

CONCEPTUAL CLASSIFICATIONS OF JUSTICE - LEGAL AND PHILOSOPHICAL CONCEPTS

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Abstract:

Justice is the concept of justice based on moral ethics, reason, law, natural law, fairness and equity. The right is usually equivalent to justice because, the latter is characterized by a series of rational elements. The concept of justice refers to fairness and equity, both as a moral principle and as a judicial organization. In a broad sense, justice means the equality of all before the law and the fair application of rights and obligations, and in a narrow sense, it is related to the attribution of each person what is due to him. In fact, the force of justice, its purpose and role lie precisely in the element of balance between justice and power, and reaching this balance, affecting it, makes justice no longer justice, but power. It is undeniable that the act of justice can only be achieved through force, the power of the state, knowing that the strongest will also be the one listened to, but it is equally important that power manifests itself justly, that is, in a framework governed by equal laws for all and in which man, with his rights and needs, is at the center of the legislator's concerns.

Keywords: justice, law, rule of law, equity, ethics.

Justice is the moral concept of justice based on ethics, rationality, law, natural law, fairness and equity. Conception of justice is a key feature of society.¹

Revealing the role of law as the main guarantor of social order and regulations and respect the rights and freedoms of individuals, a number of authors², among which Mircea Djuvara, considered that the right³ is usually equivalent to *justice* because, the latter is characterized by a series of *rational* elements (such as equal parts, rational and logical nature of justice, the idea of fairness and proportionality in the distribution of justice) and *actually* (embodied in the stability of the laws, their uniform application).

Consequently, the right can not fully achieve these elements⁴ rational and actually *social justice's* elements, and therefore it can never be, and at the same time, *fair, just* and *equitable* for all individuals, even as a society or just not right will be more effective and functional than an unjust in terms of legal and legislative, which leads to the relativity of criteria which are defined according to the notions of *justice* and *law* in different legal systems.

For Aristotel as for Plato, the *supreme good*⁵ is happiness produced by virtue. The state is a necessity not a simple alliance is a perfect organic union, which aims universal virtue and happiness. It regulates the life of citizens through laws that dominate his life for individuals does not belong to them, but the state.

The content of laws is *justice*, whose principle is *equality*.⁶

Starting from Aristotel's theory of justice in terms of classification theory and practice of law, believe they can be distinguished several types or ways of achieving justice in society.

Distributive justice, based on the guarantee and the realization of rights and obligations of individuals in accordance with certain rules established by the legislature in proportion so that each person receive what he deserves (which is worth) based on its contribution in the company. Usually, distributive justice refers to proportional equality established by the legislature considering what caused the corporate (state) of its members

¹ Popa Nicolae, General Theory of Law, Actami Publishing House, Bucharest, 1996, p.100.

² Popescu Sofia, General Theory of Law, Lumina Lex Publishing House, Bucharest, 2000.

³ Mircea Djuvara, Rational law, sources and positive law, Publishing HouseAll, Bucharest – 1995, p.114.

⁴ Craiovan Ion, Philosophy of Law or Law as Philosophy, Universul Juridic Publishing House, Bucharest, 2010, p. 219.

⁵ Platon, Republic, in Works V, Scientific and Encyclopedic Publishing House, Bucharest, 1986, p.309.

⁶ Aristotel, Rhetoric, translated by Maria-Cristina Andries, Publishing HouseIRI, Bucharest, 2004., p.98.

that apply to the distribution of honors and property and that each of the partners tend to get a merit or right. Is proportional justice, or what Aristotel called even "geometric"⁷.

Rawls's *theory of distributive justice* is based on the assumption that society is a system of cooperation for mutual benefits between individuals. Justice thus embodies the most important value is related political and fundamental institutions of society.⁸

Theory of justice as fairness is a moral to accept Rawls, defined as the nucleus of a panoply of principles, standards, ideals, defining political values. Author's theory is a moral concept founded for specific purposes such as political institutions, social, economic, and in particular, apply basic structure of society.⁹

Like Aristotel treated and equity issue¹⁰ - *epieikeia* - as something distinct from justice. In essence, he says, what is fair is really fair, but not according to law. Equity is rather a correction of *legal justice*. Because of the irregular and natural variety of the material on which the law seeks to regulate, it can not provide for a fair treatment for every possible case. Therefore, equity does not act by changing the general law, but by a popular vote to soften the ad hoc application and by an arbitrator agreed by the parties to a dispute.

