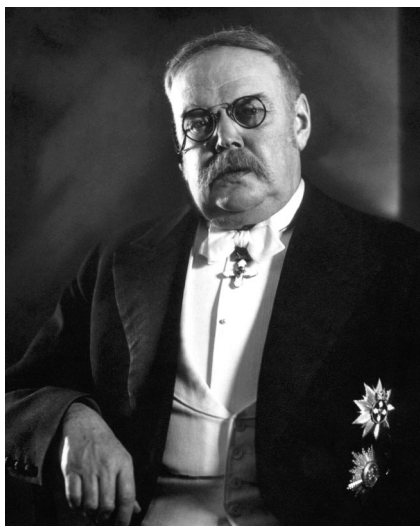


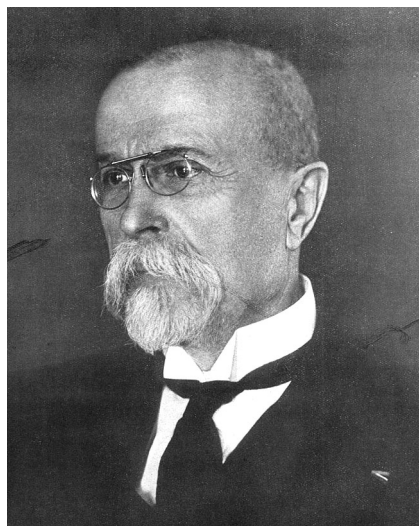
TOMÁŠ GARRIGUE MASARYK AND MYKOLAS RÖMERIS: TWO FIGURES, TWO APPROACHES TO THE STATE AND THE CONSTITUTION

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Permanent functional state governance (established) is permanent governance bodies, arranged according to the competence categories and hierarchically systemized with their main constitutional bodies. It can only function within the boundaries of the constitution, it is defined by the provisions of the constitution, which it may not overpass.¹

Prof. Mykolas Römeris (1880–1945)



A state is not just a mechanism, and politics are not just a qualified administrative and diplomatic technique. A state is an association of citizens, operating on the basis of rationality and morals.²

Prof. Tomáš Garrigue Masaryk (1850–1937)

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¹ Römeris, M. *Valstybė ir jos konstitucinė teisė. Konstitucinės institucijos. I tomas. Suverenitetas*. Vilnius: Pradai, 1995, p. 191.

² Masaryk, T. G. Speech by President Masaryk on the Tenth Anniversary of Czechoslovak Independence, October 28, 1928 [interactive]. *Virtual Archive of Central European History* [viewed 10-01-2009]. <http://ecommons.library.cornell.edu/bitstream/1813/1495/1/Masaryk_Speech_1928.pdf>

INTRODUCTION

T. G. Masaryk and M. Romeris. The sole comparison of such names may seem artificial and therefore missing real grounds. However, I have more than once visited Charles University in Prague and Masaryk University in Brno for research and educational purposes and thus enriched my knowledge of the heritage of T. G. Masaryk as the head of state and a scholar and learned more about features of his personality. As I was doing this I was kept being surprised by noting the existence of certain relations with the personality and scientific heritage of M. Romeris. The said observations, however, still did seem to be substantial enough to move me to write on the aspects of viewpoints of T. G. Masaryk and M. Romeris. The fact that studies of T. G. Masaryk and his scientific and political heritage are an ongoing and permanent process in Czechoslovakia, now the Czech Republic, as well as the existence of different doctrines and concepts of evaluation of scientific and political heritage of T. G. Masaryk also raised doubts. Hence the probability of errors or failure to accurately understand or interpret, kept me postponing this long nurtured idea. Only sustained and honest discussions with Ján Gronský, Professor of the Department of Constitutional Law of Charles University in Prague, an undisputed expert of Czechoslovakia's constitutionalism and the scientific heritage of T. G. Masaryk, helped me to make up my mind. It was during the discussions with J. Gronský where my attention was drawn to certain "problematic" aspects of history and T. G. Masaryk's doctrine, which, according to the professor "are to be kept in mind in order not to make mistakes". In addition, I would like to thank professor M. Maksimaitis, an expert in the biography and the doctrine of M. Romeris. Without the help of the two aforementioned persons most of statements in the present article would raise reasonable doubts even to their author.

It is undisputed that T. G. Masaryk's political activities in the case of Czechoslovakia's statehood and his long office as the President of the Republic of Czechoslovakia give him certain political advantage. However, it should be stressed that the advantage is only of a political character. Looking at T. G. Masaryk and M. Romeris from the perspective of scientific heritage rather than from the perspective of their political careers, erases any doubts. The two are a match as scholars, and their scientific heritage can be compared. Both were professors, both were scientists. The research interest of both scholars was *man, nation, state and constitution*.

I. THE PERSONALITIES AND THEIR ERA

It would be very difficult to discuss about such prominent personalities outside the context of their times and geopolitical events. Therefore it makes sense to give a brief overview of the development of the historical and political events, in which T. G. Masaryk and M. Romeris lived and worked. Besides, it is meaningful to mention certain biographical aspects, which would provide a better illustration of the basis of their viewpoints. The beginning of the 20th century was the era of epoch-making

geopolitical, social and cultural changes. The World War I (the Great War 1914–1918) determined the fate of most countries and nations for years to come. It was that era – before and after the war, where T. G. Masaryk and M. Romeris lived and worked. That period of history and its realia formed the social and cultural attitude of the said scholars.

Both T. G. Masaryk and M. Romeris received the best education available in those times, they studied at famous educational institutions, had the opportunity to attend lectures, given by prominent scientists of the period. In the modern world educational mobility does not surprise anybody. However, at the end of the 19th and the beginning of the 20th century, it was more an exception than a rule. T. G. Masaryk studied at Brno gymnasium, universities of Vienna and Leipzig³, whereas M. Romeris studied at the St. Petersburg Imperial School of Law, Universities of Krakow and Paris and the famous *L'École libre des Sciences Politiques*. While studying T. G. Masaryk had the opportunity to attend lectures by such famous scholars as *Franz Brentano*, the pioneer of analytical philosophy and phenomenology⁴ and professor *Wilhelm Maximilian Wundt*, the founder of cognitive and experimental psychology. M. Romeris was also not at a disadvantage, in Paris he had the opportunity to hear lectures given by such famous scientists as *Adhémar Esmein*, a professor of constitutional law, canon law and law history, as well as *André Tardieu*, an expert in history of diplomacy as well as theory and practice of geopolitical problems. In St. Petersburg M. Romeris attended lectures by professor *Leon Petrażycki*, a representative of the school of law of psychology and a respected figure in the theory of law.⁵

It should also be mentioned that studies and research interests of both T. G. Masaryk and M. Romeris were not limited to one certain narrow area of social sciences. Upon graduating his studies in St. Petersburg and being a free auditor, M. Romeris collected materials on the topics of the Great French Revolution and the history of Lithuania – Poland at the Faculty of Philosophy of Jagiellonian University of Krakow.⁶ During his studies in France, he attended the Social-Economic Department of *L'École libre des Sciences Politiques* and researched the subtleties of the Napoleonic Code (French Civil Code of 1804) at Paris University. Social and humane studies were the object of interest of those two personalities in all of their scope. The state, its history, law, politics, nation, philosophy and sociology was the constant object of interest of both scholars. The research interest of T. G. Masaryk was within the area of social-historical problems. However, to him, “philosophy was above ethics, sociology and politics”.⁷ Although the diversity of research interests of T. G. Masaryk gave prerequisites for philosophers to regard him as a moralist and for politicians – as a philosopher, he was universally “recognized as a wise man, a colossus of intellect and spirit.”⁸ Hence,

³ Soubigou, A. *Tomáš Garrigue Masaryk*. Praha, 2004, p. 32–52.

⁴ Houška, V. *T. G. Masaryk myslitel a státník*. Karviná – Mizerov: nakladatelství PARIS, 2007, p. 151.

⁵ Maksimaitis, M. *Mykolas Römeris – Lietuvos sūnus*. Vilnius: Mykolo Romerio universitetas, 2006, p. 34.

⁶ Maksimaitis, M. *Mykolas Römeris – Lietuvos sūnus*. Vilnius: Mykolo Romerio universitetas, 2006, p. 37–38.

⁷ Rus, V. S. “Nation and (Modern) Theories of social identity”. In *1895–1995 Sto let Masarykovy České otázky*. Praha: Ústav T. G. Masaryka, 1997, p. 209.

T. G. Masaryk and M. Romeris were persons of broad interest with the difference that law to M. Romeris and philosophy to T. G. Masaryk were their primary and most important means of cognition of social environment. T. G. Masaryk “was definitely a philosopher”⁹, while M. Romeris first and foremost was a lawyer and constitutionalist. The said circumstance, as we will see below, has significantly influenced the basis of their worldview and resulted in certain differences in the emphasized aspects as regards state government institutions.

It’s hardly surprising that the natural talent and the fate, which created such splendid possibilities of studying, soon turned both into serious scholars. In 1897 T. G. Masaryk became a professor of philosophy at the Czech Charles-Ferdinand University in Prague. In 1926 M. Romeris became a professor ordinary at Lithuanian University, in 1927–1928 he was Rector of the University and later worked as the Head of the State Department of Law. In 1930, i.e. the Year of Vytautas Magnus, by decree of President A. Smetona, M. Romeris became a full professor at Vytautas Magnus University, in 1933–1939 he was the rector of the said university for two terms in a row.

