

Introduction

This special volume of *Archiwum Filozofii Prawa i Filozofii Społecznej*, the journal of the Polish Section of the IVR, focuses on the concept of public interest. The public interest theory of regulation clarifies “in general terms, that regulation seeks the protection and benefit of the public at large”¹. The “common interest” (*to koinei sympheron*) in Aristotle’s *Politics* is the rationale for proper constitutions. The “common good” (*bonum commune*) is described as a worthy aim of government by St. Thomas Aquinas in *Summa Theologiae*. The *Second Treatise of Government* by John Locke states that the transcendent political aims are the harmony, protection, and public good of the people². One of the high points of the public interest concept was in the era of Franklin D. Roosevelt. In his annual message to Congress in 1936 he said:

You, the members of the Legislative branch, and I, the Executive, contended for and established a new relationship between Government and people. What were the terms of that new relationship? They were an appeal from the clamour of many private and selfish interests, yes, an appeal from the clamour of partisan interest, to the ideal of the public interest. Government became the representative and the trustee of the public interest. Our aim was to build upon essentially democratic institutions, seeking all the while the adjustment of burdens, the help of the needy, the protection of the weak, the liberation of the exploited and the genuine protection of the people’s property³.

In the last decades of the 20th century the public interest concept lost its power of appeal. What weakened the public interest argument? According to Barry Bozeman, this situation was caused by social and academic fashion, he also blames the development of quantitative social sciences and their demand for empirical evidence for having pushed aside topics that seemed to lack precise answers⁴. Concern with the public interest had not vanished, but public interest theory did strike many as old-fashioned. In the student handbook on public administration, Herbert A. Simon, Donald W. Smithburg and Victor Thompson⁵ chose not to devote even a page to public interest, “dismissing it as simply a rationale for one’s private view of the world”⁶. Today, especially in the midst of the COVID-19 pandemic, this concept seems to regain relevance and importance. That is why I chose “public interest” as the guiding idea for the special volume of *Archiwum Filozofii Prawa i Filozofii Społecznej*: in order to rethink it and show its

¹ M. Hantke-Domas, *The Public Interest Theory of Regulation: Non-Existence or Misinterpretation?*, “European Journal of Law and Economics” 2003/15, p. 165.

² B. Bozeman, *Public Values and Public Interest. Counterbalancing Economic Individualism*, Washington 2007, p. 1.

³ F.D. Roosevelt, *Annual Message to Congress*, 3 January 1936, <https://www.presidency.ucsb.edu/node/208916>, accessed on: 6 November 2020.

⁴ B. Bozeman, *Public Values...*, p. 1.

⁵ H.A. Simon, D.W. Smithburg, V. Thompson, *Public Administration*, New York 1950.

⁶ B. Bozeman, *Public Values...*, p. 2.

validity for contemporary law. We got considerable feedback from scholars and we can present today many interesting articles dealing with the concept of public interest from different perspectives.

The issue opens with two theoretical studies. The first one deals with two key concepts of modern political theory, i.e. truth and public interest, and the relationship between them. The second paper argues that there exists a contradiction between access to justice and public interest. It substantiates this claim by reviewing selected arguments for access to justice and by referring to empirical evidence. The next three papers present problems and concepts of public interest in the area of health studies. The first one discusses issues tied to technological progress in the field of medicine, with respect to the categories of “interest of the individual”, “common good”, and “public interest”. The second one presents problems of transplantation medicine where the concept of public interest is used to justify an obligation on the citizens to donate an organ after brain death. The third one covers an imbalance between intellectual property and public interest, especially in the case of health technologies. The following text is a case study aimed at finding a solution to the challenging problem of reconciling intellectual property rights protection mechanisms with the common cultural heritage. The last three papers indicate the existence of the concept of public interest in different disciplines of law: in criminal law, press law, and constitutional law.

I would like to thank the editors of the journal of the Polish Section of IVR for their passionate work and support, which led us to such a successful end. My sincere thanks go to the contributing authors, who shared with us their thoughts and insights. I hope the readers will find inspiration in these texts and rethink the concept of public interest.

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