

THE CONCEPT OF JUSTICE ('DIKE' AND 'THEMIS') AS IT IS REVEALED BY *THE TEACHINGS OF NEAGOE BASARAB TO HIS SON THEODOSIE*

FLORENTINA GRIGORE*

Abstract: This paper is an inquiry into the problems concerning the construction of the legal system: the theme represented by human quality called to building and completing the legal system. The human being is ontologically placed between *Dike* / Legal Justice and *Themis* / Transcendent Justice. The person called to judge is the link between two different ontological orders: the order of the Absolute, of Themis, and the order of the Relative, of Dike. This person is the one who guides Themis to perform Dike, in order to do Justice in coincidence with Legal Justice. The *Teachings of Neagoe Basarab to his Son Theodosie* was written at almost the same time as *The Prince* by Machiavelli. If we look at Machiavelli's work and that of Neagoe Basarab, we are able to see two distinct ways to build and give legitimacy to the legal system. The *Teachings* do not approach a sophisticated architecture of the legal system, with hierarchies and complex abilities. The discourse about justice especially implies the moral valuation of the people summoned to judge and to do what is right. This work is about the foundation of the legal system regardless of its structure. And the foundation of the system is the person called to judge in such a way that *Δίκη* should coincide with *Θέμις*. From Machiavelli we have a different vision about Justice and the Legal system: he focuses on the system and not on the person who performs those functions within the system.

Keywords: *Dike*/Legal Justice, *Themis*/Justice, anthropocentrism, theocentrism, Christian values

SOME HERMENEUTICAL REMARKS ABOUT JUSTICE AND LEGAL JUSTICE

Written around 1519, *The Teachings of Neagoe Basarab to his Son Theodosie* is considered to be "the first important book of the Romanian cultural space" (Noica 1944, 15).

* Florentina Grigore (✉)

Faculty of Philosophy, University of Bucharest, Romania
e-mail: florentinagrigure_dz@yahoo

We approach the concept of Justice as it was revealed by *The Teachings* from an anthropocentric view. In this treatise we find a certain paragraph called “A word for the act of legal justice, for the Judge, for the Prince and for all” which concerns with Justice and the act of judging (*Teachings of Neagoe Basarab to his Son Theodosie*, 1996, IX, 325-331).

The book brings forward a special relationship between the legal system and the person, where the main accent is on the person, who represents the underlying basis of the legal system itself. This is a particularity of the East European cultural and political space. In *The Prince* by Machiavelli, written in 1513 (published posthumously in 1532), we see that the focus is on the system itself rather than the person who performs within it. The Prince is an institution and nothing more. So, we have two ways to build and legitimize the legal system: in Neagoe Basarab’s case we look at the person who performs within the system, and for Machiavelli the system is definitely more important than anything else.

We follow to highlight the special position of the person called in to judge and make justice work. Not only a certain position of the person in the construction of the legal system is at stake; but, more importantly, this is an ontological position, reserved to the human being, which also implies a specific nature of the legal justice. The relation with the transcendence (here, the Christian values) counts, for a coincidence between justice and legal justice, finally.

ETYMOLOGICAL DISCUSSION ABOUT THE CONCEPT OF JUSTICE: TWO NOTIONS FOR TWO DIFFERENT ONTOLOGICAL ORDERS

The concept of Justice is related to the two distinct notions that Justice involves, such as: *Justice* understood as *Themis/Θέμις*, from ancient Greek, and *Legal Justice* understood as *Dike/Δίκη*. There is a difference between these two notions used for the concept of Justice, and no less between two orders that are represented by Themis and Dike.