Attitude towards religion. It should be mentioned that the issues of religion, as well as the church and the state were also important in the life and worldview of both persons. The religious viewpoint of both T. G. Masaryk and M. Romeris grew on the basis of traditions of the Roman Catholic Church. However, their further life experience and splendid education made both choose the Voltaire tradition, which virtually does not question the existence of God but rejects the role of the church, namely the Catholic Church, as a mediator between man and God. That is the usual intellectuals’ fate – to be a “religious heretic”.¹⁰

However, the researchers of philosophy of T. G. Masaryk unanimously state that his moral, religious and political thinking was deeply Kantian and that the cornerstone aspects of his worldview were based on I. Kant’s arguments.¹¹ T. G. Masaryk’s philosophical grounds are characterized by religious and ethical aspects, which is the reflection of English and French philosophy of positivism. In his famous sociological work *Suicide as a Mass Phenomenon of the Modern Civilization* (1881) T. G. Masaryk attempted to prove that the growth of the number of suicides should be related to the loss of religion, and thus, the meaning of life. Therefore, T. G. Masaryk believed in God and immortality of soul.¹² He argued that apart from the social and national aspects, the religious aspect is also very important to a modern man.¹³ He sympathized with Jan Hus and the entire philosophy of reformation (T. G. Masaryk wrote a scientific study *Jan Hus*).¹⁴ Sympathy to the reformist philosophy is encouraged by a deep understanding that “the rights of man and citizen were codified only because of

⁸ Wandycz, P. S. *Laisvės kaina*. Vilnius: Baltos lankos, 1997, p. 196.

⁹ Houška, V. T. G. Masaryk známý i neznámý. Praha: Riopress Česká expedice, 2005, p. 194–195.

¹⁰ Soubigou, A. *Tomáš Garrigue Masaryk*. Praha, 2004, p. 75.

¹¹ Valenta, L. “Od humanity k demokracii”. In *1895–1995 Sto let Masarykovy České otázky*. Praha: Ústav T. G. Masaryka, 1997, p. 281.

¹² Houška, V. T. G. Masaryk myslitel a státník. Karviná – Mizerov: nakladatelství PARIS, 2007, p. 35.

¹³ Pavelka, M. “T. G. M. a český liberalismus”. In *1895–1995 Sto let Masarykovy České otázky*. Praha: Ústav T. G. Masaryka, 1997, p. 125.

¹⁴ Houška, V. T. G. Masaryk myslitel a státník. Karviná – Mizerov: nakladatelství PARIS, 2007, p. 85.

direct influence of reformation".¹⁵ It is the reformation where T. G. Masaryk saw ideological liberation and another important factor of nationality, resistance to the Germanization of Czechs.¹⁶ This attitude of T. G. Masaryk needs to be connected with the historical role of the Catholic Church in the history of statehood of Czechoslovakia and the Czech nation. Unlike Lithuania and Poland, where the Catholic Church was the supporter and upholder of the national and statehood ideas, in the Czech Republic the situation was quite different. The Catholic Church supported the idea of preservation and integrity of Austro-Hungarian Empire for a long time, therefore it is natural that this position was in conflict with the aspirations of the Czech and Slovak nations to become independent states. Only the results of World War I, only the geopolitical reality, i.e. the fall of the Austro-Hungarian Empire, created the prerequisites for the Catholic Church to turn from the church of "Austro-catholics" to that of "Czech-catholics".¹⁷ It is natural that the said circumstance reflected in the worldview of the society and its individual members. Therefore, upon the establishment of the state of Czechoslovakia the society, or at least a part of it, was very critical of the Catholic Church.

M. Romeris's attitude towards religion and the Catholic Church would be best described by the term of *respectful distance*. M. Romeris has never denied the significance of religion for humans and harmonious development of the society, he never doubted that the freedom to choose a religion is important part of the system of human rights and freedoms. However, as regards relations between the church and the state M. Romeris remained loyal to his ideals of perception of law. M. Romeris was rather critical in his analysis of the provisions of the Concordat between the Republic of Lithuania and Vatican (1926). In his publication *Malignancy of the Concordat to Lithuania*, in no uncertain terms and only in by employing legal arguments he attempted to prove the contradiction of certain provisions of the said treaty to the national Constitution. Such position perfectly reflected M. Romeris's understanding of the legal system and the hierarchy of legal acts, existing therein. The critics of such position of M. Romeris, in as many flashy words stated that "it is only an opinion of one group, which does not really care much about the highest interests of the Lithuanian nation."¹⁸ However, what are those "highest interests of the nation" and who is to decide on their content? What is more important: to have good relations with Vatican or a consistent system of legal norms within the state? The said questions remain rhetorical. To summarize the position of M. Romeris one can state as regards this issue he remained a strong representative of legal positivism. He clearly perceives and substantiates his belief that the consistency of the system of legal norms, respect for the Constitution as an expression of the will of the nation is the cornerstone of the rule of law (and the interest of the nation).

¹⁵ Masaryk, T. G. *Světová revoluce za války a ve válce 1914–1918: vzpomíná a uvažuje T. G. Masaryk*. Praha: Orbis a čin, 1925, p. 553.

¹⁶ Masaryk, T. G. *Světová revoluce za války a ve válce 1914–1918: vzpomíná a uvažuje T. G. Masaryk*. Praha: Orbis a čin, 1925, p. 595.

¹⁷ Malý, R. *T. G. Masaryk a jeho vztah ke katolicizmu. T. G. Masaryk ve třech stoletích*. Brno: L. Marel, 2001, p. 360–361.

¹⁸ Bačkis, A. S. *Lietuvos ir Šventojo sosto konkordatas*. LKMA, 2007, p. 146.

Nationalism and attitude towards empires. Both Austro-Hungary and the Russian Empire (especially the latter) were not role models as regards the rights and regulation of the status of national minorities. Therefore it does not come as a surprise that the attitude of the people of the two states towards their own countries, where they actually had to live their lives, was more critical than their attitude towards neighboring states. M. Romeris, who was perfectly aware of and personally experienced the strict policy of the Russian Empire towards Poles, Lithuanians and other nations, was of a positive opinion on the balance of national relations, which was established in the Austro-Hungarian Empire, he even expressed his position that such a state should remain in existence.¹⁹ And vice versa, the sympathies of T. G. Masaryk, who lived in the Austro-Hungarian Empire were on the Russia's side. "Our national agenda was based on sympathies to Slavism and was Russophile from the outset" – he wrote.²⁰ On the other hand sympathies to Russia did not mean rejection of the national, i.e. Czech attitude as long as the said position of T. G. Masaryk was based on the then popular ideas of Slavonic unity and respect for Russian literature and intelligentsia (T. G. Masaryk had met with L. N. Tolstoy, M. Gorky and was fascinated with F. Dostoyevsky's writing).²¹ In 1917 T. G. Masaryk visited Petrograd and, when giving a speech in the Czech and Slovak nations' council, declared that a strong Russia is within the interests of the Czech and Slovak nations. In the opinion of T. G. Masaryk, a weak Russia would not be able to guarantee the statehood of the Czechs and Slovaks.²² Both the personal experience and the family history of M. Romeris shaped quite a contrary view of the Russian Empire. "I feel Russians have a dreadful Asian power, a leveling force of the vast boundless Eastern territories with its eternal desire to expand, spread and sprawl further, conquer and devour each and every individuality" – he wrote.²³ However, the different view of Russia has not prevented any of the two scholars from taking interest in its history and culture. Therefore in the lavish bibliography of both scientists – both in the famous T. G. Masaryk's work *Russia and Europe* and M. Romeris's *Agrarian Issue in Russia*, one can find quite a good deal of attention to Russia and related problems.

It is natural that the said viewpoints and different experience resulted in different positions as regards the sympathy to the countries, which participated in the World War I. The perception that "No statehood of Czechoslovakia would be reached, if Germany and Austro-Hungary did not lose the war"²⁴ did not raise any doubts with T. G. Masaryk. His sympathies were on the side of the Triple Entente. Those were the same motives and inspirations, i.e. subdued Poland and Lithuania that led M. Romeris to express his

¹⁹ Maksimaitis, M. *Mykolas Romeris – Lietuvos sūnus*. Vilnius: Mykolo Romerio universitetas, 2006, p. 85–86.

²⁰ Masaryk, T. G. *Česká otázka*. Praha: Melantrich, 1969, p. 242.

²¹ Pichlík, K. "Masaryk a Rusko za první světové války". In *1895–1995 Sto let Masarykovy České otázky*. Praha: Ústav T. G. Masaryka, 1997, p. 97–103.

²² Pichlík, K. "Masaryk a Rusko za první světové války". In *1895–1995 Sto let Masarykovy České otázky*. Praha: Ústav T. G. Masaryka, 1997, p. 100.

²³ Mykolas Rómerio autobiografija. *Lietuvių atgimimo istorijos studijos*. T.13. Vilnius, 1996, p. 225.

²⁴ Pichlík, K. "Masaryk a Rusko za první světové války". In *1895–1995 Sto let Masarykovy České otázky*. Praha: Ústav T. G. Masaryka, 1997, p. 97.

sympathies towards the Triple Alliance.²⁵ The sympathies were different, however the motives, i.e. the wellbeing and statehood of the nation as well as their logical grounds make T. G. Masaryk's and M. Romeris's viewpoints comparable. Both wished for the wellbeing of their nations, and all the rest were just a means for reaching the goal.

