



UNIVERSITY OF NIŠ
The scientific journal FACTA UNIVERSITATIS
Series: **Law and Politics** Vol. 1, N° 3, 1999 pp. 295 - 323
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JUSTICE AND DUSHAN'S LEGISLATURE

UDC 177.9.:340.13(091)(497.11)

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Abstract. *It is just 650 years since the passing of Dushan's Code, the final act of the universal codification of the law of the medieval Serbia, which together with Matthew Blastaros' Abridged Syntagm and the so-called Justinian Code make Dushan's legislature.*

Dushan's legislature, first of all Dushan's Code, was investigated from the axiological standpoint, according to Plato's and Aristotle's paradigms. Such an approach has enabled reasonableness of Dushan's legislature to be established, instead of establishing historical phenomenon, what the historians do.

Dushan's estate monarchy was a timocracy (timarchy), which means a form of a state which at least deviates from Plato's perfectly righteous state. Secular lords, as a military estate, together with the ruler, the supreme military commander, performed the principal function, military, in the Serbian medieval state, while the clergy performed those religious, cultural and social. It is, therefore, that those were privileged estates. According to the situational justice principle and in view of their merits in the state, the privileged estates had the right of property to the land (dominium directum) and the ruler the right of the supreme property to the land (dominium eminens), the so-called free heritage and many other privileges beyond the economic field. Dependent population, however, since its activities, although indispensable, were not directly connected with the principal, military function, had the right to use the land (dominium utile), the so-called subordinated heritage and in turn a lot of tributes and obligations. Also, existing in Dushan's legislature, and first of all in Dushan's Code, was Aristotle's general justice, understood as legitimacy, explicitly formulated at several places and particularly in Articles 171 and 172. Mostly containing provisions of the public law character, Dushan's Code feature distributive justice represented to a high degree, which is demonstrated in distributing honours and goods in proportion with merits. Also, there existed a special form of the distributive justice featured by an outstandingly social function. Namely, Dushan's Code takes care of the poor, wretched, sick and frees them from various burdens imposing obligations on the Church and courts to help them. Finally, Dushan's Code recognizes Aristotle's court and criminal justice as well, as a form of corrective or synalagmatic justice which is demonstrated in

Received December 30, 1999

establishing the middle between the good and the evil, i.e. equivalency, done by the court. This special form of justice, however, was not consistently put into effect. As for its depth and reasonableness, Dushan's legislature, and first of all Dushan's Code, is an example of a majestic medieval law codification.

Key Words: *Plato's justice, situational justice, general justice, distributive justice, court justice, estate monarchy, timocracy*

INTRODUCTORY NOTES

Emperor Caesar Flavius Justinian, pious and everlasting August, in the *Constitutio Tanta* addressed to the Senate and all the peoples, pointed out, on the occasion of his codification, that "something majestic emanates from these books, when seen that the old multitude has now been replaced by the condensed and lesser one"¹. He added "that only divine things are really quite perfect", while "the form of the human law (...) always endlessly changes, so that there is nothing that could last in it forever"².

The above quoted evaluations of emperor Justinian can also be applied to Dushan's legislature.

While Dushan's fragile empire has vanished in the sands of time, his codification, as a majestic law monument, in the previously mentioned Justinian style, emanates with depth, comprehensiveness and richness into centuries. It is one of the rare, at that time, and in all times as well, universal codifications³. It is a golden treasury for all kinds of historical, economic, sociologic, linguistic, cultural, law and philosophical studies.

I. MEANING OF THE EXPRESSION "DUSHAN'S LEGISLATURE"

A narrower meaning has frequently been attached to the wording "Dushan's Legislature". Under it Dushan's Code is understood, enforced at the parliament sessions in Skoplje (1349) and Serez (1354). However, it was already in 1888 that Florinski *showed* that there was a close connection of Dushan's Code with Matthew Blastaros' Abridged Syntagm by and the so-called Justinian Code⁴. On the other hand, Aleksandar Solovjev *has proved* in his doctoral dissertation *Legislature of Stefan Dušan, Emperor of Serbs and Greeks*, based on the paleographic-philologic and political-historical analysis of Dushan's Code and on the basis of comparisons of law provisions of Blastaros' Syntagm and the so-called Justinian Code with the provisions of Dushan's Code, that all three acts make "one intended entirety"⁵. Hence, a logical conclusion resulted that

¹ See: *Justinian Digesta*, Book One of *Constitutions*, *Deo auctore, Tanta, Omnem rei publicae*, translated by Dr. Antun Malenica, Beograd, Službeni glasnik, 1997, p. 35.

² *Ibid.*, page 37

³ See: Dr. Toma Živanović, *Sistem sintetičke pravne filozofije* (System of Synthetic Law Philosophy) 1 *Sintetička filozofija prava* 2 *Sintetička filozofija pravnih nauka*, Beograd, SANU 1959, pp. 125-136.

⁴ See: Т. Флоринский, *Памятники законодательной деятельности Душана цара Сербовъ и Грековъ*, Киевъ, 1888, pp. 172-268.

⁵ See: Aleksandar Solovjev, *Zakonodavstvo Stefana Dušana cara Srba i Grka* (*Legislature of Stefan Dushan, Emperor of Serbs and Greeks*), Beograd, Pravni fakultet, 1928, p. V.

Dushan's Code was only "the third part of a tripartite code of the Serbian-Byzantine (Roman) law"⁶.

Matthew Blastaros' Syntagm was translated from Greek to Slavic⁷, probably by the end of 1348 or beginning 1349. It was reduced to one third. Retained were, first of all, rules of civil law, while most of the ecclesiastical norms were left out. The contents of Matthew Blastaros' Abridged Syntagm make regulations contained in the Byzantine emperors laws. They were from earlier known to the medieval Serbia, as a part of Nomocanon. Matthew Blastaros' Abridged Syntagm makes "the first part of the codifying work of the new emperor"⁸. The second part of the codification is the so-called Justinian Code. Those are, in fact, Agricultural Law (a certain number of articles) enacted by the end of the 7th or beginning of the 8th century during Justinian II, Eklog (a short choice of the most important provisions of the Justinian codification) of the year 726 or 741 and certain parts of Procheiron (a short-form law handbook intended for courts) of the year 870 or 879. Since emperor Justinian was a personification of the codifying work, the above mentioned law was named Justinian Code. Agrarian relations were regulated under it and was "probably" used prior to Dushan's times as well⁹. Dushan's Code is the third part, final chord of the universal codification in the Nemanjić-dynasty state.

Dushan's Code closely corresponds, first of all, with Matthew Blastaros' Abridged Syntagm. It is natural, since it is the most voluminous part of Dushan's codification. Basically, Dushan's Code is only its supplement¹⁰. Matthew Blastaros' Abridged Syntagm was given its "legal authorization"¹¹ at the state parliament, most probably in 1349, when Dushan's Code itself was enacted.

