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## CONSTITUTIONALIZATION OF JOŽE PUČNIK'S POLITICAL THOUGHT

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### ABSTRACT

*This article sheds light on the academic side of dr. Jože Pučnik. While his civic, dissident and political activities in Slovenia have been well known, his academic work and the political philosophy he developed have been largely neglected. This is unfortunate, as already a cursory insight in Pučnik's monography on Culture, Society and Technology, such as provided in this article, reveals the richness of his political thought. Pučnik as an intellectual, as a political thinker was not only aware of the main currents of western political philosophy after the WWII, but was also entirely on par with then political and legal thinkers. He had integrated their work into his own political philosophy, which he subsequently applied to the case study of Slovenia, a country that he felt most deeply about.*

*Keywords: Jože Pučnik, Slovenia, constitutionalism, enlightenment, pluralism, democracy*

## LA COSTITUZIONALITÀ DEL PENSIERO DI JOŽE PUČNIK

### SINTESI

*L'articolo fa luce sul lato accademico del dott. Jože Pučnik. Mentre le sue attività civiche, dissidenti e politiche sono ben conosciute in Slovenia, il suo lavoro accademico e la filosofia politica che ne derivava rimangono ancora piuttosto ignoti. Un peccato, perché già una rapida visione della monografia di Pučnik *Kultura, družba in tehnologija* [Cultura, società e tecnologia], che è anche oggetto di questo articolo, lascia emergere la ricchezza del suo pensiero politico. Come intellettuale e pensatore politico Pučnik non solo aveva conoscenza delle principali correnti della filosofia politica occidentale e dei suoi sviluppi dopo la Seconda guerra mondiale, ma vi contribuiva alla pari di altri suoi esponenti. Pučnik integrò i lavori dei maggiori teorici politici e di diritto nella sua filosofia politica, applicandola in pratica sull'esempio della Slovenia, il paese al quale era profondamente legato.*

*Parole chiave: Jože Pučnik, Slovenia, costituzionalità, illuminismo, pluralismo, democrazia*

FROM DISSIDENT TO THE NESTOR OF THE REPUBLIC<sup>1</sup>

With the erection of the Iron Curtain Central Europe was torn apart from the rest of Europe. From the Baltic to the Adriatic Sea a communist totalitarian system was imposed on the peoples of Central European countries. Totalitarianism was maintained and preserved first with sheer and brutal violence and later through a total and systemic, formal and informal control of all spheres of public as well as private life. However, due to individuals' eternal and universal yearning for freedom totalitarianism never succeeded to stifle all human dissent, its overwhelming oppression notwithstanding. Even though a great majority was silenced, there were always individuals who stood up against totalitarian forces not only with their words, but more importantly: with their deeds. These individuals were called dissidents. In Central Europe the period stretching between the end of the WWII and the late 1980s was the age of dissidents. Many of them became famous well beyond their homelands. Vaclav Havel, Lech Walensa, Alexander Solzhenitsyn, Andrey Sakharov have thus served as a beacon of liberal democracy around the world. However, the list of Central (and Eastern) European dissidents is not exhausted by these names alone. There were many others whose individual struggle never really made into the international limelight, but were equally courageous, important and praiseworthy.

Among the internationally lesser known, perhaps even unknown Central European dissidents, is Jože Pučnik. The communist authorities reprimanded him already in high school for publishing a critical essay of the then regime in the school journal (Pesek, 2013, 50). After a graduation at the University of Ljubljana Faculty of Arts he joined a group of young intellectuals who were publishing in the journals *Revija 57* and *Perspektive*. For his critical articles, in particular, of economic measures of the then communist regime he was convicted twice. In 1958 he was sentenced to nine years in prison and after his early release in 1963 to additional two years. Altogether he spent seven years in prison, mostly in solitary confinement, just for his academic writing (Pučnik, 2003, 78ff). After his release in 1964 he became *a persona non grata* in the then Socialist Republic of Slovenia. Even his peers started to avoid him and the secret service let him know, informally but definitely, that there is no job for him in Slovenia (Pučnik, 2003, 97). So he left for Germany where he wanted to continue postgraduate studies at the University of Hamburg, but was unable to do so since the University of Ljubljana refused to issue a copy of his diploma from the Faculty of Arts (Pesek, 2013, 208). Hence he started from scratch and while working in the local heavy industry he obtained his PhD in sociology at the University of Hamburg in 1971. In the following years he lectured at the University of Lüneburg, for some time distancing himself completely from public and political life in Slovenia (Pesek, 2013, 209–210).