In 1918, as the war progressed towards its end and the Austro-Hungarian, Russian and German Empires were collapsing, a whole range of independent states came into existence in the Eastern and Central Europe. Poland, Estonia, Latvia, Lithuania, Czechoslovakia, Yugoslavia, Austria, Hungary and Finland appeared on the map of Europe. On 18 October, 1918 the independence of Czechoslovakia was declared and the National Assembly, which on 14 November, 1918 received consents from the Czech National Committee and the Slovak National Council, proclaimed the establishment of the Czechoslovak Republic. The President of the United States of America W. Wilson delivered an ultimatum to Austria-Hungary which contained the requirement to recognize the new states and Austria-Hungary fulfilled the requirement. T. G. Masaryk was elected the first President of Czechoslovakia. Lithuania had, even in a very difficult geopolitical situation (troops of the German Empire were still in the country) and without such powerful advocates as W. Wilson, declared its independence earlier – on 16 February, 1918. In those times of geopolitical fractures the national issue was especially important as it was throughout the whole of Europe at the end of the 19th and beginning of the 20th century. Such relevance manifested in the need to decide the basis of establishment of the new states – national or civic – and on the way the new societies would exist. The national aspect was of significant influence to the worldview of both T. G. Masaryk and M. Romeris. Both represented national minorities, existing within large empires. Besides, their own nationality was an object of continuous doubts and speculations. In different phases of his life M. Romeris has called himself a Pole, a Lithuanian Pole and a Lithuanian. M. Romeris “resolved” his problem of national ambiguity through a consistently and logically perceived concept of a civic nation. He is a Lithuanian, since a citizen of the state of Lithuania of any nationality is a Lithuanian. Already in his work *Lithuania (Litwa: Studyum o odrodzenia narodu litevskiego* [1908]) M. Romeris proposed a model of a civic society, which would neutralize nationalistic tendencies and set ground for peaceful concord between different nationalities.²⁶ Therefore, although M. Romeris distinguished two ethnical groups in Lithuania: Lithuanians and Lithuanian Poles,²⁷ he recognized them all as Lithuanians, i.e. Lithuanian citizens.

Diversity can also be detected in the genealogy of T. G. Masaryk's family: Slovak, German (Austrian) descent, but it did not hinder him from calling himself a Czech and later a Czechoslovak and protecting the interests of the Czech nation and statehood.²⁸ Whereas in the famous *Czech Issue (Česká otázka* [1895]) on the issues of concord

²⁵ Solak, Z. *Tarp Lenkijos ir Lietuvos. Mykolo Römerio gyvenimas ir veikla (1880–1920)*. Vilnius: Lietuvos istorijos institutas, 2008, p. 194–196.

²⁶ Motieka, E. Lietuvos pilietinės visuomenės modelis M. Römerio veikale „Lietuva. Studija apie lietuvių tautos atgimimą“. *M. Römerio mokslas apie valstybę*. Vilnius, 1997, p. 85–90.

²⁷ Maksimaitis, M. *Mykolas Römeris – Lietuvos sūnus*. Vilnius: Mykolo Romerio universitetas, 2006, p. 51.

²⁸ Soubigou, A. *Tomáš Garrigue Masaryk*. Praha, 2004, p. 19–26.

between nations, idealism still prevails²⁹, later philosophy of T. G. Masaryk is based on great wisdom of based on the knowledge of historical development of states. T. G. Masaryk perfectly understood that the success of development of a state can be determined by the nations, living in concord with each other in the state. It is obvious that such position of T. G. Masaryk was determined by the examples of the USA and Switzerland.³⁰ Therefore it does not come as a surprise when one finds the following words in the Preamble to the Constitution of the Republic of Czechoslovakia of 1920: “We, the people of Czechoslovakia...” (*národ Československý*). This construction partially repeated the experience of the USA and France. However, Z. Kárník notes that the “people of Czechoslovakia”, mentioned in the preamble, was a unique legal – political structure not known at that time.³¹ It should be noted that the said “structure” was a legal civic expression of the nation, i.e. the one with which T. G. Masaryk envisaged the future prospects of Czechoslovakia. Only the Czechoslovakia, created on the basis of a civic nation, can sustain its statehood and has a perspective. Such was the position of T. G. Masaryk. Therefore, in the opinion of T. G. Masaryk a Czechoslovak is a citizen of the state of Czechoslovakia of any nationality and the Czechoslovak nation is not the compound of Czech and Slovak nations. Therefore Germans are the same Czechoslovaks as Czechs, Slovaks or Jews.³² Any classification of citizens on the basis of ethnical characteristics would turn Czechoslovakia into a “small Austria-Hungary”. Historians note the paradoxical situation where Czechoslovakia already existed as a state *de jure*, and the Czechoslovakian nation still was to be formed.³³

We have already mentioned that M. Romeris followed a similar position by perceiving the Lithuanian nation not through the ethnical, but rather through the civic aspect. In the modern context of citizenship and human rights and freedoms the viewpoints M. Romeris and T. G. Masaryk of the nation are reasoned and acceptable. However, when states, created on the national basis were dominating in Europe and nationalism was a very popular ideology, their viewpoints were not acceptable to everybody. Therefore such attitude of M. Romeris and T. G. Masaryk towards a civic nation could unquestionably be viewed as a democratic and progressive in the context of both human rights and freedoms and development of states.

II. THE STATE AND ITS FRAMEWORK: T. G. MASARYK'S *DEMOCRACY* AND M. ROMERIS'S *RULE OF LAW*

Prospects of statehood. Before World War I T. G. Masaryk was a federalist. Being a member of the Parliament of Austria-Hungary he genuinely believed in the possibility of reforming the state in a way ensuring no social inequality

²⁹ Znoj, M. “Realistické pojetí národa”. In *Na pozvání Masarykova ústavu*. Praha, 2005, p. 11–13.

³⁰ Soubigou, A. *Tomáš Garrigue Masaryk*. Praha, 200, p. 283–312.

³¹ Kárník, Z. *České země v éře první republiky (1918–1938)*. Praha, 2003, p. 110.

³² Houška, V. *T. G. Masaryk myslitel a státník*. Karviná – Mizerov: nakladatelství PARIS, 2007, p. 108–112.

³³ Houška, V. *T. G. Masaryk myslitel a státník*. Karviná – Mizerov: nakladatelství PARIS, 2007, p. 113.

between nations. During the time period of 1908–1914, as T. G. Masaryk lost his hopes of turning Austria-Hungary into a multinational democratic state, his position regarding the Czech statehood changed and became more radical.³⁴ And when positive geopolitical prerequisites emerged, his position as regards the Czech statehood became principled and T. G. Masaryk became an ardent supporter of independence as the ultimate goal.³⁵

Therefore, T. G. Masaryk underwent a certain change in his position regarding the statehood of the Czech and Slovak nations. In his famous *The Czech Issue* he saw and perceived the problem of statehood in an indirect way, more at a hypothetical level of indefinite forms. Before World War I, which destroyed empires with century old traditions, it was very difficult to forecast the possibility of downfall of such empires, and the prerequisites for creation of Czech, Polish or Lithuanian statehood could have come into existence only as the result of such downfall. Therefore, a rational perception of the geopolitical situation did not turn the issue of statehood the most important topic in the worldview of neither T. G. Masaryk, nor M. Romeris. Before the war a certain “geopolitical romanticism”, manifesting in the model of pan-slavism³⁶ or a federal Europe or East Europe³⁷ was characteristic of T. G. Masaryk’s perception of prospects of Czechs and other neighboring nations. T. G. Masaryk then said that although Czechs and Slovaks would wish for independence, “the very form of independence can be very different”.³⁸ J. Kiliás (*Jaroslav Kiliás*) has noted that such a pessimistic position regarding the possibility of “small nations” to reach political independence and sovereignty is based not on T. G. Masaryk’s reluctance to strive for it, but rather on a realistic perception that such a goal can not possibly be reached.³⁹ Therefore before World War I T. G. Masaryk mostly wrote and spoke on the level of autonomy of the Czech nation and left the issue of statehood for the future generations. He perceived the issue of social emancipation between nations as one of top priorities. However, persistent inequality between the Czech and German nations in social issues formed prerequisites to formulate requirements of a political character – guarantees for the Czech nation. According to T. G. Masaryk, only positions of a political nation are integral to success in economy, and thus in social issues.⁴⁰

The progress of war, changing geopolitical situation created preconditions to formulate a more significant goal – that of an independent state. Therefore in 1915, as T. G. Masaryk was in exile in France, the declaration (also undersigned by T. G. Ma-

³⁴ Garver, B. “T. G. Masaryk and America”. In *1895–1995 Sto let Masarykovy České otázky*. Praha: Ústav T. G. Masaryka, 1997, p. 248.

³⁵ Ort, A. “T. G. Masaryk – jeden z českých Evropanů”. In *1895–1995 Sto let Masarykovy České otázky*. Praha: Ústav T. G. Masaryka, 1997, p. 347.

³⁶ Masaryk, T. G. *Světová revoluce za války a ve válce 1914–1918: vzpomíná a uvažuje T. G. Masaryk*. Praha: Orbis a čin, 1925, p. 150–233.

³⁷ Masaryk, T. G. *Světová revoluce za války a ve válce 1914–1918: vzpomíná a uvažuje T. G. Masaryk*. Praha: Orbis a čin, 1925, p. 150–233.

³⁸ Karola, J. E. “Ruský aspekt v Masarykově koncepci České otázky”. In *1895–1995 Sto let Masarykovy České otázky*. Praha: Ústav T. G. Masaryka, 1997, p. 147.

³⁹ Kiliás, J. “Co je ‘malý národ’? Pokus o interpretaci pojmu”. In *1895–1995 Sto let Masarykovy České otázky*. Praha: Ústav T. G. Masaryka, 1997, p. 157.

