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Liberty versus Licence in Early Modern Poland

Introduction

In their modern usage, the words *liberty* and *licence* are often confused. For instance, one may obtain a driver's licence, a fishing rod licence or – horrible dictu – a firearms licene, may click on software licences each day or get a trademark licence in order to use certain symbols. These usages are consistent with the definition in the Merriam-Webster Dictionary, according to which a licence is „a permission granted by competent authority to engage in a business or occupation or in an activity otherwise unlawful”¹. However, if we contrast this noun with its adjective equivalent, we might be surprised to find that the word, *licentious* is defined some an action „lacking legal or moral restraints”². The latter, reprehensible meaning is echoed in e.g. Charles Dickens' Nicholas Nickleby, when the novel's antagonist tells Sir Mulberry Hawk that he „did not think of

¹ <https://www.merriam-webster.com/dictionary/license>

² <https://www.merriam-webster.com/dictionary/licentious>

subjecting [Kate Nickleby] to the *licentiousness* and brutality of so old a hand as [him]"³.

The noun form of the word therefore invokes the concept of lawfulness, while the adjective summons its contrary. How has this come to pass? Isn't this phenomenon similar to that if the words greatness and great, beauty and beautiful, fun and funny were the exact opposites of each other? In order to solve this puzzle, we have to go back to early modernity at the latest, when licence and licentiousness both came to be widely accepted as the opposites of liberty and liberality. All this took place within the framework of a certain political philosophical discourse, in which the compatibility of personal freedom with the common good was at stake, and according to which the latter was even theoretically unsustainable due the former's potentially excessive nature. This is why it became necessary to distinguish liberty from its supposedly harmful form, and this is why the novel senses of *licence* and *licentiousness* were christalized. Hence, from an early modern perspective, a driver's or firearm's license would have meant that its holder could drive in any way he liked and shoot at anyone that he did not. In the eyes of our early modern forerunners, it would have been much more accurate to speak about the liberty to drive or the liberty to keep firearms instead⁴.

As we have mentioned, the distinction only gained real currency in early modernity, but it nevertheless had some precursors. What Plato and Aristotle meant by the term *akolasia* (ἀκολασία) is more or less comparable to the early modern sense of *licentia*: derived from the verb *kolazo* (κοάζω) and supplied with a privative prefix, the term literally meant unruliness resulting from lack of taming or punishment. When, for instance, in Book VIII of *The Republic* Socrates argues for the undesirability of democracy by saying that in such a system every citizen would pursue material goods, since this alone could elevate them into

³ Charles Dickens, *The Life and Adventures of Nicholas Nickleby* (Boston: Fields, Osgood & Co. 1869), 254.

⁴ As a matter of fact, the now familiar sense *licentia* (e.g. in the case of a "driver's license") also had its origins in early modernity, when companies or private persons first gained legal permission to carry out certain kinds of activities (e.g. the production of chemicals, gunpowder or making overseas expeditions). Hence, contrary to what we shall see in the following, in certain regions of Europe - mainly in England and Spain - the concept of *licentia* gained an intra legal sense, as opposed to the extra legal one that was typical in early modern Polish thought. Vera Keller, *The Interlopers - Early Stuart Projects and the Undisciplining of Knowledge* (Baltimore: John Hopkins University Press, 2023), 91-121.

power or keep them there, he makes the resulting *akolasia* responsible for corrupting the youth by suppressing their self-restraint and, on the long run, for making them unable to rule an orderly city state. „So through negligence, and the consistent licence [ἀκολασταίνειν] they give well-born individuals to behave without restraint [...]”⁵.

Aristotle gave a broader definition of *akolasia*, since, according to the respective chapters of Book III of the *Nicomachean Ethics*, „it comes about because of pleasure”, namely when one „has an appetite for all pleasant things [τῶν ἡδέων πάντων] or for the most pleasant ones, and appetite leads him to choose these before the others”⁶. Hence, for Aristotle the *akolastos* person was characterized by striving not only for wealth, but for any kind of *hedone*.

From our point of view, however, the Roman precursors of the idea are the ones, who matter the most. But this also raises a difficulty: according to Hannah Arendt’s famous observation, all misunderstandings in philosophy began when Greek words were first translated into latin⁷, and and it is no different here. And this is one reason why we begin our actual train of thought at this point. The other is that from our point of view, it is primarily the early modern reception of the concept of *licentia* that is important, not that of its Greek precursor.

