal. Politics is seen here in a liberal way, as an inevitable but ambiguous element of social life, the negative side of which is the inherent strive for power, and the positive side of which is the possibility of using that power to protect freedom. Since it has happened that in many modern societies the negative aspects of politics seem to prevail, the judiciary has the right to become involved in it as an active "authority". Such integration takes place at two levels: constitutional practice and judicial practice. The first level is focused on disputes over the future of liberal democracy in the face of what some authors call "the revenge for postmodernism", namely the use of critical tools developed in the left-wing currents of critical theory, post-structuralism and deconstructionism by the growing groups of revolutionary conservatism or right-wing populism[23]. These groups are keen to radicalise the previous argument proposed by M. Foucault and J. Derrida about the ubiquity of politics and power, thereby not only undermining the assumptions of liberal constitutionalism (questioning their neutrality towards particular interests), but they treat their possible electoral success as sufficient legitimacy to use power to block any competing interests. Such reducing of "politicalness"

[20] T.J. Peretti, *In Defense of a Political Court*, Princeton 1999.

[21] *Ibidem*, p. 3.

[22] *Ibidem*, p. 231.

[23] A. Sulikowski, *Konstytucjonalizm wobec „zemsty postmodernizmu"*, „Przegląd Prawa i Administracji" 2017, vol. 110, DOI: https://doi.org/10.19195/0137-1134.110.7, p. 98.

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to Schmitt's friend-enemy distinction, as A. Sulikowski puts it "makes it difficult to find a way of escape that would not be corrupted by the political"[24]. And then, as the author adds, "the only sensible response to the probable path to totalitarian violence is also violence: taking over the opponent's weapon, closing ranks and forced conversion"[25].

The second of the above-mentioned levels, at which law and politics are combined, is referred to as judicial activism, which is a term derived from political science. As P. Skuczyński points out:

> […] opting for judicial activism changes the judge's cognitive situation and gives him or her the opportunity to assume ethical responsibility for the content of the law. This makes the power of the judiciary real, because judges, by judging, have authority over the meaning of the law and its perception by citizens[26].

The active attitude of judges, who carefully examine the circumstances of each case and treat judging as an ethical challenge, has the potential to strengthen citizens' trust in the justice system.

From the point of view of the difference between science and art, both of the above positions support the perception of law as an art, but tend to entrust it to artists rather than craftsmen. The latter are only required to understand and carry out a project developed by others, in a democratic system: by the legislature, representing the will of citizens. The requirements for legal-artists are much higher. They are expected to be able to assess the compatibility of proposed political solutions with something that could be defined as the internal aesthetics of the legal art, having its own assumptions and rules, and born out of the need for public administration of justice. These trends are critical about the condition of contemporary states and societies, as well as the quality of the institutions that govern our lives. By stressing the "political nature" of the legal art, they suggest that the will of lawyers can and should be a source of energy capable of ensuring such quality in the interests of society as a whole. To take care on behalf of society as a whole and, as is the case with judicial activism, at the level of individual and specific violations of justice. But this kind of thinking is not perfect. By underlining the importance of lawyers' attitudes and competence, it seems that too much trust is put in the combined power of what we call legal institutional imperatives[27]. Without such a link, the legal art given to the hands of legal-artists can become excessively creative, destroying the

[24] *Ibidem*, p. 103.

[25] *Ibidem*.

[26] P. Skuczyński, *Aktywizm sędziowski a etyka sędziowska w Polsce. Uwagi w stulecie niepodległości*, [in:] *Między tradycją a nowoczesnością. Prawo polskie w 100-lecie odzyskania niepodległości*, ed. Ł. Pisarczyk, Warszawa 2019, p. 362.

[27] A. Sulikowski, *op. cit.*, p. 103.

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coherence and predictability so important for the law. Last but not least, creativity involves exposing individuality, which can provoke divisions within the legal community itself, encouraging disputes between different authorities with their own vision of legal "politicalness".