In addition to a lot of proofs, quoted by Solovjev in the above mentioned doctoral dissertation on Dushan's Codex Tripartitus, an external reason can be cited – unsystematic nature of Dushan's Code. This unsystematic nature can be understood only when Dushan's Code is related with Matthew Blastaros' Abridged Syntagm and understood as its supplement. Particularly significant is the reason cited by Solovjev. In all older transcripts of Dushan's legislature, Dushan's Code comes along with Matthew Blastaros' Abridged Syntagm, "the which fact cannot be accidental"¹².

II. HISTORICAL AND PHILOSOPHICAL STANDPOINT AND DUSHAN'S LEGISLATURE

Dushan's legislature has been mainly studied by the historians, which is a natural thing.

⁶ See: Dr Srdan Šarkić i dr Dragoljub Popović, *Veliki pravni sistemi i kodifikacije (Great Law Systems and Codifications)*, Beograd, "Savremena administracija", 1993, p. 82; Aleksandar Solovjev, quoted work, p. 57

⁷ See: Teodor Taranovski, *Istorija srpskog naroda u Nemanjičkoj državi (History of Serbian People in the Nemanjić-Dynasty State)*, Beograd, Službeni list SRJ, 1996, p. 174; Laz. Urošević, *Pravosuđe i pisano pravo u srednjevekovnoj Srbiji u svetlosti današnjeg pisanog prava*, Beograd, 1939, pp. 30-32.

⁸ See: Dr Aleksandar Solovjev, op.cit., p. 89

⁹ Ibid., p. 89.

¹⁰ See: Dr Dragoslav Janković, *Istorija države i prava feudalne Srbije (XII-XV vek)(History of State and Law of Feudal Serbia (12th-15th century))*, third edition, Beograd, Naučna knjiga, 1961, p. 16.

¹¹ See: Teodor Taranovski, op.cit., p. 174.

¹² See: Teodor Taranovski, op.cit., p. 49

Basically, the historical standpoint is empirical and positivistic. In addition to other authors, Hegel mercilessly criticizes it. He says that historians search for historical details. Their ideal is "knowledge of all endless details" which are absolutely "needless to an intellectual insight"¹³. Some historians features "carelessness, because of that arrogance to think that the learned knowledge already has in itself an intellectual comprehension"¹⁴.

In recent times, by the middle of this century, criticizing the historical approach was also Leo Strauss. He says that for that approach "space and time factors are of greater value than the universal one".¹⁵ He thinks that historical experience is "fully insufficient to back up historicism" and that historicism "must be based upon philosophy, but not history"¹⁶ because "historical knowledge is always fragmentary and sometimes shaky".¹⁷

Deficiencies of the historical attitude in studying Dushan's legislature vanish with the best historians such as, for example, Stojan Novaković, Teodor Taranovski and Alerksandar Solovjev, although reasoning consciousness breaks out with them as well. Taranovski, who was also a law philosopher, does not speak anything about justice, although it is also mentioned in Dushan's Code and in Matthew Blastaros' Abridged Syntagm. Description of the law as it is, is not sufficient. Its legitimisation, in addition to the rest, is also necessary, which is impossible without justice. Also, without establishing the nature of the things, a true explanation of Dushan's legislature is impossible.

Here, I would like to point to the need of the philosophic, which means intellectual approach in studying Dushan's legislature, not bringing into question the historical approach at all. For, the philosophy itself is "seeing through the intellectual", and thus "understanding of the present and realistic"¹⁸. The philosophical standpoint should express the spirit of time in which great Dushan's codifying work was created. That pertaining to truth, what the philosopher is searching for, lies in Dushan's legislature itself, not outside it. Dushan's legislature is not "abandoned by God", is not left to the "atheism of the habitual world"¹⁹, so that one would search for the truth outside it. After all, as pointed out by Hegel, "the truth on the law, habitude and state is as old as explained and known in public laws, public morals and religion"²⁰. The assignment of philosophy is to find out intellectuality of Dushan's legislature, to recognize that what is righteous in it, i.e. to establish the substantial essence of the habitual reality, but not the essence of the historical phenomenon which is the business of (most of) the historians.

¹³ See: Georg Wilhelm Friedrich Hegel, *Philosophy of Right* (with Hegel's own margins in his handy copy of the law philosophy), (Yugoslav edition), Sarajevo, "Veselin Masleša" and "Svejtlost", 1989, p. 33.

¹⁴ See: *Ibid.*, p. 33.

¹⁵ See: Leo Strauss, *Natural Law and History*, (Yugoslav edition), Sarajevo "Veselin Masleša", 1971, p. 21.

¹⁶ *Ibid.*, p. 25

¹⁷ *Ibid.*, p. 28

¹⁸ See: Georg Wilhelm Hegel, *op.cit.*, p.16

¹⁹ *Ibid.*, p. 11.

²⁰ *Ibid.*, p. 9.

III. CONTINUITY OF THE IDEA OF JUSTICE IN THE NEMANJIĆ-DYNASTY SERBIA

From the times of Stevan Nemanja up to Dushan's codification, the idea of justice was omnipresent in the consciousness of the Serbian people, in the customary law, literature and in the law-creative activities of the Serbian rulers. In that regard, of exceptional interest is Nomocanon (1219), particularly meritorious for which was St. Sava. It was a systematized collection of Byzantine codes. It should have met the needs of both the Serbian Church and the Serbian state. It is, therefore, that it contains both ecclesiastical and secular regulations (excerpts from Justinian's novels and the whole Procheiron – city law). It is important to mention that St. Sava's Doctrine Nomocanon (law rules), which laid the foundations of the Serbian law, contains a provision of social justice as well, "that any poor man and any employee must not be deprived of his pay"²¹.

St. Sava's Orthodoxy Doctrine is, according to Justin Popović, "entelechy, the supreme principle, life-giving principle and the power of our soul, our history, our people, our man; it is the soul of our soul, the heart of our heart, the life of our life"²².

The idea of justice, however, as a basic principle, found its adequate place only in the Matthew Blastaros' Syntagm and Dushan's Code. It doesn't matter that it was taken from the Byzantine legislature²³. After all, that idea was also taken over by the Byzantine legislature from the Roman law and the Roman lawyers from Plato and Aristotle through the Stoic philosophy. If there were any imitations and takings over, emperor Dushan "has accepted, in his legislative work, the best principles from Byzantium"²⁴.

IV. JUSTICE AS A FOUNDATION AND PURPOSE OF THE LAW

I approach Dushan's legislature from the axiological standpoint. I start from the attitude that justice is a foundation and purpose of the law. Under the purpose I mean both the cause and the goal. Therefore, the purpose is both at the start and at the end. I think that what is historical and present (in the Hegelian sense) is not a measure of the law. Chronological sequence, what the historians hold to, is observance of illusory movements and shadows (in the Platonic sense). Chronology is a consciousness of the mere occurrence. More important than the chronological sequence is that ontological, which, after all, is a basis of the chronological sequence. Rational form of the spirit may have for its subject only that what is according to the intellect. Justice is the essence of law. It should be used to measure that what is, i.e. reasonableness of Dushan's legislature.