In doing so, we will (1) first outline the earliest traces of *licentia* that can be mostly found in Cicero, and only then (2) will turn our attention to the 16th-17th centuries. However, since Cicero’s reception was enormous in the era, we will limit our investigations to a few, geographically (and, by consequence, historically and politically) interrelated authors. These will be Andrzej Frycz Modrzewski (Andreas Fricius Modrevius, 1503-1572) and Andrzej Wolan (Andreas Volanus, 1530-1610), both from the Kingdom of Poland or Poland-Lithuania – as it was renamed during their lifetimes, in 1569. In addition to their interrelatedness and relative contemporary unfamiliarity on an international level, the reason why we chose them as exemplars was the probable motivation behind their writings: namely, that they supposedly wanted to provide a remedy for their country’s ills through a method that has recently been given the name of virtue politics. If this hypothesis of ours turns out to be tenable, it can highlight

⁵ Plato, *Republic*, 555/d.

⁶ Aristotle, *Nicomachean Ethics*, 1119/a

⁷ Hannah Arendt, *The Human Condition* (Chicago: The University of Chicago Press, 1958), 23.

what was really at stake in their often subtle distinctions between *liberty* and *license*.

1. Licentiousness in Rome: Cicero

Licere, the root of *licentia* certainly meant being permitted to do something, and the noun itself could equally signify any kind of permission, a permission to do something specifically wrong and permissiveness in the pejorative sense⁸. So far all this indeed seems to be analogous to the Greek equivalent of the word. But while – as we have seen – *akolasia* was an ethical term right from the beginning, for the Romans, *licentia* originally denoted a certain mode of rhetorical composition.

As early as 55 BC., Cicero himself tended to use it this way, when he spoke of e.g. the „*poetarum licentiae*”⁹, or the poets’ relative freedom to manipulate language (which consisted largely of being allowed to use archaic or otherwise unusual words in their poems), while orators were supposed to stick to the more common linguistic registers of their times. Almost a decade later, in his *Brutus*, he compared the wordiness of some speeches to „*iuvenili quadam dicendi [...]* *licentia*” or a „childish freedom of style”¹⁰, which was meant to be a reproach of some orators due to their inability to follow the proper rules of rhetorics. But the same meaning can be found in Quintilian as well, who, in his *Institutio Oratoria* claimed that orators were not supposed to follow poets in all respects, since their „*libertas verborum*” and „*licentia figurarum*”¹¹ or their „free choice of words and figures of speech” were not to be imitated¹².

⁸ René de Nicolay, „*Licentia: Cicero on the Suicide of Political Communities*”, *Classical Philology* 116/4 (2021):537-562

⁹ Cicero, *De Oratore* I. 16, III. 38

¹⁰ Cicero, *Butus* 316

¹¹ Quintilianus, *Institutio Oratoria*, 10.28.

¹² René de Nicolay identified 95 occurrences of the term in the works of Roman republican writers: while 33 of them had a value neutral meaning, 45 referred to cases where permission (*licentia*) was granted to morally blameworthy actions (to the remaining 7 cases no value judgement was added). License, hence, could both signify the *use* and the *misuse* of freedom within a given legal or customary framework. René de Nicolay, „*Licentia: Cicero on the Suicide of Political Communities*”, *Classical Philology* 116/4 (2021):537-562

Moreover, around the same time when his *Brutus* was written, Cicero even said that it was only a „*sermonis error*”, a slip of the tongue to say that *licere* equaled liberty: when, in his *Tusculanae Disputationes*, his interlocutor asks the rhetorical question whether Cinna, the consul of well-known cruelty, was happy or not, he comes to the conclusion that for him „he seemed miserable not only because he did those [infamous] things, but also because he behaved as if he was given licence [*liceret*] for him to”¹³. What the interlocutor lacks here in Cinna is the *conscientia*, the joint knowledge of what was permissible, and what he had done¹⁴. The Roman statesman's concerns are consonant with the reasoning of Joseph Raz, who argued that there were two types of licences or permissions: explicit and implicit. By explicit permissions he meant cases when a permission was explicitly granted, while implicit he meant situations when no clear objection was held against a certain action¹⁵ (which is actually the reformulation of the „*qui tacet consentire videtur*” principle). What Cicero's passage seems to invoke resembles the second instance: Cinna committed his crimes, because he wrongly believed that he was licenced or permitted to do so, and this conviction of his arose from the fact that there were no clear (legal or moral) objections to his deeds – or at least he failed to apprehend them.

What is Cicero's justification, however, for saying that Cinna should not have committed these crimes? „Nobody is licenced [*nemini licet*] to commit crimes; [even to put it this way] is only a slip of the tongue; since by licence [*id*

¹³ „[N]on solum eo videtur miser, quod ea fecit, sed etiam quod ita se gessit, ut ea facere ei liceret. Marcus Tullius Cicero, *Tusculanae Disputationes*, 5.55.