In another work, *Rhetorica*, he says what is right and fair is a kind of justice that goes over the *legal justice* that people prefer a judge who is guided by the principle of equity, but a judge applying strict the law. Therefore the judge was actually invented.

Aristotel does not analyze *epieikeia* in terms that are related to the natural sense of justice or moral hierarchy in which the spirit of the law would have preferred the letter. Aristotel's idea is not up to the Athenians to recognize the dual system of law and equity, familiar English and, in a different form, Roman law. On the contrary, it can be shown that even when the facts bring out something resembling good faith that the British and the Romans would have been a fair defense and justice, Athenian courts were bound by the letter of the law and not apply the principle of equity in opposition to it.

In modern terms, we may qualify as matching this definition of a *legislative judiciary*, of the kind that appears in statutes and other government measures that distributes benefits and sets limits and proportions that we can accept as rational and fair vis-a-vis a problem raised.

Coercive justice, trying to achieve a certain equality of rights and obligations of individuals, so that each individual was not due or to receive no more and no less than others. It is conceived as a kind of "equality" between what you offer and what individuals receive, between acts and their deeds and their consequences.

This type of coercive justice, which could still appoint as proposed by Giorgio Del Vecchio, and corrective equalization, ie regulating the relations of mutual exchanges. This court must but understood in a broader sense, applying it not only voluntary or contractual relations, but also those whom Aristotel called them unintentional, arising from crime, because there is some equality that is required correspondence between crime and punishment.

Coercitive justice is not *legislation justice* but rather what we call a judicial justice, justice made by the courts. Her mission is to restore a balance where the balance of justice was unbalanced. For Aristotel does not matter the quality of the human parties involved in such an imbalance: ie it does not matter. damaged as a good man a bad man, what matters is that there was an inequality which must be removed, and the judge seeks to make them equal with the penalties imposed.

Coercive justice and it presents two forms: one that occurs in cases of voluntary and involuntary situations that occurs.

Depending on the method of achieving this kind of justice can be of two kinds:

Commutative justice, which refers to an equivalent relation between individuals, when they establish their own measure or "norm" opposable relations between them (for example, the case of the purchase, repair damage, etc..)

Commutative justice is justice that governs relations between individuals, which is based on justice issues like gender equality and the legal position of equivalent value of the benefits and consideration (such justice finds expression in formula sublimated *do ut des* (I give it to you, so that you can give it.)). Commutative justice restored, also the balance between private parties when it is disturbed or broken. It is the simplest form, the form of elementary justice. Such justice bind (*juris vinculum*) or actively or passively, so collectivity (legal, collective entities) and individuals (natural persons), without distinction - when it is a collective entity - if a corporate body (person) public or private, without distinguishing whether it is a legal bond in domestic or international. For a community to participate in commutative justice it must be an organized community, thus enjoying the quality of legal entity (whether such a community is organized in a sociological sense, so the

⁷ Craiovan Ion, *Treatise on the general theory of law*, Universul Juridic Publishing House, Bucharest, 2007, p.88.

⁸ <http://cw.routledge.com/textbooks/philosophy/downloads/a2/unit3/political-philosophy/JusticeRawlsNozick.pdf>.

⁹ Rawls John, *Political Liberalism*, New York: Columbia University Press, 1993, p. 11.

¹⁰ Aristotel, *Nicomachean Ethics*, translation from the Greek language: Traian Braileanu, Antet XX Press, Bucharest, 1988. p. 114.

functional group with structure and internal hierarchy crystallized either in the legal sense, so as a legal entity recognized authority in accordance with the fulfillment of a legal procedure under the condition of meeting legal requirements stated for such recognition);

Justice "judicial" intervention is based on the third factor (the judge) in the event of dispute or neantelegere of individuals about their rights and liabilities.