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1 This paper is the result of research carried out in the project *Cultural Memory of Slovene Nation and State Building* (ARRS, J6-9354), funded by the Slovenian Research Agency (ARRS).

However, in the 1980s, as the communist regime in Yugoslavia started to demonstrate first open cracks, Pučnik again became involved in the Slovenian public life. Most notably he published in the landmark 57<sup>th</sup> edition of the journal *Nova Revija*, in which Slovenian intellectuals developed the contributions to a Slovenian national program, laying down theoretical foundations for an independent, democratic state, based on the rule of law (Omerza, 2015, 198ff). While in 1987, when the journal was published, no one had realistically envisaged the creation of an independent and democratic Slovenian state, other than perhaps in the longer run, the events that followed surpassed everyone's expectation (Jambrek, 2007). In 1989, Pučnik became a member of the newly established Social Democratic Alliance of Slovenia and just three weeks after the fall of the Berlin wall he assumed its presidency (Pesek, 2013, 253). In 1990, he became a leader of the coalition of the Slovenian democratic alliance (DEMOS), which won the first democratic election and effectively carried out the process of self-determination of the Slovenian people (Pesek, 2013, 253ff). After the people of Slovenia overwhelmingly supported the former Yugoslav's republic independence at a referendum that had first been called for by Pučnik himself, he was an engine of the process that ultimately led to the formal and *de facto* independence of Slovenia. This earned him a symbolic title of the Nestor of Slovenian independent state (Pahor, 2018). However, despite his indisputably constitutive contribution not only to the independence but also democratization of the Slovenian state, Pučnik never enjoyed an unequivocal support by the electorate, the media, let alone of the political parties. In the run up for the presidency of the then still Socialist Republic of Slovenia he lost against the incumbent communist leader Milan Kučan and was often politically and even personally attacked by the media belonging to the post-communist left (Pesek, 2013, 270ff). This public treatment of Pučnik continued even after his death, when the National Assembly had initially declined to commemorate his passing away with a memorial session (Pesek, 2013, 18–20).

## CULTURE, SOCIETY AND TECHNOLOGY

While the contribution of Jože Pučnik to the political life in Slovenia has already been documented relatively well, his academic writing, in which he reflected deeply on the social predicaments for a sound, viable and lasting democracy that he dubbed civil society, as opposed to Leninism, has so far been left almost unexplored. This article therefore seizes the opportunity for, at least partly, closing this gap by investigating the political philosophy of Jože Pučnik as this derives from his landmark work on Culture, Society and Technology (Pučnik, 2008). Published in 1988 the book consists of three parts. In the first, most abstract, theoretical part Pučnik lays out his conceptual sociological apparatus for comprehending the modern social reality, concretely European societies post-WWII. In the second theoretical part he applies this apparatus to one subset of a socio-political life, namely democracy. Lastly, in the third part the book takes a concrete turn and contextualizes the theoretical findings from the preceding parts in the Leninist social conditions in the then Slovenia.

In the first theoretical part, Pučnik is revealed as a social constructivist (Berger & Luckmann, 1971; Searle, 1995), deeply wedded to the idea of modernity and the program of Enlightenment on which modernity has been, in his view, based (Pučnik, 2008, 273). Accordingly, he construes modern societies as being embedded in and imbued with culture. Culture is a comprehensive system of technology that contains and constantly re-constitutes a society by way of unlimited and often unrelated, piecemeal and particularistic actions of individuals who are simultaneously a source and a product of this cultural technological process (Pučnik, 2008, 27–45). The latter is based and could, for the time being, only take place on the premise of argumentative rationality (Pučnik, 2008, 45), which is just another word for reason-giving. Reasons, which are themselves constructs, interpretative concepts of a particular culture, are the measure of legitimacy and validity of any social concept, deed and action (Pučnik, 2008, 68). The reasons, legitimacy and validity are thus necessarily contingent, dependent on the web of more or less persuasive interpretations and their institutionalization in practice, but this does not render neither the ultimate practical outcomes nor Pučnik's thinking relativist (Pučnik, 2008, 212). As he explicitly argues, everything taken together is not simple randomness, playfulness, a game of constructs, it is a structural contingency: "The substance's captivity in the web of its effects is not such by definition, it is genetic as a precondition of substance."<sup>2</sup> (Pučnik, 2008, 79). In this way meaning is only objective and stable subject to the structurally contingent interpretation of arguments on which it is based and which is in that context and moment recommended by that very structural contingency (Pučnik, 2008, 80). All objectivity that, therefore, exists out there is at best contingent objectivity (Pučnik, 2008, 80). Since it is relational, within the meaning of being related to a particular contextual structural contingency, it, in Pučnik's words, frees us from necessity (determinism); but since it simultaneously provides us with a rational, argumentative basis for our action it relieves us of randomness (Pučnik, 2008, 80), indeed of arbitrariness.