²¹ See: Đurica Krstić, *Srpsko srednjevekovno pravo i razvoj prava potonjeg vremena (Serbian Medieval Law and Law Development in Succeeding Times)*, in the book *Srbi u evropskoj civilizaciji (The Serbs in the European Civilization)*, Beograd, SANU, 1993, p. 187.

²² See: Archimandrite Dr. Justin Popović, *Svetosavlje kao filozofija života (St. Sava Orthodoxy Doctrine as the Philosophy of Life)*, phototype edition, Valjevo, 1993, p. 121.

²³ See: Nikola Radojčić, *Dušanov Zakonik i vizantisko pravo (Dushan's Code and Byzantine Law)*, Zbornik u čast šeste stogodišnjice Zakonika cara Dušana, I, Beograd, SANU, 1951, p. 61. "It is only that comparative study of law of all nations and all times has created a scientifically correct judgement that the law collections can rightly be considered as a people's pride even when there are a wealth of borrowings. Namely, it is not their number that is in question, but their law depth and their ethical highness. Wherever taken from, the best among them become and remain characteristic of the people who accepted them.

²⁴ See: Dr. Aleksandar Solovjev, op.cit., p.222.

Justice is both at the beginning, as an out-of-the-law concept, and at the end, as reasonableness of Dushan's legislature. Justice as reasonableness, as something general and true, is personified in Dushan's legislature as well. The true is only that what can be justified by means of it. The rest is mere survival, empty existence, casual, final, untrue.

I do not accept a standpoint according to which one cannot determine what justice is. For justice is, it is said, a value and "value judgements are subjective", and hence "very different" and "mutually contradictory"²⁵. Justice is a noble feeling, ethical ideal to be longed for, says Kelsen, but cannot be conceptually determined. Such a standpoint is dangerous. It claims that what is true, i.e. justice, cannot be found out. It is a humiliation for philosophy. Philosophy is just searching for that what is eternal, unchangeable and true. Instead of illusion of things, it establishes the very thing, i.e. the nature of things of the law, its reasonableness, justice.

Truly, justice has been differently understood in different times. But there has always remained an unchangeable core, which is proportion, equality.

A mention of justice has been frequently made in Dushan's Code. As found out by Stojan Novaković, at some places the word "justice" is used to denote the law²⁶ or, for example, a dispute or a lawsuit²⁷. The key place in Dushan's Code, which is in Article 171 and which, translated by N. Radojčić, reads: "Yet, my emperorship ordered to me: If my emperorship writes a letter either out of fury, or out of love, or out of grace for someone, and that letter destroys the code, and is not in accordance with justice and the law, the judges are not to believe that letter, but to judge and do as it is in accordance with the justice"²⁸. Organically connected with this place also is Article 172 which, translated by N. Radojčić, reads: "All the judges to judge in accordance with the law, rightfully and like it is written in the code, but not to judge for fear of my emperorship"²⁹. The above provisions which are the "highest point"³⁰ of Dushan's Code are, as found out by Nikola Radojčić, taken over from the Byzantine law (Basilike)³¹.

²⁵ See: Hans Kelsen, *Šta je pravda (What is Justice)*, (Yu edition), Beograd, "Filip Višnjić", 1998, p. 16.

²⁶ See: Stojan Novaković, *Zakonik Stefana Dušana cara srpskog 1349 i 1354 (Dushan's Code of 1349 and 1354)*, Beograd, Izdanje Zadužbine Ilije M. Kolarca, 1898, p. 220. Art. 123 of Dushan's Code, translated by Nikola Radojčić, reads: "On marketplaces; wherever the Saxons have cut the woods till this parliament, that land may remain theirs; if they have taken land to a certain lord without any *right* (my italic – M.P.), may lords fight them s in court under the saint king's law, and from now on the Saxon is not to cut, and that what he cuts not to till and no people to settle down, only the barren area to remain, the woods to grow; none is to forbid the woods to a Saxon, as much needed for the marketplace, he is to cut down" (Beograd, SANU, 1960, p. 123). On the meaning of the word "code" in Dushan's legislature, see: Srđan Šarkić, *Zakon u glagoljskim i cirilskim pravnim spomenicima (The Law in Glagolitic and Cyrillic Law Documents)* (from the 12th to the 18th century), Novi Sad, 1994.

²⁷ See: Stojan Novaković, op.cit., p. 166, Art. 33 of Dushan's Code, translated by Nikola Radojčić, reads: "Ecclesiastical people in each *lawsuit* (my italic – M.P.) to be put on trial before their metropolitans, and before bishops and priors, and if both men are of one church, to be put on trial before their Church, but should litigants be of two churches, to be judged by both Churches" (op.cit., p. 98).

²⁸ See: Nikola Radojčić, op.cit., p. 135.

²⁹ Ibid., p. 135.

³⁰ See: Nikola Radojčić, *Dušanov zakonik i vizantinsko pravo (Dushan's Code and Byzantine Law)*, p. 63.

³¹ See: Nikola Radojčić, *Snaga zakona po Dušanovom zakoniku (Force of Law According to Dushan's Code)*, Glas CX SAN, 1924, pp. 100-139; Nikola Radojčić, *Sudije i zakon u srednjevekovnoj Srbiji i u Ugarsko (Judges and Law in the Medieval Serbia)*, Letopis Matice srpske, 305, 1925, pp. 53-68.

There is no determination of the concept of justice in Dushan's Code. There it is, however, in Dushan's legislature, in the first part of Codex Tripartitus and in Matthew Blastaros' Abridged Syntagm. There, under justice "permanent and steady striving that everybody should be done what he rightfully deserves" is understood, and under the rightful "to live peacefully, not insulting the other and decently provide everybody with what he deserves"³². He adds that "great (...) wisdom is in justice: to know divine and human things, what is righteous and what is unrighteous"³³.

Here we recognize Ulpian's words from Justinian's *Digesta*, from Book I of rules in a somewhat clumsy translation. Originally, Ulpian says: "Righteousness is a continuous and everlasting will everybody to be given what he rightfully deserves. 1. These are law principles: to live honestly, not to insult the other, to provide everybody with what he deserves. 2. To know law is to realize divine and human things, a science on righteous and unrighteous"³⁴.

The Roman law was, as recently found out by Ostrogorski, "in all times a basis (...) of the lawful life" of Byzantium and her "lawful consciousness"³⁵. It continued to live in numerous collections of Byzantine codes (particularly in voluminous Basilikes) and thus, through Matthew Blastaros' Syntagm as well, into Dushan's Serbia, to be, as Taranovski says, "lawfully authorized" at the state parliament in Skoplje in 1349.