Through Justice, as Themis, we understand “the prescriptions that set the rules and duties performed under the rule of a leader *γενος* in everyday life, at home and under exceptional circumstance: in alliances, marriages, in battles. Themis was the privilege of a *βασιλεύς*, of divine origin. The plural *θέμιστες* defines the sum of prescriptions, the code inspired by God, the unwritten laws, and the collection of

sayings and decisions of a judge, the behaviour to follow” (Benveniste 2005, 13). Themis / Justice implies an order of the Absolute, of Transcendence, the order of principles, that of concept and not of the notion, the order of Values, in fact the order of the reason of Dike / Legal Justice.

For Legal Justice, we begin from “the Latin *dico* and the Greek *Dike*. *Dike* involves the representations of a right which determines what must happen in every given case. The judge - *δικας πόλος*, in ancient Greek - is the one who grades this formulary laws and who pronounces with authority; that is in Latin *dicit*, the right sentence” (Ibid., 20). *Dike* implies an order of Relative, of laws, of notion; in fact the order of what was founded by Themis, by Justice.

In a Platonic interpretation, Justice as Themis is the order of Ideas, and the order of Legal Justice as *Dike* is that of the copy of Ideas (an order of particular cases to which laws are applied, the laws founded by the order of principles). So it is a discussion about the foundation of the legal system, based on two orders, on two registers, each of them having its own notion of justice. *Dike* is Legal Justice – trial, legal court, order, punishment, rules: “*Dike* is the personification of *Themis*, of Justice” (Vlăduțescu 2012, 192). The human being is the link between these two different ontological orders. If the order of the Absolute, of Themis / Justice, is represented by Good and by Christian values (as we find in Neagoe Basarab’s *Teachings*), then we will be able to talk about the person (in a Christian meaning).

After we clarified the distinction between *Dike* as Legal Justice and Themis as Justice - two different notions for the concept of Justice, in general -, we now have two notions for two orders: the order of the Absolute, where Justice is Themis, and the order of the Relative, where Legal Justice is *Dike*. So, we are now confronted with a discussion about the foundation of the legal system, based on these two orders, with own characteristics:

- the order represented by Justice as Themis, the order of the Absolute, the transcendence, the principles of the concepts¹, of Values, of Christian values, i.e. the order of the reason of the Legal Justice, of *Dike*;

¹Here we need to make a difference between *concept* and *notion*. Notion is a concept applied in a particular case, a particular situation. We have ‘notion’ in the order of Legal Justice.

- the order represented by Legal Justice as Dike, the order of the Relative, of laws, of juridical notions, i.e. the order of what was founded by Justice, as Themis.

A DISCUSSION ABOUT FUNDAMENT - THE PERSON AS THE LINK BETWEEN THE TWO ORDERS: THE ABSOLUTE AND THE RELATIVE, THE JUSTICE AS *THEMIS* AND THE LEGAL JUSTICE AS *DIKE*

The case presented in the *Teachings* has the following major consequence: the emphasis reveals the structure of the person and then that of the system (either legal or social). Man has the ability to be a reason for justice or injustice, depending on the way he is himself built:

Neagoe Basarab, like most humanists, is not doubtful of God is the creator of the world. He sees God as a heavenly watcher who caused the beginning and waits for the end (death) of man. In-between these two moments, man passes through the world himself, but not without God. The human being is endowed with will and that is the reason to be able to acting. Along his existence, man is a dual and contradictory human being, living through the senses and that's why he must not be tempted by elusive and deceiving things of this world, which is transitory. Because the love for the things of this world removes people's thought from God, the one who searches for fame loses his soul" (Cartoian 1996, 79).

The person is the link between two orders: the order of the Absolute, of Justice as Themis, and the order of the Relative, of Legal Justice as Dike. The person named to judge is the one who guides Justice (general justice), Themis, to perform Legal Justice as Dike. The dimension in which justice resides is that of a theocentric order, and the dimension in which legal justice resides is that of an anthropocentric order. The first dimension, that of justice, constitutes the reason of the second dimension, that of legal justice; hence, the establishment of a social ontology, as an order of the relative, of the human dimension, which resides in the order of the absolute. In the order of the absolute there is theocentrism - Justice, truth, equality, and honesty; in the order of the relative dimension there is anthropocentrism - legal justice, legal truth, isonomy, fairness. The link between the two dimensions/orders is the human being. Through man (as a result of a struggle with himself) one may filter the idea of justice.