⁴⁰ Pavelka, M. “T. G. M. a český liberalismus”. In *1895–1995 Sto let Masarykovy České otázky*. Praha: Ústav T. G. Masaryka, 1997, p. 123.

saryk) of the Czech national committee required neither autonomy, nor equality of the German and Czech nations, or social justice, but independence and statehood. In 1917, when visiting Russia, T. G. Masaryk expressed his strong positions on the issue of statehood. He even expressed the regret that the independence of Poland could hinder the Czech and Slovak state to have a borderline with Russia, which, according to T. G. Masaryk could be a significant factor, guaranteeing the Czech and Slovak statehood. He envisioned the future of the East Europe as three states, created on the basis of Slavonic nations. According to T. G. Masaryk, unions of Russian–Polish, Serbian–Croatian–Slovenian and Czech–Slovak nations could serve as the basis of building states.⁴¹

Analysis of the development of T. G. Masaryk's position on the statehood and its comparison to the position of M. Romeris reveals certain similarities. As the war progressed, positions of M. Romeris developed and changed in a way similar to that of T. G. Masaryk's. It should be noted that such "federative romanticism", which was also typical of M. Romeris, who considered the federative perspectives of the Lithuanian – Polish union, was dissolved by national aspirations of Lithuanians and Poles. Before the beginning of war the issue of the statehood of Poland and Lithuania was more of a matter for historical romanticism than a real possibility. In *Lithuania (Litwa: Studyum o odrodzenia narodu litevskiego (1908))* mentioned above, and his publication *Ethnographic and cultural relations in Lithuania (Stosunki etnograficzno – kulturalne na Litwie (1906))*, M. Romeris, similarly to T. G. Masaryk's *The Czech Issue*, the topic of the nation rather than that of the statehood was dominant. He spoke on statehood only within the context of assumptions and hypothetically considered that the ethnographic boundaries of the Lithuanian nation could be the basis for creation of the state.⁴² There was a time period, when M. Romeris (similarly to T. G. Masaryk whose ideas developed in the context of federalism and pan-slavism) participated in the "countrymen's" movement, which, according to Professor M. Maksimaitis "did not categorically reject the idea of a union of Lithuania and Poland and possibilities for it becoming a reality. However, they only considered as acceptable such a union, which would be created on the grounds of parity to both partners."⁴³ That was not only the situation in Europe, since as T. G. Masaryk was visiting the United States of America and participating in meetings of small nations of Eastern Europe, it was Poles and Lithuanians (represented by dr. Šliupas) who were tough as regards the prospects of a federal Eastern Europe.⁴⁴

"Problems of a small nation are problems of Czechs" – wrote T. G. Masaryk⁴⁵. Therefore for a long time the issues of cultural self-expression of a "small nation", democracy, social justice and equality of nations, rather than political independence

⁴¹ Soubigou, A. *Tomáš Garrigue Masaryk*. Praha, 2004, p. 187.

⁴² Maksimaitis, M. *Mykolas Romeris – Lietuvos sūnus*. Vilnius: Mykolo Romerio universitetas, 2006, p. 51.

⁴³ Maksimaitis, M. *Mykolas Romeris – Lietuvos sūnus*. Vilnius: Mykolo Romerio universitetas, 2006, p. 56.

⁴⁴ Masaryk, T. G. *Světová revoluce za války a ve válce 1914–1918: vzpomíná a uvažuje T. G. Masaryk*. Praha: Orbis a čin, 1925, p. 298–300.

⁴⁵ Masaryk, T. G. *Problém malého národa*. Praha, 1990, p. 67.

were dominating in the works and worldview of T. G. Masaryk.⁴⁶ Even later, in its celebratory speech on the occasion of the tenth anniversary of statehood of Czechoslovakia, T. G. Masaryk, then being the President of the country, remained a true philosopher by stating two contradictory thoughts in the same speech. “The state is not the final and most important of human endeavor, but rather the only way to ensure a moral and intellectual existence of the society” – he spoke⁴⁷. Being a representative of a small nation T. G. Masaryk rather categorically rejected the ideology of liberalism and its values as “distantly social, not serving the whole nation, and simply outdated.”⁴⁸ However, it should be mentioned that the “revolution”, which occurred in 1917 in Russia, also failed to captivate T. G. Masaryk by its “social agenda”. Being a supporter of national emancipation and social justice, he did not approve of the utopian concept of equality, stating that “the law can provide for equal rights, but not equivalence”.⁴⁹

Therefore the statehood of Lithuania and Czechoslovakia as a goal and a value took root in the worldview of M. Romeris and T. G. Masaryk gradually, but very firmly. This understanding eventually became a conceptually perceived integral part of their philosophical, political and legal worldview.

Constitution and the framework of state government institutions. Such terms as “Constitution”, “constitutionalism”, “rule of law”, and “democracy” were very popular in the doctrine of the end of the 19th – beginning of the 20th century. However, notwithstanding the popularity of the said terms, revealing them in legal writings was complicated and, as stated by R. Hain, even “illusory” and “vague”.⁵⁰ The value of constitution at that time mostly lay in its ability to curb authoritarianism. Therefore the issue, dominating in theory, was related to the fact of existence of the constitution, whereas the issue of content and quality of the constitution was not yet a widely discussed theoretical topic. According to R. Hain the topic of protection of constitution and constitutional justice was “completely forgotten by an entire generation of law experts.”⁵¹ Even in the famous K. Čapek’s (*Karel Čapek*) *Discussions with T. G. Masaryk* little attention is paid to the mechanism of the state and the constitution. Indeed, in those discussions T. G. Masaryk reveals himself as a very significant philosopher knowledgeable in the descent, goals and principles of operation of the state. However, it is obvious that constitution and the mechanism of framework of state institutions are not in the centre of attention, since, according to T. G. Masaryk, those are only specific “issues of law”. Speaking of constitution he said that it was elaborated “hastily,

⁴⁶ Pavelka, M. “T. G. M. a český liberalismus”. In *1895–1995 Sto let Masarykovy České otázky*. Praha: Ústav T. G. Masaryka, 1997, p. 120.

⁴⁷ Masaryk, T. G. Speech by President Masaryk on the Tenth Anniversary of Czechoslovak Independence, October 28, 1928 [interactive]. *Virtual Archive of Central European History* [viewed 10-01-2009]. <http://ecommons.library.cornell.edu/bitstream/1813/1495/1/Masaryk_Speech_1928.pdf>

⁴⁸ Masaryk, T. G. *Naše nynější krize*. Praha, 1948, p. 274.

⁴⁹ Broklová, E. “Masarykova sociálně etická dimenze demokracie”. In *1895–1995 Sto let Masarykovy České otázky*. Praha: Ústav T. G. Masaryka, 1997, p. 191.

⁵⁰ Hain, R. *Teorie státu a státní právo v myšlení T. G. Masaryka*. Praha: Univerzita Karlova v Praze, Nakladatelství Karolinum, 2006, p. 70.

⁵¹ Hain, R. *Teorie státu a státní právo v myšlení T. G. Masaryka*. Praha: Univerzita Karlova v Praze, Nakladatelství Karolinum, 2006, p. 79.

therefore it contains a good deal of ambiguities and even errors.”⁵² If T. G. Masaryk’s political experience or his philosophical worldview could be the source of what’s referred to as “errors”, then his thoughts on the “ambiguity” of the constitution give reasons to agree with R. Hain, who, when analyzing T. G. Masaryk’s views on constitution and the rule of law, stated that T. G. Masaryk “was no a constitution theoretician.”⁵³ M. Romeris, on the other hand, first and foremost was a true constitutionalist, and only then a sociologist, historian and philosopher. To him constitution was not just law, but rather means to protect law, which was the issue of securing the will of the nation. Therefore, the content of the constitution and the mechanism of its security are at the heart of the rule of law, which was a very important subject for M. Romeris to look into. That is why M. Romeris dedicated such a great deal of attention to this topic. Not only did he reveal the importance of constitutional justice in his works but he also analyzed the principles of activities of the constitutional court as an integral institution of state governance.

However, when emphasizing the role of democracy as a tool of decisions of social morality T. G. Masaryk did not give too much prominence to the importance of institutional guarantees of democracy.⁵⁴ On the other hand he never denied and has recognized the need for separation of powers as a guarantee of democracy.⁵⁵ One could state that while solving issues of the concept of democracy T. G. Masaryk preferred the philosophical method. First and foremost being a philosopher, T. G. Masaryk had to envision and did envision the most abstract goal – the state framework, based on humanistic democracy and social justice.⁵⁶ According to historian N. Davies, such viewpoint of T. G. Masaryk, based on the concepts of democracy and humanism, was strongly influenced by the theoretical and practical heritage of J. Comenius (*Jan Amos Komenský – Comenius*).⁵⁷ In his philosophy one may observe the methodologies and means leading to the goal, though they are less clear compared to the works of M. Romeris.

It has already been mentioned that T. G. Masaryk’s democracy is a system aiming at humanistic goals,⁵⁸ whereas the methodology and institutional measures for reaching the said goals were viewed only as tools. “In order to have a democratic republic it is not enough to replace a monarch with a president, we need to have a society with a modern view of life and the world, since democracy stems from the attitude” – wrote

⁵² Masaryk, T. G. Speech by President Masaryk on the Tenth Anniversary of Czechoslovak Independence, October 28, 1928 [interactive]. *Virtual Archive of Central European History* [viewed 10-01-2009]. <http://ecommons.library.cornell.edu/bitstream/1813/1495/1/Masaryk_Speech_1928.pdf>

⁵³ Hain, R. *Teorie státu a státní právo v myšlení T. G. Masaryka*. Praha: Univerzita Karlova v Praze, Nakladatelství Karolinum, 2006, p. 69.

⁵⁴ Broklová, E. “Masarykova sociální etická dimenze demokracie”. In *1895–1995 Sto let Masarykovy České otázky*. Praha: Ústav T. G. Masaryka, 1997, p. 190.

⁵⁵ Masaryk, T. G. *Moderní demokracie. Masarykova práce*. Praha: Státní nakladatelství v Praze, 1930, p. 293.

⁵⁶ Šimská, J. “Masarykova koncepce humanitní demokracie”. In *1895–1995 Sto let Masarykovy České otázky*. Praha: Ústav T. G. Masaryka, 1997, p. 276–278.

⁵⁷ Davies, N. *Europa: Istorija*. Vilnius: Vaga, 2002, p. 615.

⁵⁸ Urfus, V. “Georg Jellinek a Masaryk. Názory státopěvce a autora České otázky na úlohu reformace v dějinném vývoji”. In *1895–1995 Sto let Masarykovy České otázky*. Praha: Ústav T. G. Masaryka, 1997, p. 312–313.

