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The Cracked Scales of Justice, or on the Tensions within the Romanian Judicial System[2]

Motto: Justum et tenacem propositi virum / Non civium ardor
prava jubentium, / Non voltus instantis tyranni / Mente quatit solida[3]

1. Introduction. Independence, formalist positivism, and professional conscience in a moment of institutional tension

Descriptive positivism in law can only be a temporary, transitional purpose. Equitable (*ex aequo et bono*), just justice is the natural purpose of law.[4] Its ethical foundations are evident, natural-law-based, and are ontological[5] and anthropological[6] in nature, not merely phenomenological, positive, mechanical, or simply descriptive.

In mature democratic societies, genuine crises of justice do not usually manifest themselves through spectacular breaks of the constitutional order or through explicit

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Manuscript received January 11, 2026.

2 This study takes as its starting point a series of philosophical and legal reflections, prompted by several tense episodes in Romanian legal and judicial life between 2017 and 2025, in which the protagonists were the Constitutional Court of Romania and the representatives of the three branches of government: legislative, executive, and judicial.

3 The passion of the public, demanding what is wrong, /never shakes the man of just and firm intention,/ from his settled purpose,/ nor the tyrant's threatening face / (Horace, *Odes - Roman Odes -,* 3, 3, 1-4, *cited in* Eugen Munteanu, Lucia Gabriela Munteanu, *Aeterna Latinitas. A Small Encyclopedia of European Thought in Latin,* Polirom Publishing House, Iași, 1996, p. 135.)

4 Jean-Claude Rocher, *Ethical Foundations of Law, vol. 1, Phenomenology*, Éd. FAC, Paris, 1994, p. 214: "However, an ultimate, positive purpose of Law is possible only in a transitory manner."

5 Jean-Claude Rocher, *Ethical Foundations of Law, vol. 2, Ontology*, Éd. FAC, Paris, 1994, p. 184: "Indeed, law is not merely an essential element in the structuring and functioning of a given society. It is, above all, a moral element necessary for life and social survival. It embodies indispensable ethical requirements, in order to give authentic meaning to human action in all its forms."

6 Jean-Claude Rocher, *Ethical Foundations of Law, vol. 3, Anthropology*, Éd. FAC, Paris, 1994, p. 200: "This dimension is that of Conscience, the privileged locus of the expression of universal and spiritual values, the eternal heritage of Humanity. In the evolution of societies, Ethics imposes itself on consciences. In a being, it imposes itself on the reasoning intellect."

suspensions of the functioning of institutions, but through natural-law approaches, under the banner of a rational, ethical, and deontological moralism, in the tradition pioneered by Hugo Grotius (in *the Prolegomena to the Treatise on the Law of War and Peace*), Pufendorf (in the treatise *De officiis*), Leibniz, J.-J. Rousseau (*The Social Contract*), Immanuel Kant (with his *pure reason*), Giorgio del Vecchio, Wolf (*Jus naturae methodo scientifica pertractum*), Henri Batifol, Stammler, Fr. Gény (the author *of the theory of free legal research*, which led to the acceptance of the plurality of formal sources of law and the democratization of the courts from under the Napoleonic normative monopoly), Husserl, Jean Carbonnier, etc., up to the present day.[7]

They appear more discreetly, in the form of tensions, of a counterpoint, at a meeting point of legal and moral meaning, of slow shifts in the balance of power, and of a progressive change in the relationship between institutions and public conscience.[8] Jurisprudence, like legislative norms, should adopt the principle of normative progress: *Cessante ratione legis, cessat ejus dispositio*…Precisely for this reason, such crises are more difficult to identify and, in the long term, more dangerous than open conflicts: they take root in language, in institutional reflexes, in seemingly technical justifications, and in the repeated invocation of form as a substitute for purpose. The wished-for pan-legalist law can easily slip into *the hypothesis of non-law*, to use the well-established Carbonnierist expression.[9]

In Romania in recent years, and with increased intensity during the periods 2017–2019 and 2024–2025, respectively, the debate regarding the status and role of the judiciary has seen a significant resurgence. European legal values, in the process of constitutionalizing the European Union, have been ignored. For instance, the institutional balance and the loyal cooperation among the institutions of the three branches of government, naturally.[10]

Inter-institutional conflicts, "unionist" and "corporatist" reactions (reflexes from a bygone era of isolationist justice, as Fr. Ost would say)[11] from certain segments of the

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[7] For details, see Michel Villey, *Philosophy of Law. Definitions and Purposes of Law. The Means of Law*, Éd. Dalloz, Paris, 2001 , pp. 224 *et seq*.

[8] Philippe Jestaz, *The Law*, 11th edition, Ed. Dalloz, Paris, 2021, p. 46: "In our view, their point of convergence (law and morality, n.m., VMC) lies in the fact that law is a means—imperfect, but we have found no other—of moralizing politics: thus, it could rather be compared to a chemical synthesis of politics and morality, of the effective and the just. Just as water, a liquid, has a nature entirely different from that of the two gases it synthesizes, so too does law bear no resemblance to either of its two components. It transcends them and is something else."

[9] For the concept of "discrete" crises of the law in jurisprudential justice within consolidated democracies, see Jean Carbonnier, *Flexible droit*, LGDJ, Paris, 10th ed., 2001, pp. 21–29, where the author describes the slow erosion of institutions through *formalism* and *symbolic attrition*. *E.g.,* p. 24: "A certain insignificance of the law must be one of the postulates of legal sociology: the law is a foam on the surface of society. If we need a hypothesis here, it will be, far from pan-legalism, the salutary hypothesis of non-law."

[10] Marianne Dony, *Law of the European Union*, Ed. des Universités de Bruxelles, Belgium, 2008, p. 35: "The legal order of the European Union has undergone, through successive revisions of the founding treaties, a process of progressive constitutionalization that continues unabated, despite the failure of the Constitutional Treaty. First, of course, there is, through the treaties, the organization of power within the European Union: the establishment of bodies, the description of the relationships between them, and the affirmation of guiding principles, such as institutional balance and loyal cooperation between institutions."

[11] For the isolationist image of the judiciary and its current duty to society, see François Ost, *Dire le droit, faire justice*, Ed. Bruylant, Brussels, 2007, p. 110: "2. – From the (corporatist) discipline of the judiciary to the (civic) ethics of justice. Undoubtedly, judges have always been required to uphold the duties of their office; competence, loyalty, objectivity, discretion, and a personal life as irreproachable as possible constitute the core (X. De Riemecker and G. Londers, *Deontologie et discipline, op. cit*., pp. 308 *et seq*.). But these traditional values have taken on a renewed and broader meaning today: whereas until recently they were focused on the corporatist defense of the image of the profession and the concern for

judiciary (the body of judges and that of prosecutors in the Public Ministry and district prosecutor's offices), the Constitutional Court's interventions in sensitive areas of public policy, and the repeated recourse to the procedural argument as a last resort for legitimacy have created a climate of institutional unease, felt with increasing acuity at the social level. In this way, *the law has become detached from justice*, as Paul Martens would say…[12]

Beyond the immediate circumstances, this state of affairs, described above, raises a deeper question: what happens to justice when its independence risks becoming detached from the sense of public responsibility that legitimizes it, and this happens, absolutely paradoxically, precisely through the instruments of law, as has occurred, ignobly and relatively recently, in Romania, beginning with the ill-fated Ordinance 13/2017? Beyond the law and rights lies, always, Justice… My good spiritual mentor, Jean Carbonnier, put it much more beautifully than I ever could.[13]

This issue is not a new one in the history of law. From classical reflections on the separation of powers within the state to contemporary debates on judicial governance, it has consistently been recognized that independence is not an end in itself, but rather a means designed to serve the achievement of impartial, credible, and socially accepted justice. Furthermore, all issues of the justice system, or within the justice system, are so many fiefdoms of the state. The justice system can become its own enemy when it closes itself off in a caste-like manner. Eugeniu Speranția was right when he observed that "The state is, therefore, by its very origin, a development, an amplification, an outgrowth of the need for justice."[14] When this means to an end is absolutized, and institutional autonomy begins to transform into normative self-referentiality, the risk arises of a rift between *legality* and *legitimacy*, between the letter of the law and its spirit.[15]

This article proceeds from the hypothesis that the current tensions in the Romanian judiciary cannot be adequately understood through an exclusively legal-formal reading or by reducing the debate to material interests or conflicts of jurisdiction. Rather, they express a crisis of meaning regarding judicial independence, in which procedural form risks supplanting reflection on the purpose of the act of justice, and the claim to autonomy risks overshadowing

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internal cohesion within the courts, they now appear as the guarantee of a judicial function that is more aware of its duties toward society."