¹⁴ Cicero was the first one we know of to have used the term *conscientia* (presumably as an equivalent to the Greek *συνείδησις*) in its traditional, pre-modern sense (see: Udo Thiel, *The Early Modern Subject* (Oxford: Oxford University Press 2011), 1-34). Elsewhere in the *Tusculanae Disputationes*, e.g. he claims that it is better to be tormented by *conscientia* than by pain caused by shame or infamy („[i]mpunitas enim peccatorum data videtur eis qui ignominiam et infamiam ferunt sine dolore; morderi est melius conscientia”. Marcus Tullius Cicero, *Tusculanae Disputationes*, 4.20.). He was also well known for his treatment of the topic later on, as evidenced by the French grammarian, Pierre-Joseph Thoulhier d'Olivet (1682-1768), who devoted an entire chapter of his *Pensées de Cicéron, Traduites pour servir à l'Éducation de la Jeunesse* (1744) to the occurrences of *conscience* in Cicero's works (its English translation by Alexander Wishard was also available since 1750 under the title, *Thoughts Of Cicero On The Following Subjects: Religion, Man, Conscience, The Passions, Wisdom, Probity, Eloquence, Friendship, Old Age And Death*).

¹⁵ Joseph Raz, *The Authority of Law – Essays on Law and Morality* (Oxford, Oxford University Press 1983), 64-65.

enim licere dicimus] we mean something that everyone is entitled to do"¹⁶. That is, if someone is entitled to commit a crime, then the same entitlement should extend to all citizens, since this is what the „legal consent and common interest"¹⁷ of people – Cicero's famous *raison d'être* of republics – would demand, and releasing such unrestrained dispositions would result something that is more like a Hobbesian state of nature than a republic well-ordered by laws and morals. Another famous remark from around the same period (*Philippicae in Marcum Antonium*) makes Cicero's attitudes even clearer. Here, pondering whether a general should in any case lead an army against his own country, he comes to the conclusion that might never constitutes right:

[n]obody is licenced [*nemini licet*] to lead an army against his fatherland, if by licence we mean whatever one is entitled [*conceditur*] by the laws and the morals of his forerunners [...]. And nobody is licenced to do whatever is in his power, neither is he permitted [*permittitur*] to do so even by the lack of obstacles¹⁸.

2. Licentiousness in Renaissance Poland

What we have seen so far is that why – in Cicero's view – no republic consisting of licentious individuals can be created or is able to persist on the long run. As we shall see in the next section, a similar approach was reflected by certain Polish authors from early modernity. In the works of Andrzej Frycz Modrzewski (Andreas Fricius Modrevius, 1503-1572) and Andrzej Wolan (Andreas Volanus, 1530-1610), two reform-minded theorists from the 16-17th centuries, the question of *licence* and *licentiousness* arose in connection with the possible renewal of the Noble Republic. While neither of them intended to abolish estate system, in other words, they in many areas they recognized the validity of the differences between estates' legal statuses, they nevertheless sided with the principle of procedural equality as far as criminal law was concerned.

¹⁶ Marcus Tullius Cicero, *Tusculanae Disputationes*, 5.55.

¹⁷ Marcus Tullius Cicero, *De Re Publica*, 1.39. „[C]oetus multitudinis iuris consensu et utilitatis communiione sociatus”.

¹⁸ Cicero, *In Marcum Antonium Philippicae*, 13.14. „Licet autem nemini contra patriam ducere exercitum, siquidem licere id dicimus quod legibus, quod more maiorum institutisque conceditur [...]. Neque enim, quod quisque potest, id ei licet, nec, si non obstatur, propterea etiam permittitur”.

2.1. Licence in Andrzej Frycz Modrzewski's *De Republica Emendanda*

Andreas Modrevius. Royal Secretary, but even more the mediator of that dirty scoundrel Luther [*lutulenti illius subulci Lutheri*], after absorbing the wicked dogmas of whom, he broke through the gates of the Church by proclaiming things that were not proper, writing such that was not permitted [*non licuit*], and doing what was not decent [...]. He wrote both about the Schools and the Church, but since he filled these writings of his with errors, they were immediately despised by pious people, and eventually perished altogether, as did his other works, with the exception of those [...] in which he made no mention of religion, such as the three books of the *De Emendanda Republica*¹⁹.

As this quotation from the Jesuit writer, Szymon Starowolski (1588-1656) already betrays, Andrzej Frycz Modrzewski had a dubious, but European-wide reputation in his own time²⁰. This is also supported by the fact that in his *Dictionnaire Historique et Critique*, Pierre Bayle devoted a separate – and much more unbiased – article to his life and works, from here, we learn that Modrzewski felt affinity towards some „nouvelles opinions” (viz. *irenicism*) from early on, as a result of which some Catholics accused him of apostasy right away²¹. He also mentions that Hugo Grotius referred to him with appreciation on several occasions in his *In Consultationem Georgii Cassandri Annotata* (1642)²².