T. G. Masaryk.⁵⁹ Speaking of the relation between the constitution and democracy, T. G. Masaryk stated that “Democracy is not only the form of the state, it is not only what is written in the constitution; democracy is a view towards life.”⁶⁰ Therefore, when speaking on the possibilities of democracy T. G. Masaryk stressed the problem of maturity of the society. In modern terms T. G. Masaryk was interested in the issue of maturity of the “civic society” and its readiness for democracy. Whereas M. Romeris, was a follower of legal positivism, close to philosophy of law, and dedicated particular attention to the institutional guarantees of the rule of law. In terms of the said aspect both M. Romeris and T. G. Masaryk are close to their positions as regards the common goal – merits of “the rule of law” and “democracy”.

It should also be noted that T. G. Masaryk’s position does not mean the irrationality of his understanding of the political and legal system of the state. He was not just a philosopher, he was also a member of parliament of Austro-Hungarian Empire, and after the war, in 1918, 1920, 1927 and 1934, he was elected the President of the Republic of Czechoslovakia. Thus, he had the possibility to check his philosophical views in a real legal and political environment. As stated by V. Houška (*Vítězslav Houška*), “T. G. Masaryk’s humanistic idea was not a manifestation of his political naivety.”⁶¹ When writing about the democratic and humanistic nature of the state T. G. Masaryk more than once emphasized that humanism is neither sentimentalism, nor pacifism.⁶² On the contrary, T. G. Masaryk, notwithstanding his philosophical worldview, did not deny that life of the society can and must be arranged on the basis of legal principles.⁶³ However, he recognized that the positive law, being the “moral minimum” only helps to strive for the “ethical maximum”. “The ethical principle can be neither formal, nor eternal” – wrote T. G. Masaryk.⁶⁴ He did not doubt that the “ethical minimum”, i.e. the law, is what takes a country to ideal, i.e. the “moral maximum”.⁶⁵

When revealing the contents of democracy T. G. Masaryk succeeded in matching the ideas that “democracy is a discussion” and that “democracy needs a leader, not a lady”.⁶⁶ When speaking of democracy and the need to manage it T. G. Masaryk’s worldview was similar to that of Plato (one of his most beloved and respected philosophers), which was later reiterated by Voltaire and a number of other philosophers. The ideal is an educated ruler, but not a dictator. In K. Čapek’s *Discussions* T. G. Masaryk clearly recognizes that when elaborating the constitution he “also made attempts to ensure competence of the authority, and therefore we have a combined parliamentary power and professionals, *permanent* (highlighted by T. G. M.) high-level

⁵⁹ Masaryk, T. G. *Světová revoluce za války a ve válce 1914–1918: vzpomíná a uvažuje T. G. Masaryk*. Praha: Orbis a čin, 1925, p. 542.

⁶⁰ Čapek, K. *Pašnekesiai su T. G. Masaryku*. Vilnius: Amžius, 1994, p. 259.

⁶¹ Houška, V. *T. G. Masaryk myslitel a státník*. Karviná – Mizerov: nakladatelství PARIS, 2007, p. 25.

⁶² Masaryk, T. G. *Světová revoluce za války a ve válce 1914–1918: vzpomíná a uvažuje T. G. Masaryk*. Praha: Orbis a čin, 1925, p. 557–559.

⁶³ Musil, J. “Východiska Masarykovy České otázky – možnost nové interpretace”. In *1895–1995 Sto let Masarykovy České otázky*. Praha: Ústav T. G. Masaryka, 1997, p. 317.

⁶⁴ Masaryk, T. G. *Světová revoluce za války a ve válce 1914–1918: vzpomíná a uvažuje T. G. Masaryk*. Praha: Orbis a čin, 1925, p. 560.

⁶⁵ Hain, R. *Teorie státu a státní právo v myšlení T. G. Masaryka*. Praha: Univerzita Karlova v Praze, Nakladatelství Karolinum, 2006, p. 87.

⁶⁶ Houška, V. *T. G. Masaryk myslitel a státník*. Karviná – Mizerov: nakladatelství PARIS, 2007, p. 36, 42.

officials (Švehla, Beneš and others).”⁶⁷ It is obvious that such a philosophy should have some critics in the modern tradition of democracy. Therefore, some researchers of even the first Republic of Czechoslovakia, who do not have too much sympathy for T. G. Masaryk, note that even this state had certain “authoritarian potential”.⁶⁸ Certain historians of law recognize the development of the Czech constitutionalism as “controversial”.⁶⁹ However, it should be noted that in no ways the aforementioned “authoritarianism”, if there are any grounds to discuss it, matched the totalitarian and authoritarian regimes, existing in Europe during the interim period. Even the non-democratic authoritarian regimes, which set root in the Baltic States in the middle of the third decade of the 20th century, were tougher than the “trends”, noted by the critics of T. G. Masaryk’s leadership methods. Nevertheless the interim Czechoslovakia was a state with a democratic political regime. During the entire interim period Czechoslovakia remained a democratic state, retaining true traditions of parliamentarianism.⁷⁰ It should be noted that when T. G. Masaryk became the head of the state, i.e. the president of the Republic of Czechoslovakia, he remained loyal to the ideas of democracy and humanism and he never refused them, never attempted to deny their utmost importance, he followed the principles, which undoubtedly are an important ground for democracy. Although T. G. Masaryk admired Plato’s philosophy, nevertheless, as stated by K. Popper (*Karl Raimund Popper*), T. G. Masaryk “was not a leader that Plato would like, since he was a democrat.”⁷¹ An obvious example is provided by the following: when speaking on the freedom of self-expression and the possibility to criticize the state machinery and its individual members T. G. Masaryk proved to be an individual, who has deeply perceived the principles of democracy. He noted that “the right to criticism, in terms of its content, is a right of political initiative.”⁷²

Some aspects of the worldview of T. G. Masaryk explain perfectly well most of his actions as the President of Czechoslovakia and his concepts as a theoretician. It is natural that perceiving the positive law as the “moral minimum”, he did not pay too much attention to the ways of achieving and implementing such a minimum, even if only in a formally. This position is what distances T. G. Masaryk, at least in his philosophy, from the theory of legal positivism.⁷³ In this respect M. Romeris’s views, more obviously reflecting the significance of legal positivism to the state, were closer to the views of H. Kelsen or G. Jellinek, rather than to those of T. G. Masaryk. Although M. Romeris was not always in conflict with H. Kelsen’s ideas, especially

⁶⁷ Čapek, K. *Pašnekesiai su T. G. Masaryku*. Vilnius: Amžius, 1994, p. 150.

⁶⁸ Broklová, E. “Masarykova sociálně etická dimenze demokracie”. In *1895–1995 Sto let Masarykovy České otázky*. Praha: Ústav T. G. Masaryka, 1997, p. 188.

⁶⁹ Hendrych, D. *Constitutionalism in the Czech Republic. The Rule of Law in Central Europe. The Reconstruction of Legality, Constitutionalism and Civil Society in the Post – Communist countries*. England: Aldershot, 1999, p. 16.

⁷⁰ Hughes, S. H. *Contemporary Europe: A History*. New Jersey: Prentice-Hall, Inc., Englewood Cliffs, 1981, p. 173.

⁷¹ Popper, K. R. *Atviroji visuomenė ir jos prieštai*. Vilnius: prada, 1998, p. 717.

⁷² Masaryk, T. G. *Světová revoluce za války a ve válce 1914–1918: vzpomíná a uvažuje T. G. Masaryk*. Praha: Orbis a čin, 1925, p. 547.

⁷³ Hain, R. *Teorie státu a státní právo v myšlení T. G. Masaryka*. Praha: Univerzita Karlova v Praze, Nakladatelství Karolinum, 2006, p. 85.

taking into consideration his doubts in H. Kelsen's attempts to "ground the primacy of the international law",⁷⁴ M. Romeris's and H. Kelsen's views were closer in thinking about law as a strictly defined system and purifying functions of the institutions of the state.

It is becoming obvious that in their theories T. G. Masaryk, first and foremost being a philosopher, and M. Romeris, first and foremost being a lawyer, emphasize seemingly different things. When analyzing the terminology, dominating the works of T. G. Masaryk and M. Romeris, one can observe certain conceptual differences. T. G. Masaryk, when speaking of a *democratic and humanistic state* and M. Romeris, when stressing the values of the *rule of law*, in essence speak of the same thing, i.e. the ideal state. However, T. G. Masaryk's "moral minimum" in M. Romeris's works is that value, which can be actually reached in the real – institutional way in its positive form. That is why in M. Romeris's works one can see a particularly strong conceptual focus on constitution, the hierarchy of legal acts as well as the issues of supremacy of constitution, constitutional justice, separation of powers, the judiciary and parliamentarianism. It is no coincidence that in his *Lectures on the Lithuanian Constitutional Law* M. Romeris points out a significant "element of discipline" of the legislative power in the constitutional norms,⁷⁵ i.e. a formal element of the mechanism of checks and balances, necessary for democracy. On the other hand T. G. Masaryk's attention to the "ethical maximum" leaves out a whole range of conceptual – practical issues as regards the ways of reaching both the "ethical maximum" and also the "moral minimum". It is a paradox, but the development of democracy in Europe of those days showed that in most cases it was very difficult to reach T. G. Masaryk's "moral minimum", save for the possibilities to reach an ideal state created following any concept. The political regimes in existence in the Baltic States, Poland, Hungary, Romania, Bulgaria, the Soviet Union, Italy, Spain and Germany during the interim period could not possibly be called "democratic". The said countries had a lot of problems even with the concept of the "moral minimum" – law, stability and practical issues. Summarizing all of the above one could state that M. Romeris's academic attention to T. G. Masaryk's "ethical minimum" – law, is as much valuable as T. G. Masaryk's attempts to reveal the content of the "moral maximum". Those are theories which are not confronting, but rather supplementing each other and showing how important it is for a theoretical abstract idea to have a conceptual legal form.