[12] The tendency to "wash one's hands of the matter," à la Pontius Pilate - a proceduralist tendency that runs counter to the ideal of justice - is well captured by Paul Martens in "*Le droit peut-il se passer de Dieu?"* Ed. Presses universitaires de Namur, Belgium, 2007, p. 144: "Just as aesthetics had shifted from the celebration of God to the glorification of the subject, and then to its disappearance, so too has the law detached itself from justice and confined itself to mechanical legalism, and then to procedural forms." In essence, our Court of Cassation, always at the forefront of progress, had anticipated this trend, refraining, in accordance with Article 147 of the Constitution, from hearing cases on their merits, and exercising only a purely conceptual review (Fr. Rigaux, La nature du contrôle de la Cour de cassation, Brussels, Bruylant, 1966, p. 397)."

[13] Jean Carbonnier, *Écrits. Texts compiled by Raymond Verdier*, Presses Universitaires de France, Paris, 2008 , p. 1015: "The law beyond rights. " – Is there anything beyond the nebulous? It is a widespread opinion, though not always openly admitted, that, superior to all rights, there exists somewhere something else, let us call it *justice* by convention. However, once the transcendence of this law has been recognized, differences emerge regarding its content; and it would not suffice to say that justice is what remains for jurists when they have forgotten all positive law. For in this metaphysical space, thoughts are guided by personal sensibility and even, very often, by an incommunicable effect of revelation."

[14] Eugeniu Speranția, *Fundamental Principles of Legal Philosophy*, "Ardealul" Institute of Graphic Arts, Cluj-Napoca, 1936, p. 158. See also Andreea Dragomir, *Romanian Legal Philosophy*, Ed. Aius, Craiova, 2010 , p. 256.

[15] On the distinction between *legality* and *legitimacy* in the exercise of judicial power, see Max Weber, *Economy and Society*, Vol. I, Plon, Paris, 1971, pp. 226–234; see also Hannah Arendt, *On Revolution*, Gallimard, Paris, 1963, pp. 143–156.

the dimension of public service exercised on behalf of citizens. In some states, this procedural drift has obscured supreme values, such as social peace.[16]

In this context, the judiciary is called upon not merely to apply rules in an ultra-positivist, simplistic, and descriptive manner, devoid of legal hermeneutics, but to reaffirm its own institutional vocation rooted in aequitas, in justice.

The judge is not merely a technical expert in procedure, but the representative of a branch of state power, invested with an authority that draws its strength from public trust and the sober exercise of reason. In the U.S. Constitution, for instance, in Article IV, we find an interesting concept: *the Full Faith and* Credit *Clause*[17] in relations among the states of the union. Trust, loyalty, and concrete legal judgment are essential not only in inter-human relations but also in inter-institutional ones.[18] Where this authority is perceived as being used for institutional self-protection, or for the preservation of symbolic privileges, a slow but profound erosion of the moral capital of justice occurs. Rawls comprehensively explains the anti-aristocratic expectations of modern society[19] and, indirectly, evokes the ancient Roman principle (much appreciated by Eminescu also) *Privilegia odiosa* sum…[20]

The present study aims to examine these tensions from a doctrinal and philosophical-legal perspective, drawing on comparisons with other European models and the analysis of fundamental concepts, such as, *for example*, judicial independence, the speed of judicial proceedings, case deliberation, and the statute of limitations on legal liability.

The aim is not to launch diatribes against exorbitant demands from the judiciary, but to outline a reflective re-examination of the meaning of justice in a rule-of-law state, subject to the pressures of its own forms of responsible governance.

Ultimately, the question running through this article is a classic one, yet always relevant: how can justice remain independent without becoming opaque and isolated from the entire socio-political and economic "ecosystem," without detaching itself from the shared responsibility that we, all citizens, have toward our own citadel? The answer cannot be purely technical or exclusively institutional; it calls for a return to the spirit of proportion, to the ethics of public service, and to the idea that the law, in order to be respected, must first be understood as an expression of reason and collective conscience.[21]

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[16] *** *Judges in Corsica*, edited by Jean-Michel Verne, Robert Laffont, Paris, 2019, p. 194: "Did we make errors of judgment? Which ones? The proceedings and the reasoning behind judicial decisions generally reveal gaps in the investigation. However, due to a procedural issue, the case could not be reviewed on appeal; I would have preferred to get to the bottom of this matter. Justice has gone by."

[17] *** *The Constitution of the United States of America*, Foreword by Hon. Jack Brooks, Chairman, Committee on Judiciary of the House of Representatives, U.S. Government Printing Office, Washington, D.C., 1992, p. 9

[18] David P. Currie, *The Constitution of the United States of America: A Commentary*, translated by Lucian Galescu, Ed. Nord-Est SRL, Iași, 1992 , p. 47.

[19] John Rawls, *A Theory of Justice*, Revised Edition, Translated by Horia Târnovanu, Alexandru Ioan Cuza University Press, Iași, 2011, p. 474: "The basis of self-respect in a just society does not lie (...) in the income that each person receives, but in the publicly affirmed distribution of fundamental rights and freedoms. Since this distribution is equal, all have a secure, similar status when they come together to address matters of common interest to society. None tends to look beyond the constitutional affirmation of equality to pursue political strategies to secure their status."

[20] Valerius M. Ciucă, *"Privilegia odiosa sunt (?)*", in *Convorbiri literare*, Iaşi, no. 2/2004, pp. 156–157.

[21] In the sense of judicial independence as a public guarantee, rather than as a professional privilege, see Robert Badinter (born to Bessarabian parents, who became Minister of Justice, advisor to President Mitterrand, the abolitionist—in France, in

Methodological Delimitation: The Nature and Purpose of the Analyses

This text does not intend to be a political pamphlet, a circumstantial intervention in the public debate, or a strictly positivist analysis of recent constitutional or infra-constitutional norms.

The text itself does not target individuals, careers, or personal interests, nor does it, in and of itself, challenge the necessity of judicial independence in a state governed by the rule of law. On the contrary, the fundamental premise of this endeavor is that the independence of the judiciary constitutes one of the essential guarantees of citizens' freedom and institutional balance. This is a Kantian idea, albeit a rather precarious one in practical terms. Our freedoms versus the freedoms of others, under a general law of freedom—an acceptable algorithm, but one that is too transactional, reaching its limits when it collides with the wall of statutory law: public order, the protection of statutory honor, statutory norms, etc. This is what we see in the simmering conflict between the statutory powers in Romania... Professor and European judge Pierre Pescatore has clearly understood these nuances of the deficit in Kantian interpretation.[22]

The subject of this analysis, as we shall see, is of a different nature: the structural tension between the independence of the judiciary—understood as a public safeguard—and the tendency toward corporate and union-based self-referentiality, which risks transforming this independence into a form of institutional autarchy, aristocratic and detached from society as a whole and from the other state institutions within the institutional spectrum reserved for the other two branches of government: the legislative and the executive, respectively. The legislative branch is not unionized. The executive branch is not unionized. Why should the judicial branch be so?... This is a serious deviation on the part of the CSM. Perhaps not only in Romania. Theorists have long discussed the legal anomaly of unionization, given that democracies have accepted lobbying techniques and pressure groups, alongside demonstrations, as forms of social protest and freedom of expression. Essentially, unions are private associations formed with the aim of defending the professional and wage interests of certain professional groups, while ignoring other groups with the same legitimate interests. Can specialized "pressure" be accepted? No one has been able to address the legal anomalies arising from factual situations generated by socio-state conflict. Experts remain silent. They view this spectacle of intellectual tensions as the *sui generis* core of an institution, a soothing oddity from the perspective of social disputes.[23] We cannot provide a general answer either. As far as justice is concerned, however, constitutional and statutory legal norms are unequivocal. Trade unions are prohibited. State practice, however, is, unfortunately, transgressive. The most strident opposition of the CSM to the other two branches of government has a unionist flavor, a fact prohibited by constitutional norms and culture.

The group deserves private laws (*privi* + *legium*). It deserves power. Not from excellence, but from these two ingredients it derives its "prestige." This is the essence of

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Europe, and, to some extent, worldwide—of capital punishment, recently and gloriously enshrined in the Panthéon in France...), *Le pouvoir et la justice*, Fayard, Paris, 1999, pp. 87 *et seq*.

[22] Pierre Pescatore, *The Philosophy of Law at the Turn of the Millennium: State of the Issues, Attempts at Solutions, Reprint of the report published in 2002 in the Proceedings of the Grand Ducal Institute of Luxembourg, Section of Moral and Political Sciences,* Bruylant, Brussels, 2009 , p. 9.