¹⁹ Simon Starovolscius, *Scriptorum Polonicorum Hekatontas: Seu Centum Illustrium Poloniae Scriptorum Elogia et Vitæ* (Frankoforti: Jacobus de Zetter, 1625), 81-82. In fact the *De Ecclesia* and the *De Schola* – the books Starowolski cautionarily mentions – were volumes IV. and V. of the *De Republica Emendanda*, although published abroad due to the ban by Polish censorship. Starowolski, however, seems to regard them as separate works.

²⁰ Except for the short, appreciative part, the rest of the passage was also quoted by the French Huguenot theologian, André Rivet (Andreas Rivetus, 1572-1651), who in return added to it that „[w]hile [Modrevius] could still hope for reform through a council, he wrote many things in order to judge and to explain how this could be achieved. But all this was not received well and he was eventually forced to withdraw from the communion with the Church of Rome”. Andreas Rivetus, *Operum Theologicorum quae Latine edidit, tomus tertius* (Rotterdam: Arnold Leers 1660), 976.

²¹ Pierre Bayle, *Dictionnaire Historique et Critique* vol. 4. (Amsterdam: Compagnie des Bibliothèques, 1739), 218-219.

²² The *Consultatio* was meant to be an appendix to Grotius' own edition of Georg Cassander's (1513-1566) *Via ad Pacem Ecclesiasticam*. As opposed to his earlier work dedicated to the same subject, the *Decretum pro Pace Ecclesiarum* (1613-14), where he

One significant thing Bayle strangely forgets to bring up in connection with Modrzewski was the impact he had on Jean Bodin: this can be either attributed to the fact that as a Huguenot in exile he was primarily captivated by Modrzewski's endorsement of interdenominational peace and religious tolerance, but also to that the French author consistently referred to his Polish colleague under the name, Andreas Riccius which might have made him harder to identify²³. Whatever the real reason is, it is more important for us to see what Bodin discovered in „Andreas Riccius“: „[...] the Polish author Andreas Riccius writes that it is a seriously wicked thing that the patricians and the plebeians, the powerful and the weak, the citizens and the foreigners are not punished with the same punishment”²⁴.

Not surprisingly, Bodin had primarily the second book of *De Republica Emendanda* before his eyes (called *De Legibus* or *On Laws*), which allowed him to interpret Modrzewski within a mostly legalistic framework. However, Modrzewski himself writes at the beginning of the same book that „if sheer education, modesty, probity, pure and holy morals were to prevail in any Republic, there would be no need for laws in it: for laws are not written for good men, who obey the dictates of honesty due to moderation and morals instead of fear”²⁵. The conditional tense he uses (*legibus minime opus esset*) makes it clear that laws are indeed necessary according to him, however, this does not mean

argued that Protestant denominations should develop a *modus vivendi* among themselves (hence, with the exclusion of Catholics), and for the sake of which they should put aside their dogmatic differences (which, in his opinion, were not so significant anyway), in the *Consultatio* he brings up a number of Catholic theologians in order to support the protestant position. And Modrzewski is one of them: regarding whether, for instance, salvation can be achieved through faith or through our deeds, Grotius seems to find similarities between Modrzewski's position and the Protestant stance, even if Modrzewski is reluctant to acknowledge it openly. „Andreas Riccius Modrevius had undertaken to settle the controversy about the merits [of our deeds], and although he did not find [our] opinion detestable, he nevertheless openly denied it [aperté negabat] as being contrary to the doctrine of Paul”. Hugo Grotius, *In Consultationem G. Cassandri Annotata cum Necessariis Animadversionibus Adreae Riverti* (Lugdunum: Elsevieriana, 1642), 49-50.

²³ W. J. Korab-Karpowicz, „Polish Renaissance Philosophy” in ed. Marco Sgarbi *Encyclopedia of Renaissance Philosophy* (Dordrecht:Springer, 2022) 1-6.

²⁴ Joan Bodini Andegavensis, *De Re Publica Libri Sex* (Frankoforti: Jonas Rosa, 1661), 1193.

²⁵ Andreas Riccius Modrevius, *De Republica Emendanda Libri Quinque* (Basel: Johannes Oporinus, 1553), 113.

revoking the validity of the moral absolutism discussed in the first book (*De Moribus* or *On Morals*), only a certain limitation of its scope at most. An eloquent, although philosophically problematic passage from Book II. (*De Legibus*) makes his stance clear:

[f]or reasonable humans nothing should be sweeter or more pleasant than if they check their own desires by the reins of reason which drive their actions to the track of right governance. These may seem to be vinckles for someone, but only such that restrain us from temerity, aggressive behaviour, cruelty and other sins, while inserting in us the obligations of prudence [*prudencia*], modesty [*modestas*], humanity [*humanitas*] and other virtues. No-one would consider God to be lacking liberty [*libertatis expers*] only because he cannot sin; hence, no-one should consider him or herself to be endowed with less liberty [*minus liber*] only because his or her licence to sin [*licentia peccandi*] was taken away by harsh laws or punishments²⁶.