Jean Dabin¹¹ believe that there are so-called *legal justice*, which is based on legal duties and obligations that individuals owed the community (in this case, the state), it can claim collective performance and achievement by individuals of such obligations (such as , for example, taxes, various fees and cash contributions, provision of social activities for the community, etc.).

So *legal justice* (or justice is the general governing relations between subjects of private law and authorities, consisting in obedience to the order so the community (social community to give what is due). Rule *legal justice* has its expression in law (here the name of legal justice). Unlike distributive justice, which has a downward, from social authority / public towards members of society in the quality of each of them as a citizen, legal justice is an upward, that is moving from company to company members organized as a whole political society, as a society that is elderly. In such a court, every member of society, regardless of social rank that is placed (governments or government) has the capacity of the borrower, is the daughter of company policy / which a society that belongs to both a *debitum legalum*, and a *debitum moralum*, so a complex duty (legal and moral at the same time) to return to the social good (*bonum commune civitatis*) which caused that person (tax and fee stipulated military service, attending public functions, to show respect for law and power / public authority).

Legal justice is impartial at origins but as it is applied ceases to be impartial in the sense that it creates the relationship of subordination between the state and its authorities on the one hand and other persons (natural or legal) on the other hand, causing it fair value through the law itself, being able to restrict or expand the scope of distributive justice.

The term *social justice*¹² has a broader sense in which it uses as a point of justice, especially in political practice, taking into account the general fact that political decisions do not put into play only objective, but value judgments about the man or the society.¹³ One refers to value judgments, always and in any political program of governance, social justice.¹⁴

Concept of social justice has been given many interpretations, so that social justice means:

- a) is applicable justice to what would call, usually "social problem";
- b) social justice is a term synonymous with the legal justice (general), except that, in accepting the social justice emphasis placed on content sc of the term natural, less on the law;
- e) combining social justice means justice terms of legal content and distributive justice.

Underlining some confusion in each of the three meanings of the notion of social justice, Professor Pierre Pescatore noted that, in fact, social justice is not a fourth type-form of justice, completing or overlapping typology santomista Aristotel and classical but only a means to making aware, in a more modern notion of common good, becoming, in this sense, a notion of great value especially in combat and political ideology.

In any society, *social justice* must ensure unhampered exercise by individuals of fundamental rights and obligations, thus making the legality and legitimacy of justice.

On 10 June 2008 International Labour Organization unanimously adopted ILO Declaration on Social Justice for a Fair Globalization. It is the third largest political statement and the International Labour Conference adopted the ILO Constitution by 1919. It is based on the Declaration of Philadelphia in 1944 and the ILO Declaration on Fundamental Principles and Rights of Labour in 1998. The 2008 Declaration expresses the contemporary vision of IOM Mission in the age of globalization.

Oppressive justice is found in countries with an authoritarian approach to legislation policy, which is fully independent of justice, a tyrannical interpretation of law. This society is one where people live under laws restricting illegal in the sense that legal rules are given without regard to societal values that society members but to "shelter" totalitarian regimes create their own law class oppression. However, historically, this type of justice should be considered to avoid.

¹¹ Jean Dabin, *Théorie générale du droit*, Bruxelles, Émile Bruyland, 1953.

¹² Pierre Pescatore, *Introduction à la science du droit*, Luxembourg, Office des Imprimés de l'État, 1960, p.440.

¹³ Duverger Maurice, *Introduction à la politique*, Paris, Gallimard, 1964, p. 19.

¹⁴ Universality present this concept in any political program exemplifies the foot, symptomatic for any thinking or policy decision, for example, U.S. Constitutie bases of liberalism in the federalist doctrine of bowing to the thesis that "justice is the goal of government, people always asking for justice and i always have to meet the governance "to this requirement (Harvey C. Mansfield jr., *Social Science and the Constitution*, in vol. *Confrunting the Constitution (The Challenge to Locke, Montesquieu, Jefferson, and the Federalists front Utllitarianistn, Historicism, Marxism, Freudianism, Pragmatism, Existentialism...)* (ed. by Alian Bloom), Washington, the AEI Press, 1990, p. 413).