[23] J.P. Buffelan, Introduction to Political Sociology, Masson et Cie, Publishers, Paris, 1969, pp. 126–131.

unionist psychology: *"Nous apprendrons aux groupes a devenir des dieux*" (Jules Romains), a *motto* used by Nicolae Steinhard in his doctoral thesis in law.[24]

The criticism formulated is not external to the judicial system, but internal, stemming from professional experience and a constant fidelity to the idea of justice as a function of the state exercised in the general interest.[25]

From this perspective, the approach is doctrinal and philosophical-legal, situated at the intersection of constitutional law, the theory of the separation of powers, and the ethics of public professions. It does not aim to provide an exhaustive inventory of recent case law nor a technical commentary on specific rulings, but rather to analyze recurring institutional reflexes that, over time, can erode the moral capital of the justice system and public trust in the judicial process.

Methodologically, the analysis is based on four complementary axes. First, a conceptual approach is employed, intended to clarify the meaning of the notions of judicial independence, judicial autonomy, procedural celerity, the statute of limitations on legal liability, and case-by-case deliberation, beyond their formal or rhetorical usage.

Second, we will employ institutional comparativism, drawing on established European and non-European models, not as a mimetic exercise, but as a critical tool for distancing ourselves from our own systemic dysfunctions.

Third, we will adopt a moderate normative discourse, of the *de lege ferenda* type, which does not propose radical or improvised solutions, but signals the need for a rebalancing between professional institutional autonomy and public accountability.

Finally, the analysis will be "galvanized" in a bath of evident ethical dimension, in the classical sense of the term, which regards the judiciary and its inherent deontology not merely as a profession, trade, or art, but as a public vocation (*in jus vocare*...).

The author's position in this text is explicitly stated: that of a law professor and former European judge, trained in a legal culture of rigor, sobriety, and institutional responsibility,

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[24] Nicolae Steinhardt, *Classical Principles and New Trends in Constitutional Law. A Critique of the Work of Léon Duguit, Addenda: Social Law*, Edited, with notes, an introductory study, critical references, and indexes by Florian Roatiș, Biobibliographical Notes by Virgil Bulat, Rohia Monastery, Polirom Publishing House, Iași, 2008, p. 349 et seq.: "It is said that a person must belong to as many groups as possible. But will this be the case in a society of trade unions? What are these 'groups'? Clubs, political parties that anyone can join? No. They are professional groups, clearly defined, reserved for members of a profession. And a person will naturally have a profession. He will therefore belong to one *group*, by force, and not to several. Then, where will freedom come from? If, however, by "group" we do not mean a profession, but any sports club, club, or league, another problem arises: will all of these, in their capacity as social totalities (as Gurvitch puts it), possess the power to issue legal rules? Will all of them, even social clubs, create binding legal relationships? / In reality, the claim by social jurists that they seek to defend the individual against the omnipotence of the State is hypocritical, just as the proposed means is false. The tendency is hypocritical because social law hates the individual, it is not concerned with his interests. The means is false because it presupposes the death of the State (the true goal of the trade unionists), which is the greatest evil. Because it replaces the authority of the State with the tyranny of the group. If one sincerely seeks the means to defend the individual against the State, these are: family, property, the freedom to use economic goods, and the preservation of social balance. But no, they want to take away the individual's property, destroy his family, and prevent him from enjoying the benefits of economic freedom. / Groupomania does not propose good associations."

[25] For a critique of institutional self-referentiality and the transformation of autonomy into autarchy, see P. Rosanvallon, *La légitimité démocratique*. *Impartialité, réflexivité, proximité,* Ed. Seuil, Paris, 2008, pp. 257 *et seq*.

with constant theoretical[26] and practical contributions to the deontological-judicial culture in Romania, as well as during years of cooperation with European colleagues within the Court of Justice of the European Union.[27]

The criticism expressed is by no means directed against the judiciary as a branch of government, but rather against certain mechanisms and reflexes that risk diverting it from its fundamental mission: the exemplary service of the idea of justice for all citizens. Pointing out such deviations does not weaken the judiciary, on the contrary, it attempts to protect it from its own internal erosion.[28]

In this sense, the article should be read as a reflection on the profound meaning of independence, not as a challenge to it, and as a plea for reconnecting the act of justice to the public conscience, to a sense of proportion, to reason, quite simply, and to humanism, to the reasonable expectations of ordinary, but wise, people and to the idea of public service carried out on behalf of citizens. When these criteria are met, everything becomes clear, and the "morning" fog dissipates...[29]

The Judge – the State's *Lawgiver*. Constitutional Premises and Institutional Architecture[30]

One of the recurring confusions fueling contemporary tensions in the Romanian judiciary concerns the constitutional nature of the office of judge. Possessing a "silent" conscience, one that cannot express itself, that cannot "regulate" in a normative sense, but only on a case-by-case basis; at times, it has been likened to a ventriloquist ("one who speaks from the belly") who, in Montesquieu's view, communicates the prescribed texts of another – the legislator – and in systems with a plurality of normative sources (custom, law, case law, doctrine, sacred texts, etc.), their reproduction is polyphonic, bringing into play the ventriloquist's own imitative capacity.[31]

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[26] *Exempli gratia*: Valerius M. Ciucă, Lecţii de sociologia dreptului. Câteva repere în sociologia generală a dreptului, Foreword by Anton Carpinschi, Polirom Publishing House, Iași, 1998; Valerius M. Ciucă, *Vagant prin ideea europeană. Fulguraţii juridico-filosofice*, Axis Academic Foundation Publishing House, Iași, 2011; Valerius M. Ciucă, *Euronomosofia. Periplu filosofic prin dreptul european. Lecţiuni*, Forward by Wilhelm Dancă, Afterword by Alexandru Zub, "Alexandru Ioan Cuza" University Press, Iași, 2019.

[27] In this regard, see Gheorghe Scripcaru, Valerius M. Ciucă, Aurora Ciucă, Călin Scripcaru, *Judicial Deontology. Syllabus*, Sedcom Libris Publishing House, Iași, 2009, pp. 155–172, and pp. 237–287, respectively.

[28] On the nature of the judge as an ambulatory power of the state, not as a public official, see M. Troper, *La séparation des pouvoirs et l'histoire constitutionnelle française*, LGDJ, Paris, 1980, pp. 113–129.

[29] Robert Badinter, *L'Abolition*, Éd. Fayard, Livre de Poche, Paris, 2000 , with this motto: *"Si je prouve que cette peine n'est ni utile ni nécessaire, j'aurai fait triompher la cause de l'humanité*," Cesare Beccaria, *Des délits et des peines*, p. 320: "On leaving the Senate, I discovered that the sun had dispelled the morning fog. I went to the Luxembourg Gardens. Children were playing around the pond where little boats were gliding. I watched for a moment. The weather was fine, wonderfully fine. I thought about everything that had happened. Then I walked home along the paths. It was over, the death penalty. Tillard, December 31, 1999."

[30] For the idea of the separation of powers as a dynamic balance, not as isolation, see Charles de Montesquieu, *De l'esprit des lois*, Book XI, Chapter VI, Ed. GF Flammarion, Paris, 1995.

[31] Stefan Goltzberg, *Les sources du droit*, Ed. Presses Universitaires de France, Paris, 2016, pp. 106–107: "The judge, according to Montesquieu's passage, is supposed to be the mouthpiece of the law, a figure of ventriloquism: he shows how he is not the source of the words he merely applies. The ventriloquist *stages* a dialogism (according to Frédéric Géa's term) or a polyphony (according to Oswald Ducrot): the jurist *acts as if he* were listening to the sources he chooses, whereas he chooses

In public discourse, but sometimes also in the system's internal dynamics, the magistrate is perceived either as a public official with special status or as an autonomous professional, possessing technical expertise and a high level of education (the Socratic ideal, denounced during the trial by the philosopher's populist accusers) [32], protected by independence. Socrates also erred in fetishizing the people, as Cicero did later (*Salus populi suprema lex esto, De legibus*, III,3,8). Both representations are incomplete and, in certain contexts, misleading. Both disregard the 2002 Bangalore Principles of Judicial Conduct.[33]

From a constitutional perspective, the judge is neither an administrative agent nor an expert outside the state order. He embodies a power of the state, alongside the legislative and executive powers. This characterization has decisive legal and ethical consequences. To exercise a power of the state means to act in the name of sovereignty, not in one's own name – *Nemo esse judex in sua propria causa potest*; just as the individual and society are not mutually exclusive, neither are the judge and the other powers of the state mutually exclusive;[34] to represent the state, not a professional body; to fulfill, with sobriety, a public mission, not the interest of a social group, under the banner of silence, reserve, and non-vindictive impartiality.[35] However, let us not delude ourselves. Judges are human beings too. As such, the refusal of money, disinterest, and self-sacrifice may appear hypocritical in the eyes of critics. When we encounter Pierre Bourdieu among the critics, we are left pondering…[36]

The separation of powers was not conceived as a juxtaposition of watertight autonomies, but as a dynamic balance between distinct functions, each limited by the existence of the others. Judicial power is not an exception to this logic. Its independence is not

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them *deliberately*, sometimes because he believes that is the applicable source, sometimes simply to convince his audience, this source being such as to justify a conclusion to which he adheres for all sorts of reasons."