When visiting the United States of America, France, the United Kingdom and Italy T. G. Masaryk had a possibility to get familiarized with the governance forms of these states. Comparing state governance forms of the United States of America, Switzerland and France T. G. Masaryk thought that not a presidential or parliamentary, but rather a mixed governance form would be most suitable for Czechoslovakia.⁷⁶ However, the Constitution of Czechoslovakia of 1920 consolidated the parliamentary

⁷⁴ Römeris, M. *Valstybė ir jos konstitucinė teisė. Konstitucinės institucijos. I tomas. Suverenitetas*. Vilnius: Pradai, 1995, p. 224–226.

⁷⁵ Römeris, M. *Lietuvos konstitucinės teisės paskaitos*. D.1. Kaunas, 1937, p. 105.

⁷⁶ Masaryk, T. G. *Světová revoluce za války a ve válce 1914–1918: vzpomíná a uvažuje T. G. Masaryk*. Praha: Orbis a čin, 1925, p. 557.

governance at least on the *de jure* level.⁷⁷ In long debates with regard to the content of the Constitution the parliamentary governance model was selected while everybody was fully aware of the fact that the undisputed authority, i.e. T. G. Masaryk was to become the president of the country. E. Broklova, when analyzing the content of constitutional debates, notes that the choice of parliamentary form of government resulted from the fact that “the Constitution was elaborated not for T. G. Masaryk, but rather for his successor.”⁷⁸ “Czechoslovakia’s political system, based on the Constitution of 1920, looked as if was transplanted from France, yet it was much more stable and nevertheless also close to the idea of the ‘governed democracy’” – says S. P. Wandycz.⁷⁹ Looking from a historical retrospective, the mentioned stability of the political system and “governed democracy” should be related not to the Constitution, but to the authority of the long-time president T. G. Masaryk. Without giving the president wide *de jure* authority Czechoslovakia sought to eliminate potential threats of authoritarianism, which at that time were related not to the personality of T. G. Masaryk, but to vagueness of the future.

It does not raise any doubts that during the interim period Czechoslovakia had one of the most progressive constitutions in Europe.⁸⁰ The Constitution was adopted in 1920 and its content reflected most conceptual achievements of the constitutional doctrine of the period. The Constitution consisted of the preamble and six chapters, 134 articles in total.⁸¹ The very initial articles established the institution of the Constitutional Court, which was one of the first (the very first was established in the Republic of Austria) in entire Europe. It was the Constitutional Court which had the function to check the constitutionality of legal acts.⁸² The Constitution established the principle of sovereignty of the entire nation and system of checks and balances, two chambers of parliament, the executive authority, which included the President and the Government and the system of independent courts. An entire chapter of the Constitution was dedicated to the regulation of human rights and freedoms. In the said chapter one may find a sufficiently comprehensive (even from today’s perspective) system of human rights and freedoms. The said chapter consolidated the principle of equality of people, inviolability of property, the right to freely leave the country, the freedom of speech and thought, the freedom of press, meetings and associations. The freedom of conscience and beliefs was also consolidated. The Constitution does not single out any religion by establishing that all religions are equal before the law. When establishing the responsibilities, the Constitution specifies only one, i.e. “to obey the call to defend the state”. A separate chapter of the constitution is dedicated to ensuring

⁷⁷ Soubigou, A. *Tomáš Garrigue Masaryk*. Praha, 2004, p. 236–241.

⁷⁸ Broklová, E. *Prezident Republiky československé: Instituce a osobnost T. G. Masaryka*. Praha, 2001, p. 15.

⁷⁹ Wandycz, P. S. *Laisvės kaina*. Vilnius: Baltos lankos, 1997, p. 223.

⁸⁰ Mesonis, G. “Čekijos Respublikos konstitucinė sąranga”. *Konstitucinio reguliavimo įvairovė*. Vilnius: Mykolo Romerio universitetas, 2006, p. 184.

⁸¹ Grónský, J.; Hřebejk, J. *Dokumenty k ústavnímu vývoji Československa I*. Praha: Karolinum, 1997.

⁸² Mesonis, G. “Parlamentas Čekijos Respublikos konstitucinėje sąrangoje”. *Parlamentas ir valstybinės valdžios institucijų sąranga: Liber Amicorum Česlovui Juršėnui*. Vilnius: Mykolo Romerio universitetas, 2008, p. 457.

the rights of national, religious and ethnical minorities. Even today, when analyzing Chapter V of the Constitution of the Republic of Czechoslovakia of 1920, i.e. “Rights, Freedoms and Responsibilities” one might get the impression that this is a completely modern catalogue of rights and freedoms. It is not surprising that the constitution was not only a quantum leap in the history of Czechoslovakia’s law, but also became an example for the development of constitutionalism of the states of Eastern and Middle Europe (Lithuania, Poland, Romania and others).⁸³

Achievements in the philosophy of law and in the manifestation of positive law, however, does not guarantee success in the implementation of law and T. G. Masaryk also recognized this fact. “It is easy to write a nice constitution, but it is difficult to observe it accurately and consistently” – he wrote, upon becoming the president.⁸⁴ Therefore in the practice of constitutional legal relations, quite frequently only the huge authority of President T. G. Masaryk gave him *de facto* power to act in the areas where the Constitution “was silent”. Researchers note that being a democrat T. G. Masaryk was quite frequently “imprecise” as regards the issues of institutional procedures. When appointing ministers, in the appointment decree T. G. Masaryk enumerated what he expected from the new minister point-by-point. Not only there were no such presidential authorizations in the provisions of the Constitution of Czechoslovakia, moreover, researchers note that, such actions were “on the boundary of (non)constitutionality”. However, such aspects neither hindered the system of executive authorities from efficient activities, nor did they give raise to a constitutional crisis. It should be noted that the stability of activities and consistency of state government institutions was also determined by the fact that the evolutionary method of resolution of issues pertaining to the state as well as to other issues was prevalent in T. G. Masaryk’s philosophy. That is why T. G. Masaryk was critical of the ideas and methods of the Russian “revolution”.⁸⁵ “Revolution is harsh political primitivism” – he wrote. “Reformation and not a revolution” is a way out and the method.⁸⁶ The huge authority of a scholar and a politician and political moderation based on philosophy, as well as priority of evolutionary methods determined the fact that Czechoslovakia’s constitutional framework, with T. G. Masaryk as the president, was one of the most stable in Europe.

It has been already mentioned that the Constitution of Czechoslovakia of 1920 established the institution of the Constitutional Court, to which, as one might say now, classic constitutional control functions were assigned. The Constitution and the Law on the Constitutional Court, which was passed in the same year as the Constitution (*Zákon o ústavním soudě* [1920]), provided that the institution shall consist of seven judges. Three judges, as well as the Chairman of the Court were appointed by the President of the Republic. Two judges were appointed by the Supreme Court and the Supreme Administrative Court (*Nejvyšší soud a Nejvyšší správní soud*) each

⁸³ Mesonis, G. “Čekijos Respublikos konstitucinė sąranga”. *Konstitucinio reguliavimo įvairovė*. Vilnius: Mykolo Romerio universitetas, 2006, p. 185.

⁸⁴ Masaryk, T. G. *Světová revoluce za války a ve válce 1914–1918: vzpomíná a uvažuje T. G. Masaryk*. Praha: Orbis a čin, 1925, p. 576.

⁸⁵ Houška, V. *T. G. Masaryk myslitel a státník*. Karviná – Mizerov: nakladatelství PARIS, 2007, p. 42.

⁸⁶ Houška, V. *T. G. Masaryk myslitel a státník*. Karviná – Mizerov: nakladatelství PARIS, 2007, p. 61.

respectively. Such was the positive manifestation of law. However, in the practice of legal relations, although Czechoslovakia attempted to follow the Austrian tradition, the Court, which commenced its activities in November 1921, acted as if being in the shadow of other branches of authority and in 1931 *de facto* ceased its activities. Upon the expiry of the terms of judges, President T. G. Masaryk just did not propose any new candidates, thus turning the institution into one which existed in *de jure* only.⁸⁷ One should probably not blame T. G. Masaryk for such a position in the context of the modern world. It is obvious that although the institution of the Constitutional Court was provided for in the Constitution of Czechoslovakia of 1920, the perception of significant importance of such an institution to the constitutional system, was not strong both in theory and within the society. When analyzing scientific texts and speeches of T. G. Masaryk, one may observe that he was an advocate of the doctrine of sovereignty of the parliament, therefore he was most likely skeptical of the idea that some institution could abolish legal acts, adopted by an institution, representing the sovereign, i.e. the nation. More than once he has expressed a strong position that “the parliament, elected by the people is the source of the overall authority in the country.”⁸⁸ As regards this aspect, T. G. Masaryk’s position is closer to that of M. Romeris’s, who was also rather skeptical of the possibility of courts to abolish acts, adopted by the parliament. However, differently from T. G. Masaryk, M. Romeris “did not stop” with the said position, but, by analyzing the aspects of the state ruled by law, provided conceptual basis for such statements and changed the opinion. Such change resulted from the understanding that the Constitution is also an act, adopted by the nation, i.e. the sovereign, which not only grants rights to the parliament or another institution but also restricts their rights and therefore, according to M. Romeris, the constitutional control should be perceived not as a restriction of powers of an institution, representing the sovereign, but as the guarantee of the values, protected by the Constitution, adopted as the will of the nation. That is why M. Romeris, when analyzing the basics of democratic political regimes, dedicated a good deal of attention to “the problem of security of the constitutional structure.”⁸⁹ M. Romeris’s work “At the Borderlines of Constitutional Law and Law of Courts” obviously illustrates his conceptual perception of the philosophy of law as well as the content of a state ruled by law and the need of constitutional justice for a democratic state.