Modrzewski here compares the citizens of a republic to God, who voluntarily decides to restrain himself from committing sin. This analogy, however, only holds as long as citizens actually restrict themselves, and do not act merely in obedience to some external law (for God could hardly be subjected to rules external to him). Hence, as soon as the self-imposed moral necessity loses its force, laws will be needed to replace it and to maintain order. But at this point the analogy is already broken, and this is why Modrzewski presumably considered legalism only a second-best option. According to him, the best possible solution would have been to prevent citizens from developing the idea of a *licentia peccandi* or *license to sin* in the first place.

Since the stakes of *licence* could not be higher, let us see what the author had to say about it first in general, then through some particular examples! One of the most important theses of Book I (*On Marals*) is that „morals have the greatest power over every sphere of life” (*[m]orum vim maximam esse in omni vita*), but Modrzewski also admits that „many things that were once in the morals of our ancestors are merely in the laws today” (*multa, quae in more maiorum erant, hodie legis locum obtinent*)²⁷. Which means that despite their *maxima vis* or *greatest power*, morals are not omnipotent either. The reason for this is that certain dispositions cannot be easily counterbalanced:

[b]ut so great is in men the perversity [*perversitas*], the shamelessness [*impudentia*] and licence to do evil [*licentia malefaciendi*], that the harshest laws are needed in

²⁶ Ibidem 117.

²⁷ Ibidem 14.

order to, as if by obstacles, hold their ever expanding malice back, to oppose their oozing licence [*exudans licentia*] and to put their overflowing impiety under reins²⁸.

The tacit premise of the overall Book I is that the above dispositions are neither innate nor the result of the fall from grace: on the contrary, its purpose is to convince readers that their origin is „environmental”, and hence, their development can be prevented by forming an appropriate moral character in citizens. In explaining this, Modrzewski’s key point is putting „[t]rue liberty [*vera libertas*]” and licence in contrast with each other. According to the author, the former „consists not in acting however one feels like [*libertas [...] non in licentia agendi quod libeat*], but [...] by controlling the blind and reckless movements of one’s soul, and by submitting it to the rule of reason, the dictates of which can enable him to live in the best possible way”²⁹. Or as he summed it up elsewhere, „[s]imilarly to true dignity [*dignitas*], which is the opposite of arrogance [*superbia*], liberty [*libertas*] is the opposite of license [*licentia*]”³⁰.

As it can be seen, the author is plucking Ciceronian strings so much that hardly anything new can be discovered from his definitions compared to his ancient forerunner. However, he provides his readers with a much broader range of particular examples regarding licence, which can be roughly divided into four different groups: licence in education, governance, law enforcement and economics. Since these are Modrzewski’s actual innovations, here are some examples of them in order to provide a bird’s-eye-view perspective on the subject.

As for the first one he claims that since there can be no such natural talent, which could get by without education. This is consistent with his earlier tacit assertion that moral proneness or „perversity” are not innate, but acquired qualities: and for this very reason – says Modrzewski – the youth needs proper precepts, and this especially applies to those who aspire for a career in politics³¹, and this is why he finds it regrettable that very often those families tend to spoil their children, who would have the most opportunities to raise their properly. As he says,

[m]ost of the sons of noblemen are brought up too softly, and within highly licentious living conditions [*magna vitae licentia*]: they constantly perform tasks

²⁸ Ibidem 113.

²⁹ Ibidem 116-117.

³⁰ Ibidem 81.

³¹ Ibidem 26.

which would be more suitable for girls, surround themselves with harps and obscene songs with the approval of both family members and educators.³²

The author's concern is, hence, that educators can give way to hedonistic impulses at a very young age through licence. This is particularly harmful to all those who are preparing for a career in governance, because – and here Modrzewski echoes Book I.13 of the Nicomachean Ethics – „no one rightly commands others who cannot impose limits on their own affections”³³ – according to him. Hence, for Modrzewski, the ruler has to be capable of moderating both him or herself and his subjects, since, without this ability the entire state organization could only be held together by laws.

[The ruler] should not allow [his magistrates] to indulge in immoderate liberty, or even licence [...]. The licence of certain municipal magistrates in robbing the common people or in denying them access to the king, is intolerable³⁴.