This leads Pučnik to an important result in political philosophy. We as human beings in a modern society are only left with technology of argumentative rationality, of reason-giving, which is neither miraculous nor permanent (Pučnik, 2008, 129). As a result, as he openly confesses, we do not know what the truth is.

*The phenomenon of truth cannot be denied, if we take into account concrete actions [in which the truth is certainly reflected], but on the basis of these concrete manifestations of truth the truth as such cannot be identified [or comprehended in its totality]. (Pučnik, 2008, 184)*

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2 All the quotations from Pučnik's book on Culture, Society and Technology have been translated by the author of the present article.

No living human being can thus have a monopoly over truth, because no living human being has ever had a privileged, let alone direct or objective access to the truth. All that we are left with is a search for meaning, for making sense of the social and natural reality, in which we are cast.

*The search for meaning, for making sense, has become an alternative to the truth. In so doing, it has taken up the role of truth, ever since the latter has become irrevocably fragmented and as such can no longer assume that traditional role in legitimating the validity of arguments as an emphasized and at every occasion accepted validity of substance. (Pučnik, 2008, 193)*

To many this would be an utterly dispiriting conclusion, but not for Pučnik. He takes this fact of existence of truth, which is ultimately inaccessible for us humans, as a paramount argument against fundamentalism of any kind, be it secular or religious (Pučnik, 2008, 129). This is why he opts so strongly in favour of the so-called program of Enlightenment. The latter has managed to undo the world in which

*a theocracy was a leading ideational power: it claimed not only the right to rule as the entitlement of the secular power, but also the monopolized right to decide questions of meaning or truth, as well as the questions of conscience as a determinant of good and bad. That was a total monopoly over peoples' lives in a society, a monopoly over practical, concrete actions as well as spiritual and emotional life. Following this principle of regulating a society, people are subject to the predetermined ideational ordering of the world, which was construed and enforced by all means by an elite who claimed for itself that it was a direct reflection of an objective, immutable and hence necessary truth. On the basis of this claim it imposed its own monopoly over this truth, and with the help of secular authorities it also claimed the right and duty of a leading role, eg. of guiding and re-socializing its own people as well as other peoples. This typical and extremely effective identification of a theocratic elite with the reason itself, with truth and justice, thus legitimated the use of any, including the most horrible means of re-socialization: from benign persuasion to torture and burning on stakes. (Pučnik, 2008, 275–276)*

The Enlightenment introduced a definite break in the very conception of the human world. In taking a Copernican turn, as argued by Pučnik (Pučnik, 2008, 276), an individual, a concrete human being has become the measure of legitimacy of all things (Pučnik, 2008, 292). “Human being has reason and cognition which enables him to decide his fate for and out of himself.” (Pučnik, 2008, 292).

*The program of Enlightenment is a program of civility. [...] Its task is to develop and implement such institutions, which permit an individual to fulfil his life and himself, and in so doing to legitimate the validity of institutions, but also to change the image of institutions, which enable him, as a concrete and emotionally reasoned person, to live with other individuals. (Pučnik, 2008, 292–293)*

The greatest threat to the program of Enlightenment and the paramount role of individual in it, according to Pučnik, is the supremacy of the society over a person, of primacy of the collective over an individual (Pučnik, 2008, 294). But the individual human being might be a threat also to himself and other individuals. As implicitly recognized by Pučnik, in a fundamentally secular turn by the Enlightenment, which Pučnik embraces wholeheartedly (Pučnik, 2008, 270), “with the demise of the transcendental order on which our world was based, the objects too lost their ‘sacredness’, they were relieved of the taboos as [god’s] creation. In this way they in principle became dispensable like any matter, almost like a randomly available raw material. That, unfortunately, included a human being too [...]” (Pučnik, 2008, 277).