[32] *** *Le grand livre de la justice. Une histoire mondiale des lois*, Edited by Emilie Jauliac, DK Penguin Random House, London, Dorling Kindersley Limited, 2021, p. 318.

[33] *The Bangalore Draft Code of Judicial Conduct*, 2001, adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices in The Hague, 25-26 November 2002, Translation by Judge Cristi Danileț, National Union of Judges, *apud* Gheorghe Scripcaru, Valerius M. Ciucă, *op. cit., Deontology*..., pp. 252 *et seq*.: *"Value 1: Independence. Principle: Judicial independence is pre requisite to the rule of law and fundamental guarantee of fair trial judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects*. (...) *Value 3: Integrity: 3.1. A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.* (...) *Value* 6: Competence and diligence. Principle: Competence and diligence are prerequisites to the due performance of judicial office. (...) 6.5. A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness."

[34] In this regard, see Mircea Djuvara, *General Theory of Law (Legal Encyclopedia). Rational Law, Sources, and Positive Law*, Chapter "The Rational Element in Law," All Beck Publishers, Bucharest, 1999, p. 431: "It is interesting to note that one of Durkheim's followers, Duguit, who did not closely follow this entire line of thought of Durkheim's, remaining with the conception of natural rights from the time of the French Revolution, posits individual rights as opposed to society, which is an inaccuracy, as Durkheim himself, who laid the foundations of social interdependence, demonstrates amply how the individual and society are not two opposing poles, but rather constituent elements of one and the same profound reality, elements so interdependent that no advancements of one can occur without entailing the advancement of the other, and no oppression of one occurs without simultaneously causing the regression of the other."

[35] Regarding the duty of restraint and sobriety of the magistrate, see ECtHR, Baka v. Hungary, June 23, 2016, §§ 165–172, concerning the limits of judges' freedom of expression in relation to the authority of the judiciary.

[36] Pierre Bourdieu, "Les juristes, gardiens de l'hypocrisie collective," in *** *Normes juridiques et régulation sociale*, Edited by F. Chazel and J. Commaille, L.G.D.J., Paris, 1991, p. 98: "You know the proverb: Hypocrisy is the tribute vice pays to virtue; and I spoke earlier of pious hypocrisy. One could say that legal pious hypocrisy is a tribute that the specific interests of jurists pay to legal virtue, and in a certain way, when one is part of the legal game, one cannot transgress the law without reinforcing it. When one belongs to a field whose fundamental law is that of the rejection of money, of disinterestedness, etc., even when one transgresses this law, and especially when one transgresses it for commercial purposes, one is condemned to pay homage to the dominant values of the field even in the very act of challenging it."

a form of isolation, but a functional guarantee, intended to protect the act of adjudication from external pressures, not to exempt it from any form of public accountability or social control.

Herein lies one of the central stakes of the current debate: confusing institutional autarchy for independence, and realistic-opportunistic decisionism for scientific, moral, wise legal hermeneutics.[37] This would be an uninspired and disastrous step backward in time. It is not merely the authority of case law that makes us, the postmodernists, content at the end of a hermeneutic and exhausting journey. We want more from justice today. We want the fulfillment of a rational ideal of hermeneutics, one that makes them fully congruent, compatible with themselves, "rabbinical," like the waters of French artesian fountains, which intertwine, intermingle, and seek their organic unity and symphonic harmony, in the words of Mircea Djuvara. The support, even if informal, of the community of deontological hermeneuts can be obtained, and the wise judge owes it.[38]

When the judge perceives himself primarily as a member of a professional caste rather than as the holder of a state power, his relationship with the other powers and with society changes substantially. Criticism becomes aggression, legitimate social control is reinterpreted as interference, and public debate is perceived as an attack on justice itself. In such a climate, the judiciary risks retreating into a self-referential space, protected by procedure but fragile in terms of legitimacy.

The European constitutional tradition has avoided this drift by constantly reaffirming the representative and impersonal nature of the judicial office. The judge does not judge in his or her own name, nor in the name of the professional body, but in the name of the law and the state, in the name of the European law, within the European Union, including from the perspective of European constitutional law. From this follows a specific requirement for sobriety, restraint, and neutrality in the magistrate's public conduct, including in forms of protest or advocacy. The suspension, even if temporary, of the exercise of judicial power cannot be equated with a traditional strike without affecting the continuity of the judiciary, an intrinsic component of state continuity. Time flows without interruption. For the sovereign state and its three branches of government, there are no pauses, not even for a millisecond. This principle derives from the Latin maxim, so instructive: "A year that has begun is not interrupted until its end..." *Annus incoeptus habetur pro completo...*

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[37] Alexandre Viala, *Philosophie du Droit*, Ed. Ellipses, Paris, 2010, p. 118: "II. The growing emergence of the figure of the judge. Legal thought in the age of judicial decisionism. – One of the major trends in contemporary legal thought lies in the extensive use of the resources of the hermeneutic revolution, which, in the 20th century, brought to light the judge's discretionary power as an interpreter - a power so long denied and obscured in the earlier era when legal positivism reigned supreme. The resonance of Montesquieu's words - for whom *the judge is the mouthpiece that pronounces the words of the law* - is today seriously stifled by the success, widely perpetuated in first-year law lecture halls, of the phrase of Hector, who, in the words of Jean Giraudoux in "*The Trojan War Will Not Take* Place", maintains that *law is the most powerful of the schools of the imagination* and that *no poet has ever interpreted nature as freely as a jurist interprets reality*."

[38] Benoît Frydman, *Le sens des lois. Histoire de l'interprétation et de la raison juridique*, 2nd ed., Bruylant, Brussels, 2007, pp. 662–663: "In jurisprudence, it is decisions that are authoritative, not interpretations. (…) This is why any judicial decision worthy of the name must account for its validity, beyond the authority of the court and the invocation of its case law, by means of adequate reasoning. But to whom should this reasoning be addressed, particularly when the decision it justifies is no longer subject to any appeal within the positive legal system? It is here that the ideal tribunal of the community of interpreters, or the universal audience, asserts itself with all the force of its necessity. It symbolizes this idea, which is, after all, simple: that, for the assessment of its validity, every interpretation necessarily falls under an authority that transcends it, before which it is called upon to justify itself."

The implications of this characterization are manifold. They concern, first and foremost, the relationship between the judge and the public interest: the awareness that, before the court, stand not only the parties but the state itself (*erga omnes*), confers upon the act of justice an enhanced dimension of responsibility. Second, they influence the exercise of institutional autonomy, which must remain compatible with the principles of transparency, accountability, and constitutional oversight. Finally, this perspective shapes the relationship between the branches of government, which cannot be one of permanent rivalry, but rather of tense coexistence, yet loyal to the constitutional order.

To understand the judge as a power of the state means, ultimately, to accept that his independence is not an individual property of the magistrate, but a delegated function, exercised for the benefit of the political community, of organic society, of the social *entelecheia* (intimate unity), as Aristotle and Giorgio del Vecchio would say.[39] Any break between this function and the awareness of the public mission that legitimizes it transforms independence into isolation, and authority into a procedural reflex.[40] Both can lead to a counterpart of justice, to anti-justice: *Summum jus, summa* injuria…

Judicial Independence vs. Corporate-Unionist Drift: A Few Thoughts on the CSM[41]

If the role of the judge is understood as the exercise of state power, and their independence as a public guarantee, then the institutional framework designed to protect this independence takes on a decisive importance.

In the Romanian constitutional order, this role falls to the Superior Council of Magistracy (CSM). The issue is not the existence of such a body, but the way in which it defines its legitimacy, its limits, and its relationship to the public interest, to legitimate external oversight, and to social and legal criticism, which are equally legitimate.[42]

In its original, constitutional form, the CSM is a balancing body, not an autonomous center of power. It does not represent the judiciary in a corporatist or unionist, aristocratic, sense and does not replace democratic oversight. Its mission is to guarantee the independence of the judiciary from the other branches of government, and not to guarantee the various professional advantages of those who exercise judicial functions *in concreto*.

The problem arises when this function is reinterpreted as a mandate for the exclusive self-representation of the body of magistrates. Legitimacy built almost exclusively on internal voting, caste solidarity, and the rhetoric of defense (the "besieged fortress" complex) favors the transformation of the CSM from an institutional mediator into a self-interested actor.

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[39] Giorgio del Vecchio, *Lectures on Legal Philosophy*, Based on the 4th edition of the Italian text, Preface by Mircea Djuvara, Ed. Europa Nova, Bucharest, 1994 , p. 269.