The Roman-Byzantine understanding of justice (and the natural law) was mediated by Cicero's "the law of nature", i.e. by Platonic-Aristotelian-Stoic understanding where "the legal and political are not separated from ethical"³⁶

Ulpian derives the word "right" (ius) from justice (iustitia)³⁷. Referring to Celsus, he says that the law is "the skill of good and equal" (ars boni et aequi)³⁸, that the three law commandments are: "Honeste vivere, alterum non laedere, suum quique tribuere"³⁹. He determines the natural law as "that which the nature has endowed to all living beings born on the earth and under the sea, and which is common to the birds as well"⁴⁰. Here, it is easy to recognize Stoic-pantheistic understanding of God-like nature, as well as union and reconciliation of the natural, rational and divine law. For, the nature, reason and God

³² See: Translation of law regulations entered into Matthew Blastaros' Syntagm (alphabetical collection of Byzantine ecclesiastical and state laws in Slavonic translation of Dushan's time, edition of Stojan Novaković), Chapter I and – On Justice, in the book *Pravosuđe i pisano pravo u srednjekovnoj Srbiji u svetlosti današnjeg pisanog prava (The Judiciary and the Written Law in the Light of the Modern Written Law)*, Laz. Urošević (Beograd, 1939, p. 61).

³³ Ibid., p. 61.

³⁴ See: *Justinian's Digesta*, p. 69.

³⁵ See: Georgije Ostrogorski, *Istorija Vizantije (History of Byzantium)*, Beograd, Narodna knjiga, Alfa, 1998, p. 53. "Byzantium is tied to Hellenism not only genetically but also with a deep substantial kinship. Hellenistic as well as Byzantine culture have got something epigonic, eclectic. Both live on the heritage of cultures of greater creative power and express themselves less in their own creation than in maintaining or adopting someone else's. But lack of spiritual freshness is compensated by the power of synthesis. The Roman state and the Greek culture grow together on the Byzantine soil into a new living organism and inseparably merge with Christianity within which the old state and the old culture had seen their strongest negation". (op.cit., pp. 52-45).

³⁶ See: Ljubomir Tadić, *Filozofija prava (The Philosophy of Law)*, Zagreb, Naprijed, 1983, pp.42'45.

³⁷ Ibid., p. 44.

³⁸ Ibid., p. 44

³⁹ Ibid., p. 44.

⁴⁰ See: *Justinian's Digesta*, p. 65.

are all "one and the same"⁴¹. According to Ulpian's determination the natural law is "*a form* of a positive law, but not *the ideal* of law or *boundary of worthiness* of the positive law"⁴². Therefore, the natural law, and the justice as well, is not anything of beyond, it is not a form of personification and singularization of the eternal law, such as with Thomas Aquinas. That reasonableness, justice, is in the positive law, its part and the higher one. It is a paradigm for building and interpreting the rest of the positive law. Justice, therefore, was not understood as an overburdened concept, such as with the rational and revolutionary natural law of the new age. In the Roman-Byzantine law, there is a uniqueness of the concept (in the Hegelian sense) and its realization. That *mutatis mutandis* also refers to Dushan's legislature. Hence, it is indispensable that Dushan's Code should be understood as a part of a wider entirety, of Codex Tripartitus, along with Matthew Blastaros' Abridged Syntagm and the so-called Justinian Code as I have already pointed out.

V. SITUATIONAL JUSTICE AND DUSHAN'S ESTATE MONARCHY

It is usually considered that, without further investigation and intellectual insight, Middle Ages is "ill fate which had destroyed classical civilization and culture"⁴³. Gibbon describes Middle Ages as a "long night of illiteracy and violence, saved from the total darkness only by some remaining traces of classical culture"⁴⁴. Such a common-sense view is explained by the fact that there were neither "great meditative undertakings nor discoveries which raise dignity and creative power of mortal people to immense heights"⁴⁵. There are, however, authors which observe that the "highest medieval achievements (...) are the fruits of deep thinking and sacrificing to the service of mankind and God"⁴⁶.

The development of society can be measured both by the number and quality of social spiritual creations. Such approach became legitimate in the second half of the 19th century, first of all, thanks to the philosophy of values, the branch of the neo-Kantian philosophy, so-called Baden or South-West German School, the leaders of which were

⁴¹ See: Ljubomir Tadić, op.cit., p.44-44.

⁴² Ibid., p. 46.

⁴³ See: Veljko Korać and Branko Pavlović, *Istorija filozofije (The History of Philosophy)*, 12th edition, Beograd, Zavod za udžbenike i nastavna sredstva, 1999, p. 103.

⁴⁴ See: H.V.K. Davies, *Srednjevekovna Evropa (Medieval Europe)*, (YU edition), edited by D. Nikolić and M. Maksimović, Niš, SKC/Zograf, 1999, p.8.

⁴⁵ See: Veljko Korać and Branko Pavlović, op.cit., p. 103.

⁴⁶ See: H.V.K. Davies, op.cit., p. 9. "In other words, they had germinated from the soil and ripen in the air of a civilized society" (p. 9). "What we like in the medieval standpoint on life is as follows; first, the idea of humanness, as fraternity which surpasses national and political divisions, fraternity united in a common search for truth, filled with the spirit of mutual love towards the close, the spirit of reciprocal support and endowed with a stronger will and wisdom than those possessed by its members. Second, it is a deep faith in the superiority of law with reference to power, of spirit with reference to the substance, of everlasting significance of humanness with reference to ambitions and passions of temporary character. If there were no Christianity, these goals of faith hardly would become a common heritage of all people, and if there were no Church, there eventually would be little likelihood for Christianity to survive this period of half barbarism in which foundations of the modern society were laid" (p. 115).

Wilhelm Windelband and Heinrich Rikert. Taranovski, our historian and law philosopher has also accepted that orientation, particularly in his *Encyclopaedia of Law*⁴⁷.

Instead an event of the worldwide historical importance to be seen in the Christian principle, Christianity is just being accused for cultural backwardness. However, it was only in Christianity that the spirit has emancipated from the nature. In the nature, a man is completely unfree. It was only in Christianity that spirit turns towards its own essence. It is a process of the proprietary production. In other words, a man is that what he makes out of himself. A man is, therefore, a proprietary activity. And that is the selfproduction of a man by proprietary work. It is with Christianity that a man has emerged as a free spirit. That is why the Christian principle is, as shown by Hegel, the truth of classical philosophy⁴⁸.

Paradigms based upon which the development of society is to be estimated should be: freedom, justice and human dignity. They make a whole, like a physical spectrum of colours. Measured by these measures, the medieval society rises above the classical slaveholding society. Human freedom spaces have widened within it, human dignity level is higher, while the ideological form of justice, the so-called situational justice, is above that justice of ancient times.

1. Plato's Justice and Dushan's Estate Monarchy

Constituents of justice in Matthew Blastaros' *Abridged Syntagm* and Dushan's Code are, as it has already been mentioned, Plato's and Aristotle's justice as well, mediated by the Stoic philosophy and partly by the Christian principle.

a) *Perfect State and Perverted States*

Plato's justice is, of course, a starting and central element in the Byzantine and (Roman), i.e. Serbian medieval understanding of justice. Plato thought that positive law can be founded on supralaw manner only, ontologically, by means of justice. Justice has that power to impart truth to the law. Everything existing, exists according to it. Also, Plato's state is based on justice. Its purpose is accomplishment of the idea of justice.