But the same duty of the ruler applies in this regard not only to magistrates, but to ordinary subjects as well: one of Modrzewski's recurring themes throughout his lifetime was criminal punishment, and that it should be extended to everyone in equal measure regardless of rank or status. He had even devoted a separate work to this question (*Lascius, sive de Poena Homicidii*, 1543), where he claimed that as far as historical records can tell, the punishment for most cases in homicide was merely a fine: and for a period of time „that was no greater than sixty marks in our currency; but later, as the licence of men increased further [*licentia hominum crescente*], we are told that it advanced to even one hundred marks”³⁵. What Modrzewski suggests here and elsewhere is that unequal retribution gives rise to an unequal quantity of criminal actions, and since the ruler's goal and interest should be to reduce these altogether, he should inflict equally severe punishment on all those who are not hindered in their *licence* by moral convictions.

Moreover, *licence* may cause inflation not only in fines related to homicide, but in other areas of the economy as well. The relevant discussions in *De Republica Emendanda* are among the most interesting parts of the grandiose work because

³² Ibidem 23.

³³ Ibidem 32-33.

³⁴ Ibidem 37.

³⁵ Andreas Fricius Modrevius, *Lascius sive Oratio de Poena Homicidii* (Krakow: Vietor 1543), 10.

they contained cutting-edge observations in their author's time (mostly in I.15, *De Rerum Venalium & Numorum Curatoribus* or *On Products and The Keepers of Money*), which are consistent with his own virtue ethical convictions at the same time. Inflation induced by debasing the value of coins had been known and warned against ever since antiquity, but inflation as a quasi-natural economic phenomenon was first being discussed in Modrzewski's own time on the other side of the continent³⁶. Despite all this, the author formulated that demand for money (or as he called it, *licentia*) could result in an increase in its quantity, which, on the longer run could raise prices.

The licence to value foreign coins, both gold and silver, has become so fashionable among us, that a greater [tendency] is nowhere to be found. Their price increases every quarter of the year, meanwhile their value does not. Many [learned men] give many reasons for this. But if the resulting loss of our private or public properties from these ever-increasing numbers does not shake us: it is hard to say what more would be needed to restrain that license, and establish a certain system of value³⁷.

2.2. Licence in Andrzej Wolan's *De Libertate Politica sive Civili*

The above examples also show that for Modrzewski, laws were of an auxiliary nature: if voluntary self-restraint did not work, only then were laws needed to

³⁶ The earliest formulations of the so-called quantity theory of money the essence of which can be found in Modrzewski as well is generally held to have been first described by Spanish „economists“ during the „price-revolution“ of 1525-1618. In his *Handbook of Confessors and Penitents (Manual de Confessores y Penitentes, 1549)*, Martin Azpilcueta (1491-1586) claimed that „the lack of money reduces the price of everything“ in cases when the volume of goods increases and that of money does not. This idea was further elaborated by the much more well-known Luis de Molina (1535-1600) in his *On Justice and Law (De Justitia et Jure, written between 1593 and 1609)*, where he claimed that „the concourse of customers and the shortage of goods increases the price of a certain good [*concursum emptorum et penuria mercium auget pretium rei*]; while, on the contrary the lack of customers and the abundance of goods decreases it [*paucitas contra emptorum et copia mercium minuit pretium*]. Luis de Molina, *De Justitia et Jure – De Contractibus* (Mainz: Balthasar Lippius, 1602), 238.

³⁷ Andreas Fricius Modrevius, *De Republica Emendanda Libri Quinque* (Basel: Johannes Oporinus, 1553), 57-58.

ensure the order of the republic. The problem is that such cases could frequently occur even according to Modrzewski, which means that even he admitted that virtue ethics could not provide a completely reassuring answer to the question of how the state could be kept safe from licentious agents.

Let us now turn our attention to a treatise bearing the curious title, *De Libertate Politica sive Civili* (1571). Both the life and the aspirations of its author, Andrzej Wolan bore considerable similarities to those of his elder counterpart, Modrzewski: as a Calvinist, he found himself in the midst of confessional conflicts (he had theological debates with Fausto Sozzini, Antonio Possevino, Laurentius Bioerus among others), but instead of his battles fought against Jesuits and Socinians, he was „advantageously known as a political writer by his work *De Libertate Politica seu Civili*”³⁸ already by the 19th century. Also similarly to his forerunner, one of his major concerns was how the possibility of licence could be eliminated from a republic. Wolan's starting premises are strikingly similar to Modrzewski's, but, as we shall see, he eventually turns them upside down. In one of his central theses, Wolan claimed that it was „liberty that pertained to human nature the most [*libertas humanae naturae maxime conveniat*]”³⁹. The arguments he gave for this tenet can be formalized as follows: (1) humans strive for happiness by nature, (2) one necessary prerequisite of happiness is virtue, (3) but humans can only be virtuous when endowed with liberty. Consequently, when deprived of their liberty, individuals will be *both* unable to carry out virtuous deeds *and* to attain happiness. As he says,

[a]lthough nature has endowed mankind with a great deal of commodities, I still suspect that liberty is by far the most beautiful one among all human things. Since if nature has inscribed in the human soul and body great treasures, in which the means of true happiness seem to reside, without liberty, neither could these commodities fulfill their duties, neither could they bring stable happiness to humans⁴⁰

Following in Modrzewski's footsteps once more, Wolan holds that one of the major obstacles of *liberty* is *licence*, since one's excessive liberty will deprive others of their own. This may be the probable reason why he uses the adjective *communis*

³⁸ *The English Cyclopædia - A New Dictionary of Universal Knowledge* vol. 6 (London: Bradbury and Evans, 1858), 436.