Article 3 of the Constitution of the Republic of Lithuania of 1922 established that “No law, contrary to the Constitution shall be in effect in the Republic of Lithuania.” The same provision is also found in Constitutions of 1928 and 1938. However, it is true to say that such provisions were only formal, since the Constitution of 1922 did not envisage an appropriate mechanism and in the case of the constitutions, adopted after 1926, not only no institution or mechanism, ensuring constitutionality was in

⁸⁷ Grönský, J. *Komentované dokumenty k ústavním dějinám Československa I. 1914–1945*. Praha: Karolinum, 2005, p. 72–73, 149.

⁸⁸ Masaryk, T. G. Speech by President Masaryk on the Tenth Anniversary of Czechoslovak Independence, October 28, 1928 [interactive]. *Virtual Archive of Central European History* [viewed 2009-01-10]. <http://ecommons.library.cornell.edu/bitstream/1813/1495/1/Masaryk_Speech_1928.pdf>

⁸⁹ Römeris, M. *Valstybės ir jos konstitucinės teisės. Konstitucinės institucijos. I tomas. Suverenitetas*. Vilnius: Pradai, 1995, p. 193–197.

place, but the constitutions themselves were adopted and were in operation in an environment of a non-democratic political regime. M. Romeris perfectly understood the problems of such constitutional regulation, which required the constitutionality of law but did not provide mechanisms to assure constitutionality, therefore in his scientific works he emphasized the importance of establishing a special institution of constitutional control, i.e. a constitutional court and its significance for the rule of law.

However, the experience of constitutional regulation in the pre-war Czechoslovakia shows that the formal mechanism of control (as it has been mentioned, Czechoslovakia had a constitutional institution, i.e. the Constitutional Court) did not create a genuine system of the constitutional control. The doctrine, the society and the state government institutions were not ready to perceive and accept this legal reality. M. Romeris became an advocate of constitutional control and of an independent institution – a constitutional court whose activities he related to characteristics of a state ruled by law. However, he also understood that Lithuania was not ready to accept such a novelty.⁹⁰ Although, when preparing the Constitution of the Republic of Lithuania of 1938, its draft, following the Austrian and “Czechoslovakian example”, contained plans to establish a constitutional court, they remained on paper only.⁹¹ The fact that the institution was perceived as a part of the constitutional framework at least in the draft of the Constitution is, without any doubt, a merit of M. Romeris’s doctrine. However, it is also obvious that M. Romeris’s skepticism as regards quick prospects of having a constitutional court was well-grounded, since it can be related to the change of political regime in Lithuania in 1926, the weak tradition of the legal-philosophical thinking, and to low level of legal consciousness in the society.

M. Romeris “was inclined to define the rule of law as the state where the law dominates, a state which first and foremost takes care of the protection of personal rights against the authority of the state which does not have a legal basis.”⁹², whereas to T. G. Masaryk the principle of justice seems to be “less important” than his moral maximums.⁹³ On the other hand T. G. Masaryk’s ethics is close to “rational legitimacy”, since the legislator, in legal norms it adopts, must “reflect the experience of life.”⁹⁴ From this perspective T. G. Masaryk’s position is close to M. Romeris’s perception that theoretical aspirations are unavoidably limited by social-intellectual reality of the society.

Professor M. Maksimaitis notes that M. Romeris perceived the human rights, catalogued in constitutions only as the primary ones, i.e. “a man’s freedom gives him the right to do not only the things, defined in the catalogue, but also lots of other things.”⁹⁵ Therefore M. Romeris, as well as T. G. Masaryk, cared for the rights of

⁹⁰ Maksimaitis, M. *Mykolas Römeris – Lietuvos sūnus*. Vilnius: Mykolo Romerio universitetas, 2006, p. 139–140.

⁹¹ Maksimaitis, M. *Lietuvos valstybės konstitucijų istorija*. Vilnius: Justitia, 2005, p. 265–267.

⁹² Miliauskaitė, K. “Mykolo Romerio teisinės valstybės modelis vakarų Europos teisinės valstybės koncepcijos kontekste”. *Jurisprudencija*. 2005, 64 (56): 37.

⁹³ Hain, R. *Teorie státu a státní právo v myšlení T. G. Masaryka*. Praha: Univerzita Karlova v Praze, Nakladatelství Karolinum, 2006, p. 85.

⁹⁴ Hain, R. *Teorie státu a státní právo v myšlení T. G. Masaryka*. Praha: Univerzita Karlova v Praze, Nakladatelství Karolinum, 2006, p. 87.

⁹⁵ Maksimaitis, M. *Lietuvos valstybės konstitucijų istorija*. Vilnius: Justitia, 2005. p. 129–130.

a person and that gives reasons to believe that M. Romeris's institutional concept of the framework of authority is based not only on the law, but also on philosophy. Thus M. Romeris's position that "those in power may use certain discretionary powers within the limits of their competence" clearly illustrates his perception of a constitution not as a legal act, restricting power, but also as an act, reflecting the will of the nation as the sovereign.⁹⁶ Therefore from this perspective M. Romeris's logical concept of the framework of the state, structured in the form of the positive law, does not deny his attention to the social context of law,⁹⁷ which is very similar to T. G. Masaryk's view.

To M. Romeris constitutional justice is not a self-purposeful way of ensuring constitutional supremacy and hierarchy of legal acts, but a system, which can guarantee personal rights and freedoms. T. G. Masaryk's democratic and humanistic state strives for the same goals: to be socially just and humane to a person, i.e. to respect a person's rights and freedoms. The spirit of democracy is more important than its form – T. G. Masaryk⁹⁸ thought, whereas M. Romeris dedicated an especial attention to the aspects of form. The attention to "the theoretical and practical issues of supremacy of law, i.e. promotion and analysis of the state ruled by law, starts with the declaration of supremacy of the law and finishes with the development of a legal mechanism for ensuring such supremacy"⁹⁹ was conceptually based on M. Romeris's conceptual perception of the rule of law.

Therefore, T. G. Masaryk and M. Romeris left us an enormous scientific heritage. However, is it still relevant today? And why is it relevant to us in development of the modern state and society? Such relevance, first and foremost, manifests in the fact that the goal of both scholars – T. G. Masaryk and M. Romeris was the ideal, i.e. democratic rule of law and the said goal and values are still relevant to us in the modern times. On the other hand, the conceptual aspects of the positions of M. Romeris and T. G. Masaryk and their comparison can undoubtedly be relevant in the modern perception of the existence of the state. In the modern life of our state, and not our state alone, we can quite often notice attempts to juxtapose the concepts of *constitution* and *democracy*, *the rule of law* on the basis of subjectively perceived slogans of "democracy" or "real national (or public) interest". We can observe clear disrespect for the constitution and the law and see how when such disrespect is disguised as a real expression of the public spirit or democracy. M. Romeris's doctrine is relevant in this context, since it is methodological in the aspect of perception of the value of the law. It supplements the concept of democracy of T. G. Masaryk, since it logically grounds the *aspect of oneness of constitutionalism and democracy*. Whereas T. G. Masaryk, in his works proves the value of democracy, M. Romeris, in his entire theory helps us to understand the most important principles of democratic-legal framework of the state, by stating that democracy is a value, but it can be materialized

⁹⁶ Römeris, M. *Konstitucinės ir teismo teisės pasieniuose*. Kaunas, 1931, p. 20–21.

⁹⁷ Maksimaitis, M. *Mykolas Römeris – Lietuvos sūnus*. Vilnius: Mykolo Romerio universitetas, 2006, p. 37.

⁹⁸ Soubigous, A. *Tomáš Garrigue Masaryk*. Praha, 2004, p. 247.

⁹⁹ Miliauskaitė, K. "Mykolo Romerio teisinės valstybės modelis vakarų Europos teisinės valstybės koncepcijos kontekste". *Jurisprudencija*. 2005, 64 (56): 37.

only in the statement of will of the nation, i.e. the constitution. Therefore respect for the constitution and observance of legal provisions are the pure civic spirit and democracy, as well as the basis for theories of democracy to become everyday reality of the state and the society.

CONCLUSIONS

T. G. Masaryk and M. Romeris are, without any doubt, prominent and history-making figures. The development of the Czech nation and the state of Czechoslovakia would be difficult to imagine without T. G. Masaryk's philosophical view of the man, the nation, the state, his political activities and the development of law and politics of the interim Lithuania would be difficult to understand without M. Romeris's scientific heritage. Those are the personalities, who left behind themselves a significant heritage in terms of their scientific, political and social activities.

M. Romeris and T. G. Masaryk are first and foremost related by pure intellectual affinity. They were the most lucid and radiant minds of Europe not only because they both received the best education in terms of its scope and content, but also since they succeeded to utilize their knowledge for enriching science and intellectual heritage of their nations. Both M. Romeris's and T. G. Masaryk's academic heritage is so vast in terms of its scope and the diversity of its content, that studies of their heritage are still relevant both in the Czech Republic and in Lithuania.

Although M. Romeris's studies were based on legal research and T. G. Masaryk's on philosophy, they both are, without any doubt, personalities of a broader worldview, intellectuals of social and humane sciences. Sociology, history and politics interested them as much as the primary subjects of their studies, i.e. law and philosophy. The cornerstones of T. G. Masaryk's and M. Romeris's worldview were the destiny and well-being of their nations, therefore the issues of social justice were particularly important in both T. G. Masaryk's and M. Romeris's worldview since they are related not only to a specific person, but rather to the issues of equality and social well-being of the entire nation.