The program of Enlightenment is thus synonymous with the program of civility that ought to underline concrete institutional systems of democracy. This civility, as openly admitted by Pučnik, is not a cure for all illnesses and remains, as everything socially constructed by human beings, structurally questionable (Pučnik, 2008, 303). “But at the same time it is all that we can currently yearn for, since it is the only realistic option.” (Pučnik, 2008, 303). The civility itself is built on the dogmatic, monistic construct of supremacy of an individual, which is of course, again, contingent and socially constructed. All this, however, we are warned by Pučnik, should not lead us into resignation, rather it should strengthen our courage in awareness of our own structural limitation that forces us into modesty (Pučnik, 2008, 314). “The courage is to definitely accept our own imperfections and act out of them.” (Pučnik, 2008, 314). Any self-assurance must be thus combined with a degree of healthy scepticism, critical self-examination that, as a result, in most general terms speaks against any kind of revolution, even if it is geared towards the final realization of the program of Enlightenment. The latter should only come about not as a revolution, but as an evolution (Pučnik, 2008, 314). This sets up, for Pučnik, a requirement of listening to and hearing each other, in a constant awareness of one’s own limitations, in acceptance that can be through concrete societal and political actions overcome over and over again, but never to the point of finality or perfection (Pučnik, 2008, 313).

## CONSTITUTIONALIZATION OF PUČNIK’S POLITICAL THOUGHT

The students of contemporary political philosophy and of modern constitutionalism would, having read Pučnik’s book on Culture, Society and Technology,

immediately recognize how deeply related, deliberately or not, his political philosophy was to that of his contemporaries, including giants of political and constitutional thought. Pučnik's embrace of technology of argumentative rationality is coterminous with discursive, deliberative democracy as it has been developed by Jürgen Habermas (Habermas, 1996). Pučnik's politically philosophical approach also echoes with Dworkin's interpretative conception of law, following which the meaning of law is never fully settled, rather it depends on the best-fit interpretations, which in legal practice, conceived of as a chain novel, strives for and is constantly underlined by the search for a right answer (Dworkin, 1986). Furthermore, Pučnik's total embrace of the Enlightenment puts him in the camp of modern constitutionalist thinking, which has long insisted that a constitution is by the people, for the people and of the people (Sartori, 1962).

People form a community, conceived of as a polity of free and equals (Kumm, 2016), which according to Pučnik

*cannot be legitimized top down, from a transcendental principle whose interpreter and executor is any given elite, but from a human being who is an exclusive source of community's legitimacy. (Pučnik, 2008, 292)*

The centrality and supremacy of human being as a measure of legitimacy and validity of all social institutions and their (in)actions is derived from a monistic foundation of human dignity (Avbelj, 2018, 35). Every individual by way of her very humanity is entitled to equal human dignity. The latter is a source of the rights to freedom and equality, to an equal freedom, which entitles everyone to self-realisation or self-fulfilment as she sees fit within the context of an equal right of others.

This bedrock of modern constitutionalism, which resonated heavily also in Pučnik's political thought, found its explicit confirmation also in the jurisprudence of the Slovenian Constitutional Court. In the landmark Tito Street case the Court rectified the human dignity deficit in the Slovenian Constitution (Avbelj & Letnar Čerňič, 2020, 25) by reading the right to equal human dignity into Article 1 of the Constitution according to which Slovenia is a democratic republic. The Court claimed that

*Human dignity is the fundamental value which permeates the entire legal order and therefore it also has an objective significance in the functioning of authority not only in individual proceedings but also when adopting regulations. (Ur. l. RS, 2010)*

This led the Court to clarify the nature of Slovenian democracy. Contrary to the classical monistic, majoritarian democracy, the essence of a constitutional democracy in Slovenia is not in formally following the rule of the majority, but to

ensure a substantive protection of individuals, because it is them and their dignity who are at the centre of the existence and functioning of the Slovenian state (Ur. l. RS, 2010). Paying heed to what Pučnik has dubbed as a Copernican turn of the Enlightenment, the Court openly declared:

*In a constitutional democracy the individual is a subject and not an object of the functioning of the authorities, while his or her (self)realization as a human being is the fundamental purpose of the democratic order.* (Ur. l. RS, 2010)

The state with its apparatus is thus established to serve an individual, to facilitate her self-fulfilment, rather than vice versa (Ur. l. RS, 2010). As there are many (a plurality of) individuals, there are – as a result of the respect for their equal human dignity – many (a plurality) of actual and potential ways of self-fulfilment, many conceptions of a good life. As humans, we therefore necessarily live in a world, which is pluralist and therefore diverse. The respect for human dignity mandates that this is good and, consequently, in a pluralist civil society, which underpins a veritable democracy, this plurality should be preserved and fostered. Pučnik was more than aware of this fact as he explicitly cautioned against “any program and any idea, including those pertaining to the civil society, that make calls for turning plurality into singularity.” (Pučnik, 2008, 332). The essence of democracy, based on a civil society as opposed to Leninism, for Pučnik then was to permit the existence “of an infrastructure which will be more sensitive to and more inclusive towards plurality, in particular of the plurality in peoples’ lives.” (Pučnik, 2008, 328).

The Slovenian Constitutional Court has thus construed Slovenia as a constitutional democracy: a democratic political community in which in order to protect each individual’s equal right to self-realization all activities of public authorities must be subject to the rule of law. A constitutional democracy is, of course, as powerfully demonstrated by Habermas and other legal philosophers (Tully, 2017), a laborious and demanding system of government which rests on “a paradoxical union of contradictory principles.” (Habermas, 2001, 766). It requires that a democratic majority, no matter how numerous and qualified, constitutionally imposes on itself the rule of law and hence limits its scope of powers in order to protect the rights of individuals, whose exercise is then a source of pluralism that provides democracy with the prerequisite civility.

One of the central constitutional mechanisms, which in quotidian practices of a democratic state guarantees the existence and flourishing of plurality, is the system of separation of powers. The principle of separation of powers is for Pučnik the most important construct of civility, brought about by the Enlightenment, which entails the system of institutional checks and balances as a logical part and parcel of the self-legitimation process in a democratic society (Pučnik, 2008, 281). It has found its way also in the Constitution of the Republic

of Slovenia. By contrast to its communist predecessor, which maintained the system of undivided powers, the contemporary Slovenian organization of state is based on the principle of checks and balances. The latter, as it has been time and again stressed by the Constitutional Court, is not established to protect the independence of different branches of power for their own sake, but to protect the individuals against the arbitrariness of public authorities. The Court thus held very early on that

The aims of the constitutional principle of separation of powers are in particular:

- *to protect and ensure personal freedom of each individual person,*
- *to prevent concentration of power and monopoly over it;*
- *to establish control over authorities, thus preventing their arbitrary acts, misuse of power and lawlessness,*
- *to organize as appropriate the tasks and powers of the government,*
- *to establish mutual control of the holders of power, as well as*
- *to maintain an equilibrium and evenly distributed power between individual branches of government and its agents.* (Ur. l. RS, 1994, par. 18)

All these requirements stemming from the principle of separation of powers are again derived from the centrality of an individual for whom the state and public order, following the ideal construct of a social contract, has been created. In Court's words:

*The essence of the constitutional provision dealing with the separation of powers is not in the manner of organizing the relationships between individual branches of government or government organizations, but in its fundamental function of protection of individual's freedom and dignity in relation to the government.* (Ur. l. RS, 1994, par. 20)

Individuals in a constitutional democracy, also as established in Slovenia, are not objects, rather they are subjects of political authority. For this matter they are recognized their fundamental human rights, which are nowadays explicitly protected in section II and III of the Slovenian Constitution. This was not yet the case at the time when Pučnik was writing his book and therefore he could not have made the case for this to change any stronger:

*We have to be aware of our fundamental human rights and of our dignity as a person. We do not want to be like an inventory that the priests of an Idea can toss to and fro, as mandated by their inconceivable cult, their scientific technology [...] Their technology is not ours, if it does not respect us as persons.* (Pučnik, 2008, 363)

It is therefore important to note that literally all human rights, which Pučnik had so vigorously intellectually and politically defended in his work, have found their way in the Constitution. The latter thus protects all the constitutive rights of a constitutional democracy, in the absence of which Slovenia could neither exist as a democracy nor as a state based on the rule of law. These are the freedom of conscience (Constitution, Art. 41), the freedom of speech (Constitution, Art. 39), the freedom of association (Constitution, Art. 42), the freedom of education (Constitution, Art. 57), the right to private property and the right to conduct one's business freely as well as the right to judicial protection in a fair trial.