Justice is, Plato says, virtue of a man as well as virtue of a state⁴⁹. With an honest man, parts of his soul are brought "into their natural position"⁵⁰. Since soul is in possession of the rational, willing, greedy parts, it is necessary that "the whole soul be governed by that part of its which is love towards wisdom or by the philosophical part", so that "no other part would rebel against that"⁵¹. It is only then that it is possible that

⁴⁷ See my work *Filozofija vrednosti, aksiološke filozofije prava i Enciklopedija prava Taranovskog (The Philosophy of Value, Axiological Philosophies of Law and Encyclopaedia of Law of Taranovski)*, Zbornik Matice srpske za društvene nauke, 1998.

⁴⁸ See: Wilhelm Friedrich Hegel, *Istorija filozofije (The History of Philosophy) (Yu edition)*, third edition, translated by Nikola M. Petrović, preface by Dr. Veljko Korać, Beograd, BIGZ, 1975, pp. 81-82; Milenko A. Perović, *Istorija filozofije (The History of Philosophy)*, Novi Sad, Filozofski fakultet, 1997, p. 168

⁴⁹ See: Plato, *Država (State) (Yu edition)*, fourth edition, preface by Dr. Veljko Korać, explanations and comments by Dr. Branko Pavlović, Beograd, BIGZ, 1993, p. 47.

⁵⁰ *Ibid.*, p. 134.

⁵¹ *Ibid.*, p. 287.

"each of them may act in accordance with its purpose, and thus be righteous"⁵².

Within his rational⁵³ construction of the state, Plato has made, as he says, a perfectly⁵⁴ good state. The goal of that state is not "that only one estate in it should be particularly happy, but the whole state in far the greatest percentage"⁵⁵. A perfectly good state is "wise, brave, moderate and righteous"⁵⁶. Wisdom is the knowledge of the general (i.e. the idea of the good). That knowledge refers "to that what exists", and based on it "one recognizes that what exists and how it exists"⁵⁷. That what exists (i.e. the idea of the good) "is always the same and unchangeable"⁵⁸, which means "everlasting"⁵⁹. Within the hierarchy of ideas (of the true world), the idea of the good holds the first place. It is only based on it that both the idea of justice "and everything connected with it is imparted the value and become useful"⁶⁰. Plato understands the idea of the good "as the cause of our knowledge and as the cause of the truth which we learn by the reason"⁶¹. Only the philosophers can recognize that idea and that is why they should administer a state. Their assistants and performers of decisions are guardians. They, in addition to other virtues (reasonableness, piety, nobility) should possess courage⁶². Their assignment is to defend the state "both from the external and internal enemies" so as to prevent "the ones in their will and the others in the possibility to do evil"⁶³. Moderation is "more similar to the accord and harmony than the two previous virtues"⁶⁴, and is expressed as "some orderliness and governance over pleasures and passionate likings"⁶⁵. It "spreads over the whole state bringing into mutual accord all its members, the weakest and the most powerful and those between them"⁶⁶. Justice, as the fourth virtue, even ranks as the first one, and in certain sense is the only one. Justice consists "in that everybody has his own and that everybody does what he should do"⁶⁷. It harmonizes other virtues and is for the state "that what is the most supreme and the most necessary"⁶⁸. It is justice that is in question from the very beginning, and only the justice, for it is *causa finalis*.

Starting from the degree of feasibility of justice, Plato has differentiated proper and perverted forms of a state. As many types of human characters there are, so are many

⁵² Ibid., pp. 287-288.

⁵³ Ibid., p. 48. "Well, let us establish a state in thoughts!"

⁵⁴ Ibid., p. 112. "I think that our state, if properly constructed, is perfectly good".

⁵⁵ Ibid., p. 103. "You have forgotten, my friend - said I - that our laws do not tend one estate in the state to be particularly happy, but to create welfare for the whole state, bringing citizens, by hook or by crook, into harmony, providing them, first of all, with a share in businesses, which each individual can, according to his capabilities, perform for the state" (op.cit., p. 211).

⁵⁶ Ibid., p. 112.

⁵⁷ Ibid., p. 169.

⁵⁸ Ibid., p. 174.

⁵⁹ Ibid., p. 175.

⁶⁰ Ibid., p. 196.

⁶¹ Ibid., p. 201.

⁶² Ibid., p. 177.

⁶³ Ibid., p. 99.

⁶⁴ Ibid., p. 116.

⁶⁵ Ibid., p. 116.

⁶⁶ Ibid., p. 118.

⁶⁷ Ibid., p. 120.

⁶⁸ Ibid., p. 235.

types of states. Socrates (i.e. Plato) says: "Do you think that governmental structures grow 'out of an oak or out of a rock', but not from the character of people who move the state as they do a weight on the scales?"⁶⁹ A proper (perfect) form of a state is "a kingdom, when from among the heads one man particularly stands out which differs from the others; the other name will be aristocracy, when there are more of such people"⁷⁰. Clearly, a supposition is that in such "mode of governing a state" (Plato), everyone does his job in accordance with his capabilities, i.e. virtues, which I have already described. Or, as Plato says: "If philosophers do not become kings in a state – said I – or, if present kings and rulers do not become proper and good philosophers, and if both: political power and philosophy (love for wisdom) do not become one thing, and if those numerous natures longing for one, or only for the other thing, are not forcibly excluded, then, my dear Glaucon, calamities will never cease not only for the states, as I think, but for the human race as well, and the governmental structure we have just depicted in words will neither become possible nor see the light of day"⁷¹. Such a perfect form of a state, Plato is talking about, "exists only in mind, for I think that it can be found nowhere on earth"⁷². After all, says Plato, "it is of no importance at all whether such a state really exists anywhere or will exist in the future only. Because such a man will live in accordance with it, but no with any other"⁷³.

In contrast to the perfect form of a state, which "exists only in mind", the existing, empirical forms of a state, perverted forms of a state can be found. Those are: timocracy or timarchy, oligarchy, democracy and tyranny (tyrannis). Plato calls them "diseases of a state"⁷⁴. Diseases of a state are "those things which gradually destroy, corrode a state inside, out of its own construction"⁷⁵. Timocracy (timarchy) is "ambitious governmental structure"⁷⁶. It arises from the corruption of aristocracy "when there occurs discord among those in power"⁷⁷. Assistants to the rulers, i.e. warriors take over the power in the state. They are afraid "of bringing the wise to power", being inclined to the "people more capable to wage war than to make peace, they will appreciate deceits and agility in war and will spend time permanently waging wars"⁷⁸. Timocracy "involves both the evil and the good", so that it is "in fact a mixture"⁷⁹. Though, in such a form of a state "prevails bravery" accompanied by "tendency towards competition and ambition"⁸⁰. Then, timocracy turns into oligarchy, which "is based upon the estimation of property, where the rich rule and the poor do not participate in the power"⁸¹. With the passage of time,

⁶⁹ Ibid., p. 238.