There is a second, alternative way to revive the legal art to make it meet new challenges. Since every art is, as Mill wants it to be, the result of science, the revival of art can be achieved by expanding or rebuilding its theoretical basis. If such a reconstruction could strengthen the "truth-based" foundation of the legal art, the latter would be able to defend its assumed apolitical position. This kind of search for a more credible – and thus less political – theoretical perspective is the result of a growing acceptance of interdisciplinarity, which as late as in the 1980s was often accused of blurring the legal matter[28] and was often regarded as an invention of bored American professors[29]. Today, the economic analysis of law, the sociology of law, or law and literature are thriving and independent currents of reflection. Political science has also become one of the scientific partners of our discipline, and today, the most mature outcome of this encounter are critical legal studies (CLS). They have attracted supporters also in Poland[30], although not so long ago this current, born in the 1970s in the United States, was considered played-out and defunct[31]. It is out of question that the regaining of vigour by CLS coincided with the return of political philosophy or the return of the "grand theory in the human sciences"[32]. And here, making lawyers aware of the "political nature" of law plays a significant role. Although there is no single definition of "the political"[33], its specific feature is the public action itself, presumably consistent with the worldview or openly expressed interests of the individual acting, and thus enabling any political entity (an individual or a group) to reveal itself to other entities who have different interests and beliefs. It is, therefore, "the political" inscribed in all interpersonal relationships of a public nature, which makes it very different from "ordinary" power relationships, i.e. "politics". One would even risk putting forward the thesis that because of the key difference between the two terms, the "politicalness"[34] of law ceases to be a sufficient basis for accusing lawyers of making "politics", which,

[28] D.W. Vick, *Interdisciplinarity and the Discipline of Law*, "Journal of Law and Society" 2004, vol. 31(2), DOI: https://doi.org/10.1111/j.1467-6478.2004.00286.x.

[29] J. Miller, *The Structures of Law and Literature: Duty, Justice, and the Evil in the Cultural Imagination*, London 2013, p. 3.

[30] R. Mańko, *W stronę krytycznej filozofii orzekania. Polityczność, etyka, legitymizacja*, Łódź 2018.

[31] B. Tamanaha, *Conceptual Analysis, Continental Social Theory, and CLS*, "Rutgers Law Journal" 2000, vol. 2(71), p. 305.

[32] *Powrót wielkiej teorii w naukach humanistycznych*, ed. Q. Skinner, Lublin 1998.

[33] See M. Stone, I. Rua Wall, C. Douzinas, *Introduction: Law, politics and the political*, [in:] *New Critical Legal Studies*, eds. M. Stone, I. Rua Wall, C. Douzinas, New York 2012, p. 3.

[34] Especially if one extends a bit the concept of "the political", arguing that being "political" is simply a value (and a burden) of the human condition. See H. Arendt, *Kondycja ludzka*, Warszawa 2000.

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with appropriate arguments, reinforces the scientific (impartial) nature of legal knowledge and theory. Law is seen here as part of the social and political context, thus losing its neutral character.

> [Such] […] law in the context becomes problematic both because it can contribute to or cause a social problem, and because, although the law may offer a solution or part of the solution, other, non-legal solutions are also in place and may in fact be preferred[35].

Recognizing the "politicalness" of law as a fact, lawyers can keep the role of scientists serving the society with their expertise and experience, suggesting specific solutions, but understanding their internal and external limitations. These limitations result from both social and political preferences, as well as the need to respect the rules of legal art. Interdisciplinarity is a natural choice here, as it allows lawyers to understand alternative ways of thinking about social problems, and thus become more active and consciously involved in solving them. However, there are also some pitfalls on this path.

The diversity of initial inspirations makes the supporters of interdisciplinarity often engage in polemics one with another. R.A. Posner does not hesitate to accuse the "law and literature" authors of the inclination towards unnecessary psychologising[36], and the latter, such as R. West[37], in turn criticise the simplification of the "economisation" of law. As D.W. Vick concludes, somewhat sarcastically, interdisciplinarity in purely pragmatic terms offers the possibility to differentiate the product in increasingly competitive academia and this results in publication and grant opportunities[38]. For some, even interdisciplinarity is not enough and they label their declared innovativeness with terms such as "multidisciplinarity", "pluridisciplinarity", "transdisciplinarity", "metadisciplinarity", and finally "cross-disciplinarity"[39]. Unfortunately, what may seem beneficial from the perspective of individual researchers, as well as universities subject to parametric evaluation, does not necessarily translate into achievements that would be essential for the development of legal art and useful in the eyes of legal practitioners. Borrowings from other fields result in new theoretical propositions, but they suggest that the legal sciences themselves are of a secondary and dependent nature, while the actual, practical participation in shaping society and the state can be found in other, more interesting and broader disciplines: economics, sociology, or political sciences enriched with political philosophy. They are, therefore, sciences in

[35] M. McConville, W. Hong Chui, *Introduction and Overview*, [in:] *Research Methods for Law*, Edinburgh 2007, p. 1.

[36] R.A. Posner, *Law and Literature: A Misunderstood Relation*, Cambridge 1988.

[37] R. West, *Narrative, Authority, and Law*, Michigan 1993, p. 79 ff.

[38] D.W. Vick, *op. cit*., p. 171.