³⁹ Andrzej Wolan, *De Libertate Politica sive Civili - O Wolnosci' Rzeczypospolitej Albo Slacheckiej*, ed. Aliny Nowickiej-Jezowej (Warszawa: Wydawnictwo Neriton, 2010), 80.

⁴⁰ *Ibidem* 75.

quasi as an epitheton ornans of *libertas*, meaning that liberty was by necessity common to all people.

One important point where he considerably differs from from his compatriot forerunner is the putative origin of this harmful disposition. As opposed to Modrzewski, who regarded *licence* as the result inappropriate upbringing and other social impulses, Wolan traces its source in the fall from divine grace, since this is when passions like ambition (*ambitio*) or greed (*avaritia*) – for him – first awakened in humans. From the perspective of ambitious or greedy etc. individuals, this is harmful because they can never live a fulfilling life since they will always strive for more than what they can obtain⁴¹. However, their actions are even more harmful to their neighbors, because ambition and greed cause hostility, while hostility on the long run causes uneven relationships between victorious parties and the defeated ones, and this is what we can – according to Wolan – rightly call serfdom. „[T]oo much liberty – says the author – can degenerate into an equally great deal of serfdom [*nimia libertas in nimiam degeneret servitutem*]”⁴², and thus, ambitious or greedy individuals must be prevented from freely exercising their dispositions.

But apart from this hasty geneology, we still find nothing new in Wolan's train of thought compared to the ones we have previously seen. However, we can notice a smaller, but even more significant shift in emphasis if we look at the role of laws in relation to licence.

While liberty [*libertas*] shakes all serfdoms [*servitutem*] off only inasmuch that it still acknowledges the rule of decent laws [*legum honestarum dominum*], licence [*licentia*] shakes off any kind of rule including that of laws along with the moderation of deeds, and exchanges reason to the base desires of the soul⁴³.

Or elsewhere:

[I]f a society is not governed by laws, and if everyone is permitted to live according to the licence that sprung from his or her passions [*unicuique pro sua libidine licentia vivendi detur*], this cannot be called a human life, but that of beasts instead⁴⁴.

The above thoughts are all the more perplexing when we recall how important self-restraint was for Cicero and Modrzewski: for the Roman orator, Cinna

⁴¹ Ibidem 86, 88.

⁴² Ibidem 80.

⁴³ Ibidem 85.

⁴⁴ Ibidem 168.

„seemed miserable” even for failing to understand the rules of decent conduct (for that „he behaved as if he was given licence” to commit atrocities), while the author of the *De Republica Emendanda* spoke of the „sweetness and pleasantry in checking one’s own desires”. On the contrary, in Wolan’s case, the possibility does not even arise that people can become virtuous through their upbringing and appropriate dispositions alone and thus preserve the freedom of their political community. They need laws in order to achieve the latter. Wolan’s is, hence, a much more legalistic approach – something Bodin attributed to Modrzewski.

Of this, he gives a tangible example when he talks about the fall of governmental forms. Here, reinterpreting the ancient theory of the cycles of political change, Wolan makes it clear that he holds a sort of *institutionalized licence* responsible for the collapse of each constitution. Regarding the reign and expulsion of kings, we learn from him that „royal rule was not unjust [*iniqua*] by itself”, but that the state was governed by „arbitrary royal decrees [*arbitria regum*] instead of laws”. Moreover, these laws „sprung more from the passions [*libido*] of the king, than for the sake of the citizens”, unless serfdom was eventually institutionalized when „everything was done according to the desire and will of one single ruler” regardless of the public good⁴⁵. But to make things even worse, the nobles who drove the kings out did not learn their lesson either:

[f]or they thought that their liberty lay in the licence which the kings cherished [*in licentia enim, quam reges aiebant, libertatem suam repositam [...] arbitrabantur*], and, on the contrary, inappropriately thought that it would equal to slavery if they grounded their liberty in obedience to the laws⁴⁶.

Hence, in both cases licence was to blame for turmoil. Therefore, what Wolan proposes in order to solve the aforementioned problem is a constitution granting equal rights to all citizens, and which threatens their occurrent licentiousness with the very same punishment. „[O]nly those republics can be really called free, in which equal rights are granted to each and every citizen [*idem ius ex aequo redditur*]”⁴⁷ – as he expressly put it elsewhere.