⁷⁰ Ibid., p. 135.

⁷¹ Ibid., p. 164.

⁷² Ibid., p. 294.

⁷³ Ibid., p. 294.

⁷⁴ Ibid., p. 238.

⁷⁵ See: Dr. Branko Pavlović, *Objašnjenja i komentari teksta (Explanations and Comments of the Text)*, in Plato's book *Država (State)*, p. 381.

⁷⁶ See: Plato. *Država (State)*, p. 239.

⁷⁷ Ibid., p. 239.

⁷⁸ Ibid., pp. 241-242.

⁷⁹ Ibid., p. 242.

⁸⁰ Ibid., p. 242.

⁸¹ Ibid., p. 244.

timocratic people "who like competition and honour (...) become devotees of money and getting rich, so that they praise a rich man, admire him and bring him to power, and despise a poor man"⁸². Thus, timocracy turns into oligarchy, and this, due to further degeneration, into democracy. Democracy is created when the poor win, who then kill a part of the enemies and expel the other part, equally sharing power and civic rights with the rest, and when the power is most frequently elected by gambling"⁸³. It is one of the "diseases of a state", since "anything is allowed" in it and "everybody does in it whatever he wants"⁸⁴. Everything in it is "anarchic, motley, which dispenses some equality to one and all, both to the equal and to the unequal"⁸⁵. Democracy favours superfluous wishes. There flourish "impudence, lawlessness, luxury and shamelessness"⁸⁶. All this destroys democracy and tills the ground for tyrannis, the most pervert form of rule, to come into existence. "Too much of freedom" destroys democracy, which in tyranny turns into "too much of slavery both for an individual and for a state"⁸⁷. At the beginning, the tyrant "represents people"⁸⁸, but later on, when he steps "into the state cart", there occurs his transformation from the "representative" to a "perfect tyrant"⁸⁹. Of all the states tyranny is "the most unhappy"⁹⁰ and "the most wretched"⁹¹ state, and the tyrant himself "much more unhappy than all other people"⁹².

b) Plato's Timocracy and Dushan's Estate Monarchy

Plato's perfect state, such as devised in his mind, does not coincide with any empirical form of a state to date. Accordingly, Dushan's estate monarchy is neither identical with monarchy (in the Platonian sense) nor with aristocracy (aristocracy of spirit) as perfect forms of a state. The question is only to what extent it deviates from the perfect form of a state, which "disease" has afflicted it and how it corrodes the state inside, to which

⁸² Ibid., p. 245.

⁸³ Ibid., p. 252.

⁸⁴ Ibid., p. 252. "And there where everything is allowed, it is natural that everybody adjusts his life in his own way to the best of his liking" (op.cit., p. 253). "One could say – I added – that this governmental structure is the best of all; like a parti-coloured garment interweaved with all sorts of flowers, so that this governmental structure as well, decorated with all sorts of characters, would appear the most beautiful, and perhaps would be estimated as the best, such as the children and women do when watching motley objects" (op.cit., p. 253).

⁸⁵ Ibid., p. 253.

⁸⁶ Ibid., p. 257. "This happens, and the other such trifles as well: a teacher in such a state fears of his pupils and flatters them; the latter scarcely respect teachers, the same as pedagogues. In general, the young make themselves equal with the old and fight with them both in words and deeds; the old, again, in order to flatter the young, give in, are helpful, full of jokes and imitate them only not to look unpleasant and despots" (op.cit., p. 259).

⁸⁷ Ibid., p. 260.

⁸⁸ Ibid., p. 262.

⁸⁹ Ibid., p. 263.

⁹⁰ Ibid., p. 274.

⁹¹ Ibid., p. 276.

⁹² Ibid., p. 276. "Although he is neither able to rule himself, he tries to rule the others, so that he looks like a sick man, who, instead of staying at home, must lead his life fighting and competing with athletes". (op.cit., p.p. 277-278). "Although he does not look like that, he is a very tyrant, in fact, a very slave, he mostly fawns over and submits, flattering the worst people. Obviously, he cannot satisfy his passions; in the eyes of those who can see his soul through he is obviously poor; all through his life he is filled with fear and leads his lifetime overburdened with worries, unrest and troubles." (op.cit., p. 278).

perverted form of rule it belongs. Timocracy, oligarchy, democracy and tyranny, as perverted forms of a state, are ordered as per the degree of deviation from the perfect, i.e. fully righteous state. Even at first glance it is obvious that Dushan's estate monarchy differs from tyranny, from democracy and from oligarchy as well. As for its organization, basic structural elements, particular purposes and goals, principal functions of the members of the estate and characteristics of their members, it approaches Plato's timocracy (timarchy), which means that it represents the least perverted form of rule. Thus, Dushan's estate monarchy proves itself partly as a righteous and partly as an unrighteous state. The history of Serbia in Dushan's times was not quite a "land of happiness" (Hegel). After all, it is also in the history of the world that, "periods of happiness (i.e. periods of harmony – M.P.) are empty leaves in it" (Hegel).

Now, I am supposed to show to which extent that reasonable (i.e. idea/justice/) has come into the external existence and in which forms, occurrences and images it has appeared.

The purpose and the goal of the Serbian medieval state under Dushan were accomplishment of the idea of the utmost good for both all the Serbs and the rest of the population involved. The idea of the utmost good should be understood in a relative, but not absolute manner. Economic, political and cultural conditions and international circumstances did not offer opportunities to accomplish the idea of the utmost good in an absolute sense, to equally provide happy life for all, high degree of freedom and human dignity. This is not attained even by the today's, modern and the most developed countries.

Particular purposes and goals of Dushan's Serbia were to provide conditions for legal security and peace. Hence, the principal functions of that state were those of military and court nature⁹³. In view of the degree of development of the society, the estate monarchy was the most appropriate form of a state of that time. If it did not equally provide freedom, equality and social justice for all, which was not even possible, the equality of members of each estate was fixed by the legislature. Situational justice was established by Dushan's Code. The principle of equality was applied to the members of the ruling estates, and the principle of discrimination towards the dependent, subordinated estate. Naturally, this did not exclude the principle of equality for the members of the subordinated estate within their mutual relations. And that was the utmost degree of justice that could have been attained in the Middle Ages. Should Dushan's estate monarchy be observed in a process, then it is "not a lengthy crime (...) but a phase of social evolution"⁹⁴. It was an objective expression of social needs, performing, in addition to other things, numerous civilizatory and cultural functions" (Taranovski).

From the standpoint of this paper, of no importance is the question whether the process of establishing Dushan's estate monarchy was completed or if it was still, as regards the dependent estate, "under establishing"⁹⁵.

To understand the situational justice, as a particular ideological form of justice in Dushan's Serbia, it is necessary to be well acquainted with all the moments of the then

⁹³ See: Teodor Taranovski, (*The History of the Serbian Law in the Nemanjić-Dynasty State*), pp. 40, 675.