The man who assumes the values by which (absolute) principles are expressed from the absolute order (that is theocentrism, justice, truth,

equality, honesty) will be the link for the order of the relative; so that when he is appointed to judge and to rule in this order of the relative, he will be able to do legal justice that coincides with justice, the legal truth with truth, the isonomy with equality, the fairness with honesty. So, after someone assumes the values representing the expression of principles in the world of the relative from the order of the absolute, he becomes criterion, measure and reason - hence the anthropocentrism. In such a view, the person who manages to become criterion and reason (built, in his turn, on the values representing the principles from the absolute order) could be seen as an analogy of the theocentrism from the absolute order.

If we look at these two dimensions (in the order of the absolute, respectively in the order of the relative) and try to explain them from Plato's perspective, we could state that legal justice in the order of the relative is in fact a copy of the 'Idea of justice' in the order of Ideas / the Absolute.

According to Neagoe Basarab, a man should build his inner self on the eternal human values. Only through these values he will be able to meet the expectations, to fulfil the functions, to make justice work, and to constitute the guarantee of these functions, the quality of the legal system. The control upon the legal system is ensured first and foremost by the self control of the reason, represented by the person appointed to perform tasks in the legal system. The *Teachings* represents "a praise of human being ... defined by faith and reason; [and] the reason is a real guide to life and conduct" (Georgiu 2007, 44). This kind of man should present some type of self-control based on the values on which he constructed himself. The legal universe we find in the *Teachings of Neagoe Basarab* shows us that the act of judging means to making justice work; more precisely, acting in a way of the legal system. On the one hand, it is about a delicate relationship between Justice and the legal system; on the other hand, it is about the relationship between man assuming Christian values (the eternal human values: good, justice, truth, respect for the human being and his/her dignity) and the legal system. The book we are analyzing here is not a construction of the legal system; it is rather a discussion about the reason of the legal system, represented by the quality of the man appointed to build and to carry out a legal system. The author of the *Teachings* exhibits an "anthropocentric position" (Cazan 1980, 39) – taking into account 'anthropocentrism' as a concept in general and also

as a concept regarding justice, which may lead to justice coinciding with the legal system.

CHARACTERISTICS OF THE WAY OF SEEING JUSTICE IN RELATION WITH SOME OTHER VIEWS ABOUT SOCIAL AND LEGAL SYSTEM

The *Teachings of Neagoe Basarab to his Son Theodosie* was compared with Machiavelli's *The Prince*. These two works follow the matter of establishing a set of rules, norms for the art of governing, but the essence of the two political thinkers, who choose the most appropriate actions in order to support their ideas, is different. „For Machiavelli, the art of governing means directing the natural forces and those of the nation, and understanding the real world and not the ethical one. The world of the Prince is a real world in which power does not come only from God, so it is a world in which the leader has his own possibilities to decide.” (Georgiu 2007, 43). If Machiavelli's work caused debates and was contested on behalf of morality, the *Teachings of Neagoe Basarab* brings up the idea of the absolute monarchy of divine right, subordinated to the Christian belief. But a monarchy of divine right, unfiltered through the permanent struggle of a man's self-construction - all the more so if the man is on top of social hierarchy - will lead not only to his lack of essence, but also to the collapse of the social system itself.

In the relation between a man and the legal system, the over demand for the construction of the legal system, as well as neglecting man and his self-formation according to Christian values and eternal human values (e.g. the French monarchy of divine right) leads to the fact that “to judge” will mean, at best, legal justice, probably doing a human injustice, and, finally, collapsing of the entire social system.