[40] Regarding the role of judicial councils as balancing bodies, rather than bodies of corporate or union representation, see Venice Commission, *Report on the Independence of the Judicial System*, CDL-AD(2010)004, §§ 32–38.

[41] On the risks of the corporatist isolation of CSMs, see Tim Koopmans, *Courts and Political Institutions. A Comparative View*, Cambridge University Press, 2003, pp. 198–211.

[42] For the idea of public interest as a criterion external to power, see Jürgen Habermas, *Droit et démocratie*, Ed. Gallimard, Paris, 1997, pp. 165–179.

Independence, instead of remaining a relational value, becomes a symbolic shield used to block any form of legitimate criticism or evaluation.

This conceptual shift has serious consequences. First of all, it affects the relationship between the judiciary and society: an institution that finds legitimacy from within tends to lose touch with public perception and the demands of citizens. Second, it alters the balance of powers, as institutional dialogue is reinterpreted as interference, and constitutional oversight as a threat.

A comparative analysis shows that it is precisely the corporatist insularity of judicial councils that has generated crises of legitimacy. Systems that have resisted this temptation have accepted controlled openness to society by including external figures who are politically unaffiliated but possess professional and moral authority. The goal is not to weaken independence, but to temper the temptation toward autarky.

In the Romanian context, the problem is exacerbated by a defensive institutional culture that equates the public interest with the interest of the professional body and treats criticism as an act of hostility. But the public interest is not a commodity to be voted on by those in power, it is an external criterion that limits and legitimizes the exercise of that power. Autonomy without openness tends to become symbolic impunity, and impunity erodes trust.

The role of the SCM must therefore be reexamined not in terms of power, but of purpose. It is called upon to maintain the balance between the judge's freedom to adjudicate and society's right to responsible, transparent, and credible justice. Without this rebalancing, independence risks remaining a formal value, invoked ritually but empty of meaning.

European Models of Good Judicial Governance. Openness, Oversight, and Legitimacy

Understanding the tensions within the Romanian judiciary requires drawing on the experience of other European systems that have, themselves, faced the dilemma of independence without isolation and autonomy without autarchy.

Comparative analysis does not serve a mimetic function here, but one of criticism: it allows for the identification of institutional solutions designed to limit self-referentiality and reconnect the judiciary to the public interest.[43]

1. The French Model: Independence Tempered by Institutional Openness

The Superior Council of the Judiciary in France constitutes a relevant example of progressive institutional reform, implemented in response to repeated crises of legitimacy.

Following periods marked by social tensions, challenges to judicial authority, and suspicions of corporatist insularity, the French system opted for a controlled opening of judicial governance to the outside world.

[43] *Exempli gratia*: on the evolution and successive reforms of the Superior Council of the Judiciary in France, see Dominique Rousseau, *La justice en France*, LGDJ, Paris, 2017, pp. 201–224.

This opening was not conceived as a political subordination of the judiciary, but as a symbolic and functional balancing act. The integration of politically unaffiliated public figures, renowned law professors with unquestionable academic authority, and trustworthy representatives of civil society, served to introduce an external perspective capable of limiting self-referentiality and restoring public confidence in the administration of justice and the good governance of this state power.

The judge's independence was preserved in the exercise of jurisdiction, but the exercise of judicial power was reinserted into a broader framework of clear public accountability and ethical decency.[44] The judge must possess a "*moral brain*."[45] We ask Creon, a character from a modern, imaginary Sophocles, to be a deontologist as well, not merely a consequentialist of the very norm he himself issued. Let him also allow Antigone to invoke the morality of justice, not just the letter of the law, a law that seems to be more of a self-serving command than a wise written custom…[46] Perhaps, for this reason, the conceptual and philosophical framework of today's constitutional law has a more customary rather than formal-legal character...[47]

We are talking in deontological terms for more than 800 years... One of the founding fathers of Anglo-Saxon *common law*, Henry de Bracton (c. 1210–1268), author of a veritable encyclopedia of Roman law, customary ethnology, and formalist legalism, the first English legal compendium, published in 1259, speaks to us of the fundamental obligations of a judge: incorruptibility (*Fraus omnia corrumpit*), respect for the the supremacy of the law (the law is above all, including the king, rejecting the classical principle *of Princeps legibus solutus*), judicial independence, diligence in adjudication by not delaying trials, and a love of justice.[48]

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[44] Regarding the controlled opening of judicial governance as an instrument of democratic legitimacy, see Jean-Louis Nadal, *La justice au cœur de la démocratie*, Fayard, Paris, 2012, pp. 63 *et seq*.

[45] Mathieu Garcia, "Mesurer les conditions de la responsabilité: quel apport des neurosciences", in Solenne Hortala, Sébastien Ranc, and Romy Sutra (eds.), *Mesure(s) et Droit*, Presses de l'Université Toulouse Capitole, 2023, p. 209: "Formulons une première question: une question indispensable (bien qu'elle puisse de prime abord donner l'impression d'être avant tout porteuse d'une puissance polémique): existe-t-il vraiment quelque chose comme les *signatures neurale* de la morale ? C'est la première chose qu'il faut se demander, car si la morale n'est pas toujours suffisante pour légitimer l'imputation morale d'un méfait, elle n'en demeure pas moins le premier des prérequis."

[46] Lalbila Raphaël Zouba, "Créon de Thèbes, est-il un mauvais juge?", in *** *L'injustice*, edited by Franck Laffaille, Ed. Mare & Martin, Paris, 2024, pp. 296–297: "Créon appréhendé par la morale. " Saisir Créon sous le prisme de la morale impose d'étudier sa figure sous l'angle des oppositions morales qui l'envahissent. À cette fin, il convient de déterminer si Créon peut être répertorié parmi les conséquentialistes ou les déontologistes. (…) Créon: conséquentialiste ou déontologiste ? Cette question porte sur les conflits internes à l'œuvre en Créon. Cette interrogation est donc nécessairement morale entre son obligation de roi (usurpateur, quand même, n.m., VMC) et sa situation d'oncle, membre de la famille d'Antigone, celle qui a transgressé la loi."

[47] Claire Lovisi, *Introduction historique au droit*, 3rd edition, Ed. Dalloz, Paris, 2007, pp. 319–320: "La résurgence de la coutume. (…) C'est peut-être en droit constitutionnel que la coutume a joué le rôle le plus décisif. Les constituants de 1875 ont adopté une constitution qui ne satisfaisait vraiment personne. Les monarchistes y voient un pis-aller en attendant la restauration monarchique. Les républicains la considèrent comme un régime acceptable dans l'immédiat, mais appelée à être réformée dans un sens plus républicain. (…) La force de la coutume est pourtant telle que, pour redonner du lustre à l'institution présidentielle, certains n'envisageront qu'une révision formelle de la constitution."

[48] Robert Jacob, *La grâce des juges. L'institution judiciaire et le sacré en Occident*, PUF, Paris, 2014, pp. 315–316: "Le juge doit éviter la faveur, la crainte, l'envie, la haine, qui pervertissent le jugement. Il ne peut accepter aucun de ces cadeaux (munera, xenia, dona) dont l'Écriture enseigne qu'ils aveuglent les yeux des sages et pervertissent les paroles des justes. Toutes sortes de cadeaux. Mais aussi les cadeaux de complaisance (obsequium), qui consistent dans l'échange de services, petits ou grands, et asservissent la justice en l'impliquant dans le jeu des influences et des clientèles. Mais aussi les cadeaux de la langue, qui ne viennent que des paroles de promesses et de séduction, mais oblitèrent eux aussi le jugement. Mais encore les cadeaux du sang, ceux que tout homme reçoit à sa naissance en raison des liens de parenté et qui l'inclinent à favoriser les siens. L'abstention des munera réelles et symboliques est seule fondatrice d›impartialité. Elle fait du juge une

The significance of this model lies not in its technical details, but in the institutional philosophy that animates it: the idea that justice, in order to remain credible, must accept outside scrutiny (through independent and renowned figures of great prestige and scientific, professional, and cultural authority) and view it not as a threat, but as a sign of democratic maturity.[49] The image of justice, its impeccable character, cannot tolerate within its ranks people who have offended the law by transgressing it, are abusive, people who have turned public office into a stepping stone for social advancement, plagiarists, informants for the intelligence services of dictatorships, impostors and the illiterate, or those who favor the undeserving (*Nemo judex in re* sua…) etc. The image of justice demands impeccable character as long as it is served by those in robes on the thrones of judgment. There is a headline in *Le Monde* (January 31, 1997): *"Les Français jugent sévèrement la justice…*"[50]

2. The German Model: Professionalism, Rigor, and Distance from Power[51]

The German model follows a different logic, but one that converges with the French model in its ultimate goal.