M. Romeris and T. G. Masaryk had very similar views on the conception of the national state. Both related the well-being of the state and the prospects of peace -and successful development to the concept of a civic rather than an ethnic nation. A Czechoslovak meant a Czech, Slovak, German, Pole, etc., living in Czechoslovakia. The Lithuanian nation is Lithuanians, Poles, Germans, Jews, etc., living in Lithuania. It is the concept of a civic nation in T. G. Masaryk's and M. Romeris's worldview which gives us the possibilities to recognize them as progressive figures of philosophical worldview, rejecting the idea of the national (in terms of ethnicity) state, which was popular and even dominant at the end of the 19th – beginning of the 20th century.

T. G. Masaryk recognized and respected the importance of law in life of the nation and the state. Being the head of state for a long period, he succeeded in preserving the principles of democracy and respect for the Constitution. It was the Czechoslovakia, led by T. G. Masaryk, which was recognized as nearly the only democratic state in that

region of Europe. However, T. G. Masaryk saw the law only as the “moral minimum”, which is important, since it can protect the nation against total anarchy. T. G. Masaryk perceived the “mechanics” of law as just a means in the efforts to achieve a more important goal, i.e. to develop a democratic state and humanistic society. That is why in T. G. Masaryk’s works the legal framework of the state, its specificities, challenges and problems receive less attention than the analysis of philosophical and value driven principles he talks about in search of prospects for genesis and development of the nation and the state.

M. Romeris related success of democracy to the principles of the rule of law, therefore the philosophical and positivistic aspects of organization of law, activities of legal institutions, distribution of powers and the mechanism of checks and balances were important subjects in his research. That is why M. Romeris’s scientific works deal not only with the philosophical issues of prospects of development of the state, i.e. democracy and political independence, but also thoroughly examine legal institutes and institutions, without progressive activities of which no democracy and statehood could be reached.

Thus the final target of cognition within T. G. Masaryk’s philosophical worldview was related to the philosophical foundations of the concept of a democratic state. M. Romeris, upon defining the goal, i.e. a state ruled by law, selected not only the ideal itself, but also the technique, needed in order to reach the goal and subjected them to his analysis. It was that circumstance that determined that T. G. Masaryk’s and M. Romeris’s scientific heritage is significant and should be regarded in more than one area or field of science.

The heritage of doctrines of both scholars is significant not only because they were the first in Lithuania and Czechoslovakia as regards most conceptual philosophical and legal issues, but also because this heritage has not lost its content and the relevance of its arguments in our times. The issues of democracy, humanistic civic society, the rule of law, constitutional foundations for the development of the state have not lost their academic and political relevance today and therefore M. Romeris’s and T. G. Masaryk’s intellectual heritage, their attitudes and logic, deriving from their worldview, are this conceptual reality, which provides us with a firm foundation for further scientific activities.

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TOMÁŠ GARRIGUE MASARYK AND MYKOLAS RÖMERIS: TWO FIGURES, TWO APPROACHES TO THE STATE AND THE CONSTITUTION

Summary

The article analyses similarities and differences of viewpoints of two prominent European scholars who lived and worked in beginning of the 20th century: Tomáš Garrigue Masaryk (1850–1937) and Mykolas Romeris (1880–1945).

First and foremost the article provides an analysis of personal, historical and geopolitical circumstances, which formed the viewpoints of T. G. Masaryk and M. Romeris. The article states that although the two scholars are different personalities with very different fates, they are similar in terms of lavishness, relevance and significance of their academic heritage to the societies of their time and today. Notwithstanding different positions of M. Romeris and T. G. Masaryk in state government institutions (T. G. Masaryk was the President of the Republic of Czechoslovakia) or in scientific institutions (M. Romeris was a Rector of Vytautas Magnus University), the article reveals that they, as professors and scholars, were constantly interested in similar problems and sought to better know the nation, state, history, constitutional framework and sovereignty.

The article also provides an analysis of viewpoints of T. G. Masaryk and M. Romeris towards the state as a result of creation of the nation, the concept of the rule of law, constitution and its content and prospects of development of the state. The article shows that M. Romeris's rule of law and T. G. Masaryk's democratic and humanistic state is the same ideal form of existence of the society, which both scholars sought to achieve with their activities and significant scientific heritage. The article is made relevant by showing that the objectives of a democratic state and the rule of law can not be contradictory, since the respect to the constitution, as an act of will of the nation, is the basis of a democratic state and civic society.

Key words: T. G. Masaryk, M. Romeris, Rule of Law, the Czech Republic, Czechoslovakia, Lithuania, Constitution, Democracy

TOMÁŠ GARRIGUE MASARYK A MYKOLAS RÖMERIS: DVĚ OSOBNOSTI A DVA NÁZORY NA STÁT A ÚSTAVU

Shrnutí

T. G. Masaryk a M. Romeris jsou dvě významné historické osobnosti. Jako by bez Masarykova filozofického pohledu na člověka, na národ a na stát, bez jeho politické činnosti bylo těžké pochopit český národ, rozvoj československého státu, tak by bez vědeckého dědictví Romerise bylo velice těžké po-

chopit aspekty právního a politického vývoje meziválečné Litvy. Jsou to osobnosti, po nichž zůstalo významné dědictví – výsledek jejich vědecké práce a jejich politické a veřejné činnosti.

Vrcholem politické kariéry T. G. Masaryka se stala funkce prezidenta Československé republiky. V akademických kruzích byl znám jako profesor filozofie UK v Praze. M. Romeris byl členem Státní rady Litevské republiky. Akademická veřejnost jej znala nejen jako profesora Univerzity Vytauti Magni, ale také jako vedoucího Katedry státního práva, děkana Právnické fakulty a rektora této uctívané instituce.

Tyto dvě osobnosti jsou především spojovány s nejvyšším intelektem. Patří mezi nejvýznamnější osobnosti v Evropě nejen proto, že obě měly výborné vzdělání, ale i proto, že využily své znalosti pro obohacení vědy a intelektu národa. Obě po sobě zanechaly bohaté dědictví. Toto dědictví je dodnes aktuální jak v České republice, tak i v Litvě.

Přestože základem studia u M. Romerise bylo právo a u T. G. Masaryka filozofie, oba lze nepochybně považovat za osobnosti širšího myšlení. Jsou to intelektuálně sociálních a humanitních věd. Sociologie, dějiny a politika pro ně byly stejně důležité a zajímavé jako právo a filozofie. Mezi nejdůležitější body jejich výzkumu patřily osud národa a blahobyt vlastního lidu. Právě takové chápání občanské společnosti v názorech Masaryka a Romerise přispělo k přiřazení těchto dvou osobností k osobám progresivního a filozofického myšlení, které odmítaly velice populární, dokonce dominantní, myšlenku konce XIX. století a začátku XX. století o národním státu (etnický aspekt).

M. Romeris a T. G. Masaryk měli velice podobné názory na koncepci národního státu. Oba blahobyt země, vyhlídky míru a úspěšného rozvoje spojovali s občanským, nikoliv s etnickým pojetím národa. Čechoslovák je v Československu žijící Čech, Slovák, Němec, Polák atd. Litevským národem jsou v Litvě žijící Litevci, Poláci, Němci, Židé atd. Právě takové chápání občanské společnosti v názorech Masaryka a Romerise přispělo k přiřazení těchto dvou osobností k osobám progresivního a filozofického myšlení, které odmítaly velice populární, dokonce dominantní, myšlenku konce XIX. století a začátku XX. století o národním státu (etnický aspekt).

T. G. Masaryk cítil a chápal důležitost práva pro život národa a státu. Dlouhou dobu byl hlavou státu, přičemž dokázal zachovat zásady demokracie a úctu k Ústavě. Právě pod jeho vedením bylo Československo považováno za téměř jediný demokratický stát v tomto regionu Evropy. Ve svých názorech T. G. Masaryk traktoval právo jako „mravní minimum“, které je důležité, jelikož nás může uchránit před totální anarchií. „Mechanika práva“ byla Masarykem chápána jako prostředek k dosažení důležitějšího cíle v procesu vytváření demokratického státu a humanistické veřejnosti. Právě proto ve vědeckých pracích T. G. Masaryka je analýze soustavy právního státu, jeho specifikům, výzvám a problémům věnováno mnohem méně pozornosti než analýze filozofických a hodnotových zásad při hledání perspektiv geneze a rozvoje národa a státu.

M. Romeris spojoval úspěch demokracie se zásadami právního státu, a proto filozofické a pozitivistické aspekty systemizace práva, činnosti právních institucí a rozdělení moci se staly důležitými objekty jeho zájmu. Právě proto Romeris ve svých vědeckých pracích řeší filozofické otázky perspektivy rozvoje státu, demokracie a politické nezávislosti, a zároveň provádí důkladnou analýzu právních institutů a institucí, bez nichž by nebyla možná sama demokracie a státnost.

Závěrečný poznávací cíl filozofických názorů T. G. Masaryka byl spojen s filozofickými základy demokratického chápání státu. M. Romeris si po definici cíle – právní stát – vybral za objekt analýzy nejen samotný ideál, ale i techniku dosažení tohoto cíle. Právě tato okolnost způsobila, že vědecké dědictví T. G. Masaryka a M. Romerise je velice významné a může být hodnoceno v kontextu několika vědeckých odvětví a směrů.

Doktrinární dědictví těchto dvou vědců je významné i proto, že oba kvůli mnohým konceptuálním otázkám filozofie a legislativy nejen patřili k prvním v Litvě nebo v Československu, ale i proto, že jejich dědictví dodnes neztatilo na aktualitě svého obsahu a argumentace. Demokracie, humanistická občanská veřejnost, právní stát a základy ústavního rozvoje státu – otázky, které si dosud udržely aktuálnost akademickou i politickou. Právě proto je intelektuálním dědictvím M. Romerise a T. G. Masaryka ona konceptuální skutečnost, která nám poskytuje pevný základ pro další výzkum a vědeckou činnost.

Klíčová slova: T. G. Masaryk, M. Romeris, právní stát, Česká republika, Československo, Litva, ústava, demokracie