In the case of the French monarchy of divine right, we see a path along which, because of the preoccupation oriented exclusively towards the system and the ignorance of the quality of the human element from the legal and social system overall, the establishment collapsed. The legal component will deny the fulfilment of the natural obligation of bringing reality under legal rule. The moment this takes place is the moment of the Revolution, or maybe even its cause. Instead to wonder: how was it possible, maybe we should change the paradigm and ask ourselves: when was it possible? The answer could be: when the legal constituent did not allow reality to be brought under juridical rules. Or maybe: because “a Revolution is never a case”

(Duverger 1995, 5). Starting from the principle that firstly the current situation within the practical reality, and then the legal constituent which intervenes to sanction it, to offer a framework to it, are coming, it is clear that the practical reality is the one claiming the subsequent legal rules. The practical reality or experience generates the legal procedure, as in any practical situation which demands legal and political rules. But the French legal system refused to bring its reality under rule; and the consequences were unprecedented.

THE NEED TO ASSUME VALUES, THE NEED OF TRANSCENDENCE

The emphasis did not only regard the construction of a legal system, but especially the necessity of a valuable person within the legal system, guiding himself/herself after the Christian values. We have to understand that „Neagoe Basarab was a prototype of Byzantine *caesar*” (Iorga 1981, 133). We may speak about a *ratio* – the man and the system – within which every component must act according to reason and values. The legal system is right if the man appointed to serve it is built according to Christian values and eternal human values. Thus the foundation of the legal system is the man, and the foundation of the man appointed to perform tasks within the legal system and the social system is represented by the Christian values and the eternal human values. This is one of the particular features of the *Teachings*: before representing an institution - a legal institution, a legal principle or the law itself -, a man is firstly representing himself and he must do so according to Christian values and the eternal human values. If this component (the ‘quality of man’) of what is to be a *ratio* (man-legal system) was neglected in the *Teachings*, we could state that “judging” would have meant, at best, making justice work according to a legal system. Between A and B, justice will establish that A is right, but legally right (as interpreted by the legal system) may not be equal to justice. Justice, legal justice, and the legal truth are built on evidence, on legal arguments and there is not always an overlapping between truth and legal truth, between justice and legal justice. Legal justice, only built on the basis of legal evidence may cause a human injustice. If the legal evidence reflects the reality of the actions, then justice and legal justice coincide. But they may not coincide at all. Legal justice is the one established by evidence, but it is not necessarily justice. Legal justice is given by the system, it is a solution offered by the system; it is a product coming from actions accepted as evidence by the legal

system. Justice may coincide with legal justice if it is done by a man built according to Christian values. Such a man will be able to do justice by the virtue of law and considering the spirit of the law.

Doing justice to someone or something only by the virtue of law may lead to a solution, and this solution is right because it is given by a legal system and represents legal justice. In order to move forward, according to *The Teachings of Neagoe Basarab*, the person appointed to do justice must also obey to the spirit of the law, and this is possible on the ground of the Christian values and the eternal human values. The Christian values work in a double procedure: on one hand, they guarantee the legal system compliance, and on the other hand, they are the reason/source of men who serve the legal system. The legal system is a formal construct and the result of this system is legal justice, based on legal truth, on a translation of reality into legal reality. Without the man appointed to judge, justice becomes strictly formal, as the legal system is.

Only a man living the Christian values and, in general, the eternal human values, who becomes a reason of the legal system, can eventually contribute to the coincidence of Legal Justice/*Dike* and Justice/*Themis*; respectively, the legal reality will coincide with reality, and the legal truth will coincide with truth.

ACKNOWLEDGEMENT: This paper was written within the “Innovation and development in structuring and representing knowledge through doctoral and postdoctoral fellowships (IDSRC – doc postdoc)” Project, cofinanced by the European Union, from the European Social Fund through the Sectoral Operational Program Human Resources Development 2007-2013, under contract number POSDRU/159/1.5/133675.

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