The reason why Wolan – as opposed to his predecessor – endorsed such a legalistic idea of the well-founded republic is most likely to be found in a kind of *epistemic inequality* attributed by him to different members or strata of society.

⁴⁵ Ibidem 94.

⁴⁶ Ibidem

⁴⁷ Ibidem 106.

Since not everyone, even from among the nobility, is equally equipped by liberal arts⁴⁸ – something that could more or less compensate for their dispositions resulting from the original sin –, they would not equally be able to comply with the demands of liberty only by themselves. This is the reason why laws are supposed to curb their almost inevitable inclinations for trespassing the equitable requirements of *communis libertas*. It does not follow from all this, however, that Wolan did not consider a republic composed of purely virtuous citizens desirable: but only that as long as such a state of affairs does not exist, laws must guarantee liberty instead of virtues.

At the same time, as long as such a state of affairs does not exist, the making, the interpretation, and the enforcement of laws remains the responsibility of those who are versed in liberal arts and are therefore virtuous. This conviction is one reason why the author is prone to endorse the Platonic ideal of a „philosopher king”, who, being able to grasp the *medulla iuris* or essence of the law, should be exclusively given the opportunity for making well-tempered laws. Another reason is that any given republic encompasses such a range of affairs in itself, that no system of no matter how well-made positive laws would be able to cover.

Justinian calls this ἐπιείκεια or equity as governmental wisdom [*gubernativa sapientia*], the source of which is in the human heart and, since it cannot be adequately prescribed by laws [*cum satis lege praescribi non possit*], it is made up from one’s experience in public affairs [*ex varietate negotiorum*]. But since we should not assume that everyone could grasp the essence of the law [*medulla iuris*], it was rightly said by Plato that humans would only cease to be immersed in evil things either when those are given the opportunity to govern republics who could philosophize rightly and truly, or when those, who have been given the opportunity to govern can philosophize truly by some divine fortune⁴⁹.

What Wolan proposes here is a kind of legal hermeneutics deeply embedded in the Renaissance ideal of *humanitas*, according to which a person or group of people who have acquired due to their education a certain ability are called upon to interpret the „proper” meaning of – in this case: legal – texts or propositions.

⁴⁸ „it is foolish to think [...] that even the smallest of arts can be properly taught without an instructor, but being the head of a republic, which is the greatest of all arts, can be learnt by someone by himself”. Ibidem 228.

⁴⁹ Ibidem 222-224.

Instead of merely adhering to their literal meaning, they should also be able to grasp their essences⁵⁰.

3. Conclusions

While the points of departure of the authors and theories discussed above were very similar, shifts in emphasis regarding the role of virtue and that of laws are also visible in them. One of our goals was to reconstruct via these episodes from the history of philosophy the process of how *liberty* and *licence* came to be differed from each other, and to indicate how the latter took up the meaning of „surplus” or „acquired right” later on – as it is mostly used today.

Another aim of ours was to highlight how a certain discourse on virtue ethics (re)emerged in the sphere of political philosophy both in antiquity and early modernity. What makes this phenomenon particularly interesting is the appearance of the concept of *virtue politics* in recent times, which holds that the renaissance curriculum of the *studia humanitatis* was not only meant to forge virtuous – and consequently eudaimonic – persons, but also citizens and states of the same kind⁵¹. According to James Hankins, the originator of the term, the idea that the aforementioned *studia humanitatis* was supposed to serve as *civic* education first of all, and, as such, it was a necessary prerequisite for a flourishing state, first became common currency in 14th-century-Italy, but it did not remain confined within geographical borders for a long time. And this is what our train of thought was partly meant to prove as well: that the very same idea was at stake in 16-17th-century Poland-Lithuania.

⁵⁰ It was Leonardo Bruni (1370-1444), who first elaborated on this idea in a short treatise of his written around 1420 (*De Interpretatione Recta*) claiming that classical education was meant to form *humanitas* in people, and people endowed with this *humanitas* were meant to be able to distinguish between the *ad verbum* (or literary) and *ad sententiam* (according to their proper sense) meanings of texts.

⁵¹ James Hankins, *Virtue Politics – Soulcraft and Statecraft in renaissance Italy*, The Belknap Press of Harvard University Press, Cambridge, Massachusetts, London, England, 2019, 31-62.

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Summary

The paper explores early modern Polish treatises by Andrzej Frycz Modrzewski and Andrzej Wolan on the difference between the concepts of liberty and license. Put in international context, we argue that the Polish philosophical tradition at the time represented by the aforementioned authors was mostly in line with the Aristotelian and Ciceronian views on liberty being an intra legal, and license being an extra legal concept.

Keywords: Andrzej Frycz Modrzewski, Andrzej Wolan, Aristotle, Cicero, Bodin, Political Philosophy