In his work, Pučnik stressed all of these rights. The freedom of conscience derives from the autonomy of person, of each individual's right to seek the truth, which prevents any given priestly caste, even if belonging to the civil society, to monopolize the knowing of truth and the interpretation of the good for the people (Pučnik, 2008, 344). "There will always be also different opinions, which have the right to be established and implemented in a political system." (Pučnik, 2008, 344). To make this happen the freedom of speech and the freedom of association ought to be protected. Pučnik saw these two freedoms as important already in general terms, but he stressed their importance in particular when applied to the political system by opining that it is only on their basis that a political system can reflect social plurality and is hence also itself pluralistic. Since any kind of power, including a democratic power, is susceptible to an abuse and indeed can be abused (Pučnik, 2008, 346), Pučnik saw the only remedy for and an exclusive alternative to an abuse of power in the establishment of political pluralism (Pučnik, 2008, 348). However, the latter could have only come into being under the conditions of established freedom of speech, by guaranteeing an as free as possible public political debate (Pučnik, 2008, 349).

The freedom of education is equally quintessential for the functioning of democracy. As presently stipulated in the Slovenian Constitution, this right belongs to individuals, foremost to parents who have the right and duty to provide education for their children (Constitution, Art. 54 and 57). The protection of this right must be again conducted in a pluralist setting, rather than in a uniform environment monopolized by a single political or ideological source. This was precisely the occasion in the communist Slovenia. Pučnik thus noted that the totalitarian character of the state had succeeded to penetrate in every single corner of social life, "from the remotest cabin in the countryside to the doormen and cleaners in the companies." (Pučnik, 2008, 380). It filtered pupils and teachers, students and professors, members of trade unions for their moral political appropriateness, turning all these building blocks of a democratic state into the instruments of a ruling party (Pučnik, 2008, 376, 381).

The same happened to the right to private property and the freedom to conduct business. The two were literally extinct, their nature transformed into social property which was *de facto* controlled by the communist regime and their protégés. The end result was economic collapse of the communist system. Pučnik

predicted this early on, already in the 1960s, for which he was incarcerated for many years. He always argued in favour of private property and freedom to conduct business, insisting that it is not for the state to make economic choices on behalf of the individuals, property owners, companies and their workers. The role of the state in economy should be limited. It should concentrate solely on the protection of a fair competition in the market (Pučnik, 2008, 369) and on providing for the legal and economic protection of workers (Pučnik, 2008, 375). The civility of a civil society should have thus been translated also in the civility of an economic system:

*Civility of an economic system consists of its total independence in a constant development of new, innovative structures of economic governance, implementation of new infrastructures of an economic system in order to enhance its efficiency; however, other systems, like legal, political, moral etc., should be entrusted with a task of creating as favourable conditions as possible for flourishing of the economy and simultaneously ensuring a constantly improving legal and political protection of employees. (Pučnik, 2008, 375)*

What Pučnik argued for in the late 1980s, is now indeed guaranteed in the Slovenian Constitution. Article 33 in conjunction with Article 67 protects the right to private property not in absolute terms, but being mindful also of its social dimension. Article 74 shields against the unfair competition and protects the freedom to conduct one's business. This is also not unfettered, as it may not be conducted in violation of public interest that, of course, includes the protection of workers' rights (Constitution, Arts. 66, 75, 76, 77) as well the environmental protection (Constitution, Art. 72). Pučnik's theoretical demands are hence today fully fulfilled in the text of the Constitution, but probably a little bit less in practice. Ever since the independence, the successive Slovenian governments have preserved a large share of state ownership in the economy, intervening in the actual business decisions, which have been more than often economically suboptimal, permeated by political interests. In exact opposition to this, Pučnik argued that the role of the state is not to take concrete business decisions, but only to provide for a sound business environment for the flourishing of private economic initiative (Pučnik, 2008, 369).