Procedural justice focuses on how the decision is made, for example, were used to define specific procedures for making decisions, or to investigate a complaint right? Determinants of procedural justice include the consistent application of decision-makers objectivity, accuracy of information, remedies, the possibility that the intervention of the affected area, and prevailing moral standards. By ensuring conformity and compliance procedures, to respect human dignity and social acceptance creates the premise of those decisions, which inherently can not be for everyone.¹⁵

From the standpoint of Christian doctrine¹⁶, justice was classified into three kinds: divine justice (Justice Dei), human justice (Justice hominis) and evil justice (Justice evil).

Divine justice is that it rewards evil with good (Justitia Dei est reddere bonum pro bono et malum pro bono);

Human justice is to reward good with good and evil with evil (Justitia hominis est reddere bonum pro bono malum pro malo) - and the very positive fundamental principle of criminal law,

Justice evil, if one may say so (si tamen dicendum est habere posse diabolum aliquam justitiam), why is to always (semper) to reward good with evil (reddere malum pro bono)¹⁷

Justice belongs to and participate - in the Christian doctrine that is based on natural law - in order transmundan (from beyond our world) truth, so the order of absolute values, the absolute and eternal law, it enjoys two attributes:

a) is high in relation to the changing nature of laws prescribed by people;

b) is absolute in our spirit I ephemeral compared with the changeable nature of the sensible world.

Obviously, the idea of justice - the innate human spirit - an order suppressing safer going through is a long way from primitive and embryonic Clemente until the insurance policy with a high degree of technical perfection, through a complex regulatory rules and thus limiting human conduct, in moments of a long history in times of social crisis is especially accustomed invoking *divine justice*.

Conclusions

If justice is a questionable, relative thing, perceived in different ways by the beneficiaries of the laws, the power factor is recognized beyond particular wills, beliefs or opinions, so that the only way for justice to triumph is to associate justice with power. Therefore, in order to be respected, justice needs power, since the latter cannot be contested, questioned; justice without the force of authority seems powerless. It is equally true that power without the value of justice transforms into a tyrannical, condemnable dimension, capable of making a society sick and overturning the rules of democracy.

It is undeniable that the act of justice can only be achieved through force, the power of the state, knowing that the strongest will also be the one listened to, but it is equally important that power manifests itself justly, that is, in a framework governed by equal laws for all and in which man, with his rights and needs, is at the center of the legislator's concerns.

If power were to manifest itself discretionarily, beyond rules and laws and violating the rights of the recipients and beneficiaries of these laws, the notion of justice would dissipate, and power would become tyrannical. A healthy, democratic society is one in which justice and force are put together, with no hierarchy between them, but, on the contrary, both constituting a bond and making it fully possible for what is just to be strong, and what is strong to be just.

It is perfectly true that justice has a relative character, in the sense that it cannot be ascertained, evaluated, appreciated unanimously, in the same manner by all people. It often happens that what some people consider an act of justice, others consider to be nothing more than a great injustice, especially if they were involved in one way or another in a certain procedure.

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¹⁵ Morton Deutsch, Justice and Conflict, in The Handbook of Conflict Resolution: Theory and Practice, ed. M. Deutsch and P.T. Coleman (San Francisco: Jossey-Bass Inc. Publishers, 2000)

¹⁶ Give Christianity a new character metaphysical justice, justice is an expression and fulfillment also a transcendent wills, the will of God. Thus, St. Gregory of Nazianzus, in the second to theological speech (on combating the Eunomie of Cyzic), which, in 360 AD, Arius still believe that down "mystery of the Godhead or dexterity in language technology, logical expression of virtuosity")!", specified as follows: "as God is, and that is causing all together-working and supportive, and gaze teaches law (order) nature,.

¹⁷ Giorgio del Vecchio, Giustizia divina e giustizia umana, in vol. Diritto naturale è unità europea Tramo Angeli, Editore, 1958, p. 17-18.

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