[39] M. Nissani, *Fruits, Salades, and Smoothies: A Working Definition of Interdisciplinarity*, "Journal of Educational Thought" 1995, no. 29, pp. 119–126.

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the understanding of Mill, having reliable and proven research methods that allow describing a specific fragment of human experience so accurately that lawyers must respect their findings as a fact. A fact that disciplines the reflection about law, because it defines its direction in advance. This means that, regardless of the intentions of the researchers, the legal art is once again reduced to a craft, and lawyers are obliged to use their own expertise in the service of goals set by other sciences, whose potential of describing and understanding social phenomena and processes seems greater. This also applies to the possible consequences of too hasty borrowing from modern political philosophy, especially in its critical variety. Interestingly, the evolution of CLS seems to prove that law theorists are becoming increasingly aware of the danger. As M. Stone notes[40], while initially the goal of critics-researchers was to abandon questions about the essence of law itself and to focus on "the production of legality" outside traditional institutional forms, the opposite trend can now be seen: thinking about what is legal in law, which constitutes its uniqueness or the "spirit" of the law. Stone himself undermines the credibility of similar inclinations and attempts to replace them with his own proposal, better suited to critical thinking in his opinion, but in my opinion his observations are not incidental. Interdisciplinarity is a value, but only if it does not become an end in itself and does not involve the search for another, non-legal basis of reflection only to escape the "boredom" associated with legal dogma. In such a context, it is worth recalling K. Opałek, who used to combine the concept of interdisciplinarity with the concept of "integration" of legal sciences and sometimes even replace the former with the latter[41]: the external integration, consisting in cooperation with other sciences and thus allowing for the harmonisation of research, but also the internal one, between various legal sciences; so as to keep the convergence of legal issues and thus confirm the strength and importance of the discipline as a whole. Only under a common understanding will lawyers-scientists (theorists) be needed for legal practitioners. And only then can legal art benefit from the development of law as a science.

Finally, let me express some personal conclusions, referring to the beginning of this article, and thus constituting a "brace" for the deliberations presented here. Well, I think that the history of political and legal doctrines can help develop a common understanding, which is a unifying factor in scientific (theoretical) legal discourse. This is so for two reasons. First of all, because interdisciplinarity, previously considered as an obstacle to scientific maturity, became a virtue before it managed to delineate its own research area in a positivist manner, to identify the subject of research and to refine its tools and methods. But also because its rela-

[40] M. Stone, *Life beyond law: Questioning a return to origins*, [in:] *New Critical…*, pp. 198–199.

[41] K. Opałek, *Problemy „wewnętrznej" i „zewnętrznej" integracji nauk prawnych*, „Krakowskie Studia Prawnicze" 1968, no. 1–2; idem, *Interdyscyplinarne związki prawoznawstwa*, „Studia Filozoficzne" 1985, no. 2–3.

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tionship with political philosophy has always been built on the side of legal issues. Even if it includes in its area of interest matters belonging to other fields – not only philosophy, but also religion, economics, sociology, etc. – it does so not to suggest their superiority over law, but to patiently explain what were, are, or may be the consequences of applying to justice a measure established on the basis of various (religious, economic, or political) criteria. The participation in the creation of just political order, despite all the vagueness of the term "justice", has always been the primary goal of the legal art, and the constant and never-ending implementation of this goal in the changing historical conditions is nothing less than the "politicalness" of justice. Thanks to its critical, analytical and comparative qualities, the history of legal and political doctrines is able to support this "politicalness" from the scientific perspective if only the historians of doctrines will be able to convince their fellow lawyers that the history they are studying is not a simple memory of what has passed. The words written by F. Maitland a hundred years ago are still relevant: "To-day we study the day before yesterday, in order that yesterday may not paralyse to-day, and to-day may not paralyse to-morrow"[42].

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STRESZCZENIE

Tytuł artykułu nawiązuje do eseju P. Manenta, opisującego „powrót filozofii politycznej". Korzystając z rozróżnienia między nauką a sztuką, zaproponowanego przez J.S. Milla, dokonano analizy możliwych reakcji prawników i teorii prawa na wyraźny „zwrot polityczny" w naukach społecznych i humanistycznych. Starano się wykazać, że przeszczepienie takich terminów jak „polityka" i „polityczność" na grunt nauk prawnych prowadzi do odrzucenia dominującego dotąd (nawiązującego do ideału K. Monteskiusza) wyobrażenia działalności prawników jako „rzemieślników" uprawiających sztukę prawniczą oraz do zastąpienia go wyobrażeniem prawnika-artysty lub prawnika-naukowca.

Słowa kluczowe: teoria prawa; nauki społeczne; polityczność; polityka