Last, but certainly not least, in order to ensure the existence of the rule of law the right to a fair trial in front of independent and impartial courts should be in place. This is precisely what follows today from Articles 22, 23, 24 and 25 of the Slovenian Constitution in combination with Art. 6.1. of the European Convention on Human Rights and Fundamental Freedoms. However, during communist times, this was certainly not the case. As Pučnik stressed, the system of justice too was subordinated and in service of Yugoslav unitarism and Leninist centralism of the communist party (Pučnik, 2008, 360). This had pernicious consequences for the system of justice in its formal institutional as well as informal, sociological

dimension. Pučnik, however, was much more concerned with the latter than with the former. He pointed to a major shortcoming of the then socialist legal system, which was reflected in the fact that its rules and institutions were not internalized by the people, as they felt alien and oppressive (Pučnik, 2008, 362). The lack of civility of a political and legal system in Pučnik's eyes impacted on the very structure of our political and legal culture (Pučnik, 2008, 363). Neither the state nor its legal system were considered as belonging to the people, while simultaneously the incivility of the state and the law were tolerated and made possible by this very same people: "We cursed and complained, but nevertheless allowed for it." (Pučnik, 2008, 363).

The remedy identified by Pučnik was political pluralism. The civility of a legal system was seen dependent on the internalization of its rules and institutions by the addressees and institutional actors (Pučnik, 2008, 364). However, "this could only take place in the context of a civil political system, which presupposes political pluralism: organized, public and transparent." (Pučnik, 2008, 365). Pučnik here voiced, only with different words, what H. L. A. Hart dubbed as the rule of recognition (Hart, 1994). The norms of a legal system have to be recognized, by way of their internalization, as the essential criterion for one's own behaviour. And while Hart imposed the duty of internalization only on the officials, the institutional actors, and permitted the common people to pass by mere obedience to the legal rules (Hart, 1994), Pučnik writing with a reference to a totalitarian state and having experienced its sheer arbitrariness, was much more demanding. He insisted that the norms of a legal system, constitutive of the actual rule of law, not only have to be internalized by everyone, but they have to be fought for by each and every individual. If one was to satisfy himself simply with obedience to the law, in the absence of internalization of its rules and institutions, "everything would be reduced down to a coordinative system of punishment and sanctions, devoid of any moral quality." (Pučnik, 2008, 284–285).

This led Pučnik to argue forcefully in favour of active citizenship. He was led by a strong conviction that

*modern cultures and their societies possess no guarantee, that would automatically protect them from falling into the well-known forms of barbarianism, experienced in less and more recent history [...]. The only means, which can protect us against [the slid into barbarianism] is us ourselves, to the extent we are able and willing to employ the technology of civility proposed by the program of Enlightenment.* (Pučnik, 2008, 330)

However, as Pučnik added, the program of Enlightenment is not self-executing. "The technology of civility entails a constant need for a creative establishment of civil substance and form in a concrete society." (Pučnik, 2008, 322). The individuals, as founding pillars of a civil society, have to act, here and now!

(Pučnik, 2008, 331), but their actions too must be imbued with a sense of civility. The requirement of ensuring civility in public social life, in particular in political affairs, demands investing into a dialogue. Staying faithful to political pluralism, which is about the recognition and acceptance of diversity, precludes treating those who do not share our opinion as our enemies. Pučnik, revealing the depth and breadth of his democratic ethos, insisted with full force:

*In fact, we are opponents, because in many important questions we adhere to different opinions, but this should not turn us into enemies who hate each other. By way of fate we are forced to search and find a minimum common denominator, while beyond it we should treat and try to resolve other questions with courage in a European, humane and civil manner.* (Pučnik, 2008, 356)

## CONCLUSION

This article has shed light on the academic side of Jože Pučnik. While his civic, dissident and political activities in Slovenia have been well known, his academic work and the political philosophy he developed have been largely neglected. This is unfortunate, as already a cursory insight in Pučnik's monograph on Culture, Society and Technology, such as provided in this article, reveals the richness of his political thought. Pučnik as an intellectual, as a political thinker was not only aware of the main currents of western political philosophy after the WWII, but was also entirely on par with then political and legal thinkers. He had integrated their work into his own political philosophy, which he subsequently applied to the case study of a country that he felt most deeply about. This was Slovenia. The latter and its people benefited from the fact that Pučnik was no mere theorist, an intellectual safely scrutinizing the social world from his ivory tower. He was a man of action. Someone who strove to turn his well thought-through ideas into practice. Someone who followed, quite literally, the principle that as things are going wrong, they ought to be improved, and corrected, again and again (Pesek, 2013).