The German emphasis is not on mixed representation within a centralized council, but on professional and ethical standards (good faith, bona fides, and Kantian goodwill, both non-Machiavellian)[52] in the selection and promotion of capable, professionally well-trained judges who are disobedient to public powers competing with the judiciary and courageous in a civic sense; a rigorous selection managed within a decentralized framework, based on the principle of subsidiarity and, implicitly, on the recognized powers of the federal "states".[53] From this

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sorte de renonçant, elle l'isole des liens sociaux qui sont le lot de l›homme ordinaire. À l›impartialité s›ajoute le devoir de diligence. Parce qu›elle participe du salut, l›œuvre de justice requiert le zèle (la célérité, n.m., VMC). Enfin, la troisième qualité du juge est l'amour de la justice et de la vérité, qu'il faut cultiver dans l'élaboration des sentences comme dans leur exécution."

[49] On the important role of external figures and civil society in balancing judicial autonomy within the CSM, see: Venice Commission, *Opinion on Judicial Councils*, CDL-AD(2007)028, §§ 14–21.

[50] Regarding the central role of prestige over power, especially in the field of justice, see François Terré, "Sur l'image de la justice," in *Horizons du droit*. Recueil d'articles, Ed. Dalloz, 2017 , p. 199: "L'on constate en définitive que coexistent dans les esprits, par rapport à la justice, à la fois un désir de fuite et un désir de rapprochement. L'image est tout à la fois d'ombre et de lumière, ce qui ne facilite pas la distinction de ce qui est immuable et de ce qui est passager, des constances et des variables. Il y a des insatisfactions de caractère congénital (lenteur, archaïsme, partialité). Il y en a d'autres qui ont pu susciter la recherche véritable de remèdes: distance estimées excessives, rejet de la bureaucratisation, désir d'une meilleure prévention des litiges, attachement a un prestige des juges altéré par les comportements ostentatoires et engagés de certains d'entre eux et, au-delà même de ces aspirations, demande d'une meilleure harmonie entre une justice, expression même d'une morale et une loi servant a canaliser ses manifestations d'une part, et d'autre part, des juges investis de l'insigne mission de juger les autres."

[51] For details on the German model of judicial careers and, in particular, the emphasis placed on competence and professional rigor, see Reinhard Zimmermann, *The Law of Obligations. Roman Foundations of the Civilian Tradition*, Oxford University Press, 1996, Introduction, pp. 1–7 (on the legal culture of rigor); see also Konrad Zweigert, Hein Kötz, *Introduction to Comparative Law*, Oxford University Press, 3rd ed., 1998, pp. 274 *et seq*.

[52] Luc Ferry, Une brève histoire de l'éthique, ed. *Le Figaro, Le Point*, Paris, 2013, p. 84: "5. La bonne volonté kantienne (Kant, Métaphysique des mœurs, 1785). Il n'y a nulle part, quoi que ce soit, dans le monde, ni même en général hors de celui-ci, qu'il soit possible de penser et qui pourrait, sans restriction, être tenu pour bon, à l'exception d'une *volonté* bonne. L'intelligence, la vivacité, la faculté de juger, tout comme les autres talents de l'esprit, de quelque façon qu'on les désigne, ou bien le courage, la résolution, la constance dans les desseins, en tant que propriétés du *tempérament*, sont sans doute, sous bien de rapports, des qualités bonnes et souhaitables ; mais elles peuvent aussi devenir extrêmement mauvaises et dommageables si la volonté qui doit se servir de ces dons de la nature, et dont les dispositions spécifiques s'appellent pour cette raison *caractère*, n'est pas bonne."

[53] On the decentralization of the administration of justice and the role of the federal states in Germany, see Ulla Karpen (a distinguished law professor and judge), *Judicial Independence in Germany,* in *Judicial Independence in Transition*, Springer, 2012, pp. 91 *et seq*.

perspective, the German system is closer to the Anglo-American common law tradition, acting as a bridge between the continental European system of Roman-Germanic law and that of judicial, political, and strategic precedent, in which the judge is more concerned with highlighting the rule than with the *literal* application of the prescribed norm.[54] And for this reason, I recommend the German system for constitutional and civil justice in Romania, just as Posner would do for us.[55]

The defining characteristic of this model is its structural distance from two disruptive factors: the political and the economic.

A judicial career is built on criteria of verifiable competence, intellectual rigor, and a solid legal education, and promotions are the result of rigorous professional evaluations, in which the role of legal doctrine and the academic environment is essential.

Parliamentary oversight exists, but it is indirect and restrained, exercised through mechanisms of institutional analysis, not through interference in the judicial process.

This architecture reflects a specific conception of independence: independence as a result of competence and internal discipline, not as an effect of institutional isolation.[56]

A judge is protected not by a corporate, unionist, or "CSM" shield, but by his or her personal professional prestige (*e.g.,* American judge Richard Posner used statistics, such as the number of reversals or the number of citations, etc. and his biographer, Benjamin Cardozo, coined a term for this method: reputology…)[57] and through an advanced culture of responsibility and devotion to his or her highly honorable mission as a dispenser of justice. *Nota bene*, we are referring to the classical meaning of the concept of prestige, rooted in a person's ethical and professional excellence and nobility of character, and not the perverted meaning from the last century, rooted in the opposite of prestige: fierce individualism, power, and privilege.[58] What is "privilege"? – Simple. A private law, a law for one person, for an organization, for a group, etc. In a word, an anti-law. Hence, the expression so beloved by Eminescu: *Privilegia odiosa* sum... Can they, perhaps, be accepted? Not to be a hypocrit, some may be, provided they do not undermine public morality and social balance. The principle is also Roman: *Beneficium legis non debet captiosum* ("The benefits and advantages granted by law must not cause harm"). Simple, isn't it? Poor Eminescu, he, too, asked for a *privilegium*. Not for himself, but for widow Veronica Micle, a special, individualized

[54] Anne-Françoise Debruche, *Équité du juge et territoires du droit privé*, Foreword by Robert Jacob, Bruylant, Brussels, 2008 , p. 2: "Alors que le juge de *common law* joue un rôle actif dans l'énoncé de la règle de droit, son homologue romaniste est en principe cantonné dans l'application de celle-ci. Or, c'est précisément par rapport au droit positif que l'on prend la mesure d'équité. Le sentiment d'équité respectif des juges romanistes et de *common law* se manifesterait donc inévitablement sous des formes dissemblables, hypothèse qu'il nous a paru opportun d'examiner de manière systématique."

[55] Richard A. Posner, *How Judges Think*, Harvard University Press, Cambridge, Massachusetts, London, England, 2008, p. 277: "The decisional process that I am characterising as political and strategic may sound just like the method of the common law. Judges create common law as they go along, yet common law decision-making is a law-like activity. It is suffused with policies that reflect political judgments (for example, in favour of capitalism), but differs from constitutional law in critical respects."

[56] For the idea of independence as a result of professional discipline and intellectual prestige, not institutional isolation, see Niklas Luhmann, *Das Recht der Gesellschaft,* Suhrkamp, Frankfurt am Main, 1993, pp. 284 *et seq.*

[57] Sir Basil Markesinis, *Juges et universitaires face au droit comparé. Histoire des 35 dernières années*, Ed. Dalloz, Paris, 2006, p. 59.

[58] Gerhard E. Lenski, *Power and Privilege: A Theory of Social Stratification*, Translated by Dan Ungureanu, Amarcord, Timișoara, 2002, pp. 359–360.

pension, a sort of state decoration, as proposed by Maiorescu in the Parliament of Romania... But he did not get it...

3. The Common Lesson of European Models

Beyond structural differences, the French and German models converge on an essential principle: judicial independence cannot be sustainable without mechanisms of symbolic control and without a firm anchoring in the public interest. Where these mechanisms are absent or rejected in the name of absolute autonomy, tendencies toward corporatist, unionist, guild, or caste-based isolation, aristocratization, and immense losses of legitimacy emerge.

Comparative analysis thus shows that the issue is not merely the existence of a judicial council, but the institutional culture that permeates it, characterizes it, and galvanizes its purported authority.

Openness to the outside world, professional rigor, limiting the accumulation of power, and the rejection of autarchy are recurring elements in systems that have managed to avoid profound crises of credibility.

The Time of Judgment. Significance, Celerity, Statute of Limitations, and the Deontological Dimension of Judgment

If institutional architecture defines the framework of justice, time reveals its true nature.

In official discourse on justice, time is treated almost exclusively as a technical variable: procedural deadlines, average trial duration, caseload, statutes of limitations. Beyond this formal accounting, however, time possesses a profound moral significance that concerns the very legitimacy of the act of judgment.

The principle of celerity was not conceived as a requirement of administrative efficiency, but as a guarantee of justice. An excessively slow trial is not merely inefficient; it becomes a form of denial of the right to justice.