⁹⁴ *Ibid.*, p. 30.

⁹⁵ *Ibid.*, p. 30

social structure, i.e. estates, their social and law status. Estates are social groups, which, in modern science, together with castes oppose layers and social classes⁹⁶. They are constituted based on the position in the hierarchy of the social power. Taranovski considers them as particular social classes: "*Estate*, (...) is nothing but a social class, only one consolidated and precisely regulated under the law regulations, which have converted factual demarcation lines among the classes into non-political law boundaries and class benefits and burdens into estate rights and responsibilities"⁹⁷.

The estate structure in the medieval Serbia, as, after all, the case is in other states, is an expression and consequence of "mutual dependence between the military and economic performance"⁹⁸. In that case, military factors essentially impact the evolution of estate society, particularly affecting "changes in the military structure".

Privileged estates in Dushan's Serbia were secular lords and the clergy. The secular lords were "military estate by profession"⁹⁹. Their basic legal duty was military service ("to wage wars under law", Article 42 of Dushan's Code). In this element, the secular lords are similar to the ruler assistants in Plato's perfect state. In addition to the above duty, there was also a duty of paying *soća*, a kind of direct tax on land, which was a "straightforward expression of obedience and subjugation to the ruler"¹⁰⁰. Other duties of the secular lords were of less importance. One of these was guarding the roads (Article 157 of Dushan's Code) and hills (Article 158 of Dushan's Code). Such a duty, however, was not performed directly by the secular lords, but through their subjects who lived on their estates. Another duty of such nature was that of court service, indirect testimony on which is Article 51 of Dushan's Code: "And he who gives a son or brother to the palace, and the emperor asks him, should I believe him, and he says, believe as you believe to me, if he does any evil, he is to pay who gave him; if he who has to do services at the palace, as they are done at the emperor's palace, makes whatever mistake, he is to pay himself"¹⁰¹. Responsibilities of the secular lords at the palace services consisted of their helping the ruler in his legal activities: court, administrative and legislative. Then, in case of need, which occurred frequently, "the lords personnel at the palace", as Taranovski says, had additional military function "both for his (the ruler – M.P.) personal protection and as a core of the army in case of campaign"¹⁰².

The principal duty of the secular lords, that military, is in correlation with their main right – a title to the land (heritage). That they could fully devote themselves to the military profession, the lords had the title to the land, the so-called direct property (dominium directum), not burdened by tributes and unpaid labour. Speaking of it in a striking manner is Article 42 of Dushan's Code: "And all the heritages to be free from all

⁹⁶ See: Dr. Milovan Mitrović, Dr. Milan Tripković, Dr. Dragan Koković, *Sociologija (Sociology)*, Beograd, Naučna knjiga, 1987, p. 151.

⁹⁷ See: Teodor Taranovski, op.cit., p. 29. "In short, estates are classes into which the people in a state is divided based on differences in rights and legal duties. That difference is hereditary in the estate structure, so that an individual according to the general rule must remain for life in the estate he was born in".

⁹⁸ Ibid., p. 34.

⁹⁹ Ibid., p. 45.

¹⁰⁰ Ibid., p. 54.

¹⁰¹ See: *Zakonik cara Stefana Dušana 1349 i 1354 (Dushan's Code of 1349 and 1254)*, translated and published by Nikola Radojčić, Beograd, SANU, 1960, p. 103.

¹⁰² See: Teodor Taranovski, *The History of the Serbian Law in the Nemanjić-Dynasty State*, p. 62.

unpaid labour and tributes to my emporship, except to pay soča and wage wars under law"¹⁰³. It is because of that that this form of land property is called a free heritage. The ruler had a supreme property (dominium eminens), while that of the dependent population was a property to use (dominium utile), subordinated heritage. Untouchableness of free heritage is guaranteed under Dushan's Code: "The lords and gentry, residents of the state of my emporship, Serbs and Greeks, whatever to whom my emporship has given as heritage and in chrysobulls, and in their possession to this state parliament, heritages to be safe" (Article 39)¹⁰⁴. And all the chrysobulls and prostagmas, which my emporship has given to whoever and which to whoever will give, and those heritages to be safe, as of previous ortodox emperors, to be free with them, or to give to the Church, or to leave for the soul, or to sell to whoever" (Article 40)¹⁰⁵. The guarantee of the untouchableness of the free heritage is reinforced by the provision contained in Article 43 of Dushan's Code: "And master emperor, or king, or lady empress shall not be authorized to forcibly take the heritage from whoever, to buy from or exchange heritage with whoever, unless he himself agrees"¹⁰⁶. Thus, the emperor's power was restricted in this field.

From the situational justice point of view, it is essential here to point out that legal equality among all the members of the secular lords has been established, both in view of the rights and duties. There are several exceptions to this principle, which do not bring into question the very principle. Namely, Dushan's Code takes over, by means of chrysobulls and agreements in the 13th century, the already established division of secular nobility to high and low. Thus, for example, Article 12 reads: "That the lord shall not be authorized, neither low nor high, nor whoever, to hold back or prevent his people, or other merchants, not to go to the emperor's marketplace, but each to go freely"¹⁰⁷, and Article 136: "The letter of my emporship to be heard where it comes, or of lady empress, or of king, or of nobility, high and low..."¹⁰⁸. High nobility represented only the "honorary upper layer" in the secular lords, but not "certain particularly privileged estate order"¹⁰⁹. With reference to the members of low nobility, the members of high nobility had a "privilege", stipulated under Article 61 of Dushan's Code: "A high lord to be summoned by a judge's letter, the others with a seal"¹¹⁰. As for the composition of the jury, there is a difference in the court procedure between the high and low nobility: "What was the law of my emporship's grandfather, saint king, that high lords shall be the jury to high lords, to middle people according to their company, to villeins their company shall be the jury; and no relatives and malicious persons shall be in the jury"¹¹¹ (Article 152). As it has already been pointed out in this country, the principle in effect in

¹⁰³ See: *Dushan's Code of 1349 and 1354*, translated and published by Nikola Radojčić, p. 100.

¹⁰⁴ *Ibid.*, p. 99.

¹⁰⁵ *Ibid.*, pp. 99-100.

¹⁰⁶ *Ibid.*, p. 100.

¹⁰⁷ *Ibid.*, p. 123.

¹⁰⁸ *Ibid.*, p. 126.

¹⁰⁹ See: Teodor Taranovski, *The History of the Serbian Law in the Nemanjić-Dynasty State*, p. 38.

¹¹⁰ See: *Dushan's Code of 1349 and 1354*, translated and published by Nikola Radojčić, p. 107.

¹¹¹ *Ibid.*, p. 130.

the Middle Ages was "peer to peer to judge"¹¹².