As Peter Jambreč (2021) writes in his encyclopedia entry on Jože Pučnik: "As a matter of fact, most of his active political time Pučnik was not successful, despite his determinate personal efforts, he did not move much of the externally tangible things." What is more, his country and people, whose independence he *de facto* decisively helped to ensure have neither truly understood nor ever really appreciated his contribution and the excessive personal price he had to pay for it. However, irrespectively of all this, and in awareness that since time immemorial no one has ever been a prophet in his own country, this article has demonstrated that all the main ideas, that Pučnik deeply believed in, and all the key values, that Pučnik espoused and practiced in his life, have found their way in the Slovenian Constitution. Pučnik's political philosophy, his political thought has thus been constitutionalized. It is in contemporary Slovenia at least

formally valid and protected on a piece of paper called the Constitution. This is, of course, neither to say that Slovenian Constitution has been modelled after Pučnik's political philosophy, nor that he had any direct impact on its text whatsoever. But it is to say with certainty that by way of adoption of the Constitution, with the entrenchment of a modern liberal political order in Slovenia, Pučnik's life-long struggle for the right cause has been formally validated and hence fulfilled.

Last but not least, the mission of implementing the program of Enlightenment and its pursuit of civility in all corners of social life is, of course, still far from being accomplished in Slovenia. The normative struggle, in which Pučnik invested so much, is, hence, far from over. It is in fact, at least as far as Slovenia is considered, still at an early stage. The formal structure of a civil society has been put in place in 1991, but it still awaits its proper effectuation by way of internalization by the people. Even in democratic countries with long and well established political and legal culture, this process of actual democratization, of ensuring the rule of law in practice, is a never ending, laborious process of trial and error, following a shared commitment that a given polity can in a common pursuit of a common good help bring about, by acting together a brighter, better and more democratic and more just future as its past had been. In short, the mission of democracy and rule of law can never, even in the best of places with the most virtuous people, be fully accomplished. It is even more difficult, however, to secure democracy and the rule of law in post-totalitarian countries, with wrecked and weak institutions and democratically pathologized citizenry. Pučnik was more than aware of that as he predicted that the process of establishing civility would take a long time (Pučnik, 2008, 381). He even went so far as openly proclaiming in the final pages of his book, published in 1987, that "the actual situation is almost hopeless, basically devoid of any hope." (Pučnik, 2008, 433). And yet, since precisely that was terribly wrong, it had to be remedied. And, indeed it was remedied, so much so that only four years later, after a centuries long struggle for an independence, Slovenians, that people that might have come from nowhere, ended up creating their independent and sovereign state. Pučnik's contribution was decisive, actual, symbolic, political and academic. In all of its guises does remain a point of inspiration for the future generations, including to us – constitutional lawyers.

## KONSTITUCIONALIZACIJA POLITIČNE MISLI JOŽETA PUČNIKA

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### *POVZETEK*

*Ta članek odstira manj znano akademsko plat dr. Jožeta Pučnika. Medtem ko so njegove državljanske, disidentske in politične aktivnosti v Sloveniji relativno dobro poznane, pa njegovo akademsko delo ter politična filozofija, ki jo je v njem razvijal, ostajata precej neznana. To je obžalovanja vredno, saj že kratek analiza Pučnikove monografije *Kultura, družba in tehnologija*, ki je posvečen tudi ta članek, razkrije bogastvo njegove politične misli. Pučnik kot intelektualec, kot politični mislec ni zgolj poznal glavnih tokov zahodne politične filozofije, kot se je ta razvijala po drugi svetovni vojni, temveč je bil tudi njen enakopraven tvorec. Dela vodilnih političnih in pravnih mislecev svoje dobe je vgradil v svojo politično filozofijo, ki jo je kasneje uporabil v praksi na primeru Slovenije, države, katere nestor je bil.*

*Ključne besede: Jože Pučnik, Slovenija, ustavnost, razsvetljenje, pluralizem, demokracija*

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