The classic aphorism, *Justitia delata est justitia negata,* expresses this fundamental insight: systematic delay transforms justice into an empty promise.[59]

The duration of a trial affects all parties involved. For the litigant, it means uncertainty and the suspension of life in a state of waiting; for the victim, a second injustice; for the defendant, especially in criminal cases, a form of anticipated punishment.[60] And, if injustice stems from an abusive law, following in the footsteps of Thomas Aquinas, there are three

[59] On the principle of celerity as a fundamental moral and functional requirement of justice, see: ECHR, Kudła v. Poland, October 26, 2000, §§ 124–130.

[60] For the significance of judicial time and the effects of trial delays on litigants, see Antoine Garapon, *Bien juger. Essai sur le rituel judiciaire*, Ed. Odile Jacob, Paris, 2001, pp. 179 *et seq.*

steps to take: *passive*, *pacifist, legitimate resistance* - non-cooperative; *defensive resistance* - argumentative; and *aggressive resistance*.[61]

Even for the judge, the excessive prolongation of proceedings erodes the meaning of deliberation and turns the decision into a formal exercise, detached from the opening moment of the trial and all the expectations of that time. The erosion of the meaning of deliberation is a *culpa lata,* causing *damnum emergens* to society... Time itself induces amnesia. The meaning of the judgment is almost forgotten, as in a performance with endless repetitions. The entire judicial ritual begins to resemble a loss of rights, a foreclosure, a terrible concealment of the essential, *sententia judicis*...[62]

In this context, the statute of limitations takes on an ambivalent character. From a legal perspective, it serves the security of social relations; from a moral perspective, it may appear as an institutionalized *forgetting*, closer to reverie than to recently lived reality, a "reverie" tangential to, "contiguous" with, *amnesty*, which sanctions not the gravity of the act, but the system's inability to judge it within a socially useful timeframe.

When serious offenses become time-barred due to structural dysfunctions, justice risks being perceived as a procedural spectacle, that employs circular reasoning (*circulum vitiosus*) and slips of the tongue (*lapsus linguae*), rather than as a sober tribunal, the supreme bearer of rationality and responsibility.[63]

This tension reveals the rift between legality and morality. Morally, serious offenses do not lose their significance simply with the passage of time. Evil does not "expire," and suffering does not dissolve through the statute of limitations. Hence the increasingly visible gap between the formal legal solution and society's moral perception.

The symbolism of time is present, not by chance, in the judicial sphere. The clock in the courtroom serves as a *memento* of justice's temporal responsibility: judgment is not an endless ceremony, but an act of decision-making that must occur at the right moment. A delayed ruling may be formally correct and yet unjust in the collective perception.

Celerity must not be confused with haste, just as efficiency must not be confused with superficiality. The genuine requirement is that of rightful time, which entails a balance between reflection and decision, between the right to a defense and the right to a resolution within a reasonable timeframe. This requirement is, at its core (*decisoria litis*), an ethical one, not merely procedural. There is a state ethic. For example, before the Constitutional Council of France, a case cannot remain pending for more than a month. The time for hearing the case

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[61] Octavian Ionescu, *The Concept of Subjective Right in Private Law*, Translated from French by Carmen-Ecaterina Ciobâcă, Edited by Marina Mureșanu Ionescu and Dan Constantin Mâță, Introductory Study by Dan Constantin Mâță, Junimea Publishing House, Iași, 2024, p. 167: "If no change in the legal order occurs through this (peaceful, n.m., VMC) means or by any other means, we are left with only aggressive resistance. Unjust laws are, strictly speaking, not laws. They do not deserve to survive. Guaranteeing subjective rights requires the elimination of these laws. But all other avenues must first be exhausted, we must have the majority's opinion on our side, and we must be certain that the harm that would result will not be greater than the present harm. / Moreover, a rapidly developing civilization increasingly and obviously demands strict respect for subjective rights."

[62] Regarding the statute of limitations as a mechanism of legal safety and its inherent moral tension with the "time of judgment," see Paul Ricoeur, *La mémoire, l'histoire, l'oubli*, Ed. Seuil, Paris, 2000, pp. 589 *et seq.*

[63] For the difference between formal legality and the moral perception of justice in cases of statute of limitations, see Mireille Delmas-Marty, *Les forces imaginantes du droit*, Ed. Seuil, Paris, 2004, pp. 243 *et seq.*

can be reduced to eight days, at the request of the French government, if circumstances require it, as would have been necessary in Romania regarding the "special" pensions law…[64]

The supreme moment. The ontological meaning of deliberation. *Justice denied*...[65]

If institutional architecture defines the framework of justice, and time reveals its external moral dimension, deliberation constitutes its internal ontological core. It is a unique, mandatory, non-negotiable, and uninterrupted act, deriving from the ontological nature, *sine qua non*, of the judge's office. And the Romanian legal framework is instructive in this regard.[66]

Deliberation, so long awaited by the socially weak (*Inde datae leges, nec fortior omnia posset* – "And that is why laws were made, so that the powerful not be able to do everything," *apud* Publius Ovidius Naso, *Fasti*, III, 279), is not a secondary procedural episode, but the constitutive moment of the judicial act, the point at which judgement ceases to be a succession of formal acts and becomes a sovereign decision attributable to judicial power, a power that nullifies the brute force and abuse of the powerful figure of the day or of another force, seemingly invincible, inextricable, and impossible to resist.

In the European legal tradition, collective deliberation is the ultimate expression of institutionalized reason. Within the CCR, the quorum, always established at the beginning of deliberations to validate the debates, as in any session, is six judges out of the nine. Just like in the U.S.[67] It involves the confrontation of arguments, the assumption of decision-making responsibility, and the transformation of a plurality of opinions into a single ruling, attributable to the court as an organ of the state.

Deliberation does not belong to the judge as an individual, but to the court as a collegial institution. For this reason, participation in deliberation is not a professional option, but a constitutive obligation of the judicial office, it is a law of the court, made by the court and which must be respected by the court as an immortal custom (*Legem patere quam fecisti*! Respect the law that you yourself have made!).[68] This aspect became even more pronounced following the emergence of a veritable appetite for shadow regulation and for expanded

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[64] André Hauriou, *Droit constitutionnel et institutions politiques*, Ed. Montchrestien, Paris, 1966, p. 767.

[65] For a discussion of deliberation as a constitutive element of jurisdiction and as an expression of institutionalized reason, see Antoine Garapon, **La raison du plus faible**, Ed. Odile Jacob, Paris, 2004, pp. 97 *ff.*

[66] CCR - LEGAL BASIS: LAW 47/1992: "Art. 64. – The judges of the Constitutional Court are required: a) to perform the duties entrusted to them impartially and in accordance with the Constitution; / b) to maintain the secrecy of deliberations and votes and not to take a public position or provide advice on matters within the jurisdiction of the Constitutional Court; / c) when adopting acts of the Constitutional Court, to cast an affirmative or negative vote, as abstention is not permitted; / d) to notify the President of the Constitutional Court of any activity that could result in incompatibility with the office they hold; / e) not to allow the use of the office they hold for commercial advertising or propaganda of any kind; / f) to refrain from any activity or conduct contrary to the independence and dignity of their office."

[67] *** Rules of the Supreme Court of the United States of America, adapted translation and preface by attorney Igor Lăcătuș, C.H. Beck Publishers, Bucharest, 2019, p. 2: "Part I. The Court, Rule 4. Sessions and Quorum, § 2. Six members of the Court constitute a quorum."

[68] On collective deliberation as a mechanism for transforming a plurality of opinions into a unified legal will, see Robert Alexy, *Theorie der juristischen Argumentation*, Suhrkamp, Frankfurt am Main, 1978, pp. 203 *et seq.*

powers in numerous aspects of social and economic life, which appeared to the brilliant French professor, Jean Carbonnier, as "regrettable," as a "legislative drift."[69]

Absence from deliberation causes a serious rupture in the continuity of the act of justice. It cannot be equated with a dissenting opinion, a doctrinal divergence or a legitimate form of jurisdictional dissent, which would require a new deliberation, following the reopening of judicial proceedings, and, naturally, a rational reasoning (*ratio decidendi*), supported by a rich framework of scientific arguments and scholarly soundness, of the separate opinion. From Plato to the present day, we believe in the law-constituting power of the deliberative judicial act. Any legal dialectic negates and dissolves the abuse of pure power, it negates investiture. The social dialectic of legal philosophers rehabilitates the power of reason, and any deliberative discourse eliminates presumptuous toxins and fanciful, imaginative prejudices.[70]

All of the above categorically presuppose participation in deliberation and engagement in legal dialogue. The refusal to deliberate is of a different nature: it amounts to the suspension of the exercise of the power to judge, to a crime, or at the very least, to a serious quasi-crime.

From a purely conceptual perspective, such a situation – the refusal to deliberate, the abandonment of open deliberations – lies beyond the realm of error or debatable interpretation. To abandon deliberation means to unilaterally suspend the exercise of a state power. And judicial power cannot be set aside without affecting the constitutional order itself.

The continuity of jurisdiction is a condition of the rule of law, not a circumstantial option, it is part of the great principle of the continuity of the state's sovereign power.[71]

The classic maxim *"Justitia delata est justitia negata"* finds its most radical expression here.[72] It is no longer merely a matter of delaying the resolution of a case, but of denying the moment when the law comes into being as a judgment. Deliberation is the act through which the abstract norm becomes concrete law; without it, the procedure remains a setting devoid of finality. To conclude deliberation, in cases of force majeure or unforeseen circumstances, judges, *exempli gratia*, may travel to their colleague's hospital bedside to obtain their verdict and signature. There have been numerous cases of such extreme measures, taken before the *supremum exitus*, demonstrating the judges' unwavering commitment to their mission.

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[69] Jean Carbonnier, *Droit et passion de droit sous la Ve République*, Flammarion, Paris, 1996 , p. 34: "Le plus regrettable dans l'attitude du Conseil d'État, n.m., VMC, c'est qu'il aboutit à une production supplémentaire de normes – partielle, sélective, aléatoire, sans doute, mais cela n'arrange rien – alors que la société en est déjà saturée. Nous rencontrerons une dérive légiférante de même nature - et guère moins importante – chez cet autre organe de pur contrôle que devait être la Cour européenne de Strasbourg. La passion du droit débute par l'appétit d'en faire."

[70] Michel Villey, *Réflexions sur la philosophie et le droit. Les Carnets, Textes préparés et indexés par Marie-Anne Frison-Roche et Christophe Jamin, PUF, Paris, 1995 , pp. 475–476: "*Platon avait horreur des sophistes et des rhéteurs, dont je viens de voir quelques-uns exercer leur art au congrès de CIEL (où je fus écouté par Ellul) - Il leur opposait la philosophie, et son mode à lui de dialectique. Aristote, outre qu'il restitue sa pleine dimension sociale à la dialectique des philosophes, réhabilitait dans sa Rhétorique le discours délibératif, en vue de l'action qui s'exerce dans des circonstances contingentes. Or une saine délibération s'aide de lieux communs d'origines philosophiques."

[71] For the idea of the continuity of jurisdiction as a requirement of the rule of law and the limits on the suspension of the exercise of judicial power, see Erhard Denninger, *Staat, Verfassung, Demokratie*, Suhrkamp, Frankfurt am Main, 1998, pp. 141 *et seq.*

[72] Regarding the classical meaning of the phrase **Justitia delata est justitia negata** and its contemporary implications (concerning the semantics of delay and the loss of meaning), see Umberto Eco, **De la littérature**, Grasset, Paris, 2002, pp. 167 *ff.*

From an institutional perspective the denial of deliberation undermines the very idea of a court. Justice is not a sum of juxtaposed individual consciences, but a unified legal will, expressed through deliberative mechanisms.[73]

To reject these mechanisms is to transform judgement into a fragmented exercise, lacking coherence and legitimacy. Subtly, *justitia publica* reverts to *justitia privata*, and the judge, from *judex, judice*, reverts to a mere *arbiter*, a *bonus vir*...

More seriously, such a practice creates a dangerous symbolic precedent: that of selectivity in the exercise of the power to judge.[74] If participation in deliberation becomes contingent, the authority of justice becomes relative. But authority cannot be fragmented without being compromised.

Deliberation must, therefore, be protected not only procedurally, but also conceptually. It is the supreme expression of judicial responsibility and the place where independence finds its ultimate justification.

To deny it is to deny the very vocation of a judge and the meaning of the act of justice as a function of the state.

Conclusions. Institutional reform, but also a reform of conscience?[75]

The present analysis leads to a finding that transcends the immediate circumstances of institutional conflicts: the crisis of the Romanian judiciary is not exclusively one of normative architecture, but one of meaning and institutional conscience, so that the "image of the father" from the obsession with the recent communist past may disappear from among our obsessions.

Legislative reforms and procedural adjustments are necessary, but they cannot produce lasting effects in the absence of a profound reflection on the purpose of the act of justice.

The independence of the judiciary remains an essential condition of the rule of law. But this independence is not an absolute good, detached from any public purpose.

It finds its legitimacy only to the extent that it is exercised in the service of the public interest, with a sense of responsibility toward citizens.

When independence is invoked exclusively as an instrument of institutional self-protection, it risks becoming a formal value, devoid of moral substance.

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[73] Regarding the court as *an impersonal legal will*, distinct from the individual consciences of the judges who make up the judicial panels or even the court *in integrum* when it sits in plenary session (*in plenum*), see Hans Kelsen, *Théorie pure du droit*, Ed. Dalloz, Paris, 1962, pp. 290–301. This bestseller of legal theory from the last century has been translated into Romanian. See: Hans Kelsen, *Doctrina pură a dreptului*, Translated from German by Ioana Constantin, Humanitas, Bucharest, 2000, *in integrum*.

[74] For a critique of selectivity in the exercise of public power and the risk of relativizing institutional authority, see Pierre Rosanvallon, *La contre-démocratie*, Seuil, Paris, 2006, pp. 117 *et seq.*

[75] For the idea of a reform of conscience as a prerequisite for institutional reform, see Pierre Legendre, from the series *Leçons, Leçons VIII. Le crime du caporal Lortie*, Fayard, Paris, 1989, pp. 213–227.

A study of judicial governance mechanisms, both in a national and comparative context, shows that corporatist, unionist, or caste-like deviations are not isolated incidents but structural risks inherent in any system that confuses autonomy with isolationism.

The models that have withstood these risks are those that have embraced controlled openness, public accountability, and limits on the concentration of power, without sacrificing judicial independence. I have outlined them above, with a greater emphasis on the German model.

The issue of time and, consequently, the issue of the statute of limitations have, in turn, revealed a rift between legality and morality...

A justice system that ends up allowing serious acts to fall prey to procedural oblivion loses its ability to function as a court of truth and accountability.

Similarly, the denial of deliberation, as a constitutive, non-interruptible, and mandatory act of jurisdiction, represents one of the most serious forms of dissolution of judicial authority, as it affects the very moment of birth of the law as a judgment, the law communicated by its *lawgivers*, the judges, the only socially accepted lawgivers of concrete subjective law: *Da mihi factum (quaestio facti), dabo tibi jus (quaestio juris)...* Those versed in the science of law are the professors, *the nomologists*, while the creators of law are *the nomothets*, the legislators, the lawmakers – in a word, the parliamentarians. An excellent book by the former Cambridge professor, Raul Charles Van Caenegem, a Belgian baron, deals, in a wise and slightly humorous tone (as befits a Belgian from Ghent, even if assimilated), with the essential differences between the three missions: the creation of law, the communication and application of law, and the scientific knowledge of law, respectively.[76]

In this light, the opposition between institutional reform and a reform of conscience proves, to a large extent, artificial. Institutional reform is necessary but insufficient; a reform of conscience is indispensable but cannot operate in a normative vacuum. The two must be considered together, in a process of rebalancing that restores to justice a sense of proportion, responsibility, and moderation.[77]

Justice is not defended through isolation, but through a clear-eyed acceptance of its public role. It does not consolidate its authority by rejecting criticism, but by demonstrating, through sobriety and rigor, that it deserves the trust that has been placed in it.[78]

In a morally weary society, the silence of the legal elite becomes complicity, and its refuge in formalism alone becomes a substitute for responsibility.[79]

Ultimately, what is at stake is not the protection of professional autonomy or the survival of an institutional structure, but the continuity of the rule of law as an order of reason

[76] R.C. Van Caenegem, *Judges, Legislators and Professors: Chapters in European Legal History*, Cambridge University Press, 1987 , *in integrum*.
[77] Pierre Legendre, *op. cit. supra*, pp. 213–227
[78] On the relationship between authority, responsibility, and the acceptance of public criticism in constitutional democracies, see Jürgen Habermas, *Entre faits et normes*, Ed. Gallimard, Paris, 1997, pp. 401 *et seq.*
[79] On the role of legal elites and institutional silence in the symbolic erosion of the rule of law, see Zygmunt Bauman, *La société assiégée*, Hachette, Paris, 2005, pp. 89 *et seq.*

and conscience.[80] Where justice remembers that it is, above all, an act of responsibility toward citizens, reform becomes possible. Where this truth is forgotten, even the most sophisticated normative framework can no longer save the appearance of legality.

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[80] For the conception of the rule of law as *an order of reason and conscience*, see Gustavo Zagrebelsky, *Il diritto mite*, Einaudi, Turin, 1992, pp. 45 *et sq*.

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Text translated from Romanian to English with DeepL, checked, corrected and edited by Cristina Andreescu.