Belonging to the secular lords were also proniars. Their principal legal duty was that military, as was the duty of the rest of secular lords. The name "proniars" was given to them because they were holders and beneficiaries of pronias. A pronia is a law institution taken over from the Byzantine law. The first mention of it dates back in 1300 in a chrysobull of king Milutin¹¹³. By the look of it, it existed in the medieval Serbia much earlier than the above mentioned year. Pronia was a state-owned field estate. It was granted to brave people for life, who probably lived in the borderline area of the Serbian state, border guards, without a title to alienate (*ius abutendi*). Article 59 of Dushan's Code reads: "No one shall be authorized either to sell or to buy pronia, he who has no heritage; out of pronia land no one shall be authorized to grant to the Church, if he does, it shall not be valid"¹¹⁴. It is in these elements that it differed from the heritage. From the law point of view it could not be inherited, in contrast to the heritage, but probably "there existed factual succession"¹¹⁵. From the standpoint of the topic I am dealing with, it is essential to point out that, as regards the estate point of view, there were no differences between proniars and the rest of the secular lords. The fact that proniars were more closely connected with the state, due to their permanent military service (hence the proniars were probably border guards, as was also claimed by Stojan Novaković¹¹⁶), was irrelevant from the estate point of view.

That the origin of the secular lords in the medieval Serbia was connected with the military factor, as a prevailing one, was shown by Taranovski. After all, it was military factor that also played a deciding role in the origin of other medieval states. Taranovski assumes that the Serbian state as well, has originated due to the "energy of certain military undertakers who gathered a group of devoted and faithful military companions around themselves"¹¹⁷. Having become rulers, they granted estates to the "devoted and faithful military companions" (the so-called company), their principal obligation still being "to wage wars". This is how the secular lords come into being, "combining military services with large estates"¹¹⁸. Although it was with the advent of time that the institution of lords stretched beyond the company circle, the company remained a "genetic core of the lords"¹¹⁹. That the company also existed in Serbia, as an indirect testimony may serve the right of the ruler, stipulated under Article 48 of Dushan's Code, "to take a horse and arms of the dead lord"¹²⁰. From this paper point of view, it is irrelevant that, with the spreading of the Serbian state, coast and Greek lords (the origin of which differed from that of the Serbian lords) were, in addition to the Rascian lords, also a part of the secular lords.

¹¹² See: Teodor Taranovski, *The History of the Serbian Law in the Nemanjić-Dynasty State*, p. 38.

¹¹³ *Ibid.*, p. 62.

¹¹⁴ See: *Dushan's Code of 1349 and 1354*, translated and published by Nikola Radojčić, p. 106.

¹¹⁵ See: Teodor Taranovski, *The History of the Serbian Law in the Nemanjić-Dynasty State*, p. 66.

¹¹⁶ See: Stojan Novaković, *Stara srpska vojska (Old Serbian Army)* (separately printed from *Ratnik*) Beograd, 1983, p. 75.

¹¹⁷ See: Teodor Taranovski, *The History of the Serbian Law in the Nemanjić-Dynasty State*, p. 75.

¹¹⁸ *Ibid.*, p. 76.

¹¹⁹ *Ibid.*, p. 76.

¹²⁰ *Ibid.*, p. 77.

Members of the secular lords were timocratic people, in the meaning attributed to them by Plato. Their basic feature was ambition, a wish to compete and conquer. Plato named timocracy ambitious governmental structure and timocratic people, suited for that structure, ambitious people. Timocratic people long for possessing both estates and wealth in general. Working on their estates should be, according to Plato, "peasants without rights". This is an essential difference between them and the assistants to rulers in Plato's perfect state. A timocratic man is full of arrogance, "desirous of power and honours", justifying this by "his war deeds and activities referring to the war"¹²¹. On that what the secular lords, as a military estate, looked like under emperor Dushan, and what their role was in spreading the territory of the medieval Serbian state, writes Georgije Ostrogorski in his work *Dushan and His Lords in Fighting Byzantium*. In the subject work he says that "principal power which encouraged them to conquer Byzantine countries was (...) a wish for expansion of the Serbian lords"¹²². That was not only under Dushan, "but long ago before Dushan". Both at the time he was stabilizing his position and when he became powerful, war campaigns were not "undertaken out of his selfishness, but because of the lords wishing further expansion and new countries"¹²³.

The second ruling estate in Dushan's Serbia was the clergy. While the secular lords, as a rule, were reproduced by succession, ecclesiastical titles were acquired by choice for life. It is well-known what and how important was the role of the Church in Dushan's Serbia. As a religious community, it was independent, "resembling a state", according to Taranovski, having originaire power in the religious field¹²⁴. As a special corporation, it was exempted by the state from the competences of state courts. Large landed properties, possessed by the Church, resulted from the ruler's gifts, and from the gifts of pious private persons as well. The Church had a full right of possession to the land. The Church property was untouchable and guaranteed by chrysobulls, also before Dushan, issued to churches and monasteries. It enjoyed economic immunity. In contrast to the secular lords, the Church did not pay soća and was not obliged to "wage wars". It was exempted from duties to repair and guard cities and had, as we have already said, court immunity. Estate rights of the Church, i.e. the clergy, were accompanied by the corresponding obligations. Provided by the Church were spiritual needs of the state and other estates. The Church was a centre and champion of culture and education. Care for nation's health and nourishment, particularly in times of famine, was one of its concerns. It supported the poor and disabled people, widows and orphans. The clergy was divided into higher (large estate owners) and regular clergy (monks and parish clergymen /priests/). The parish clergymen composed the lower ecclesiastical estate. They were

¹²¹ See: Plato, *Država (State)*, p. 243.

¹²² See: Georgije Ostrogorski: *Dušan i njegova vlastela u borbi sa Vizantijom (Dushan and his Nobility in Fighting Byzantium)*, Zbornik u čast šeste stogodišnjice Zakona cara Dušana, I, Beograd, SANU, 1951, p. 80.

¹²³ Ibid., p. 82. "He (Dushan – M.P.) has landed his most telling blow to the Byzantine lords by depriving many representatives of the Byzantine ruling layer of their positions and estates, granting them to his collaborators, who inspired his policy of conquest and who reaped his fruits" (p. 86). "The question of cities meant (...) the question of positions and estates. Those positions and estates were lost by the Byzantine religious and feudal lords and granted to the Serbian lords, actual inspirers and promoters of the wars of conquest against Byzantium, which Dushan, like his predecessors, waged, first of all, to their interests" (p. 86).

¹²⁴ See: Teodor Taranovski, *The Histroy of the Serbian Law in the Nemanjić-Dynasty State*, p. 29.

obliged to pay patrimonial tribute (bir and vrhovina).

The third estate was composed of the dependent population. Certain of our historians, particularly Stojan Novaković, based on provisions contained in Articles: 53, 55, 85, 94 and 106 of Dushan's Code, pointed out that the term villein referred to the whole population, except the secular lords and the clergy. Taranovski, however, thinks, citing Article 98 of Dushan's Code, that the term villein does not cover the whole "non-lords population, but one narrower circle, the peasants"¹²⁵. Taranovski here thinks of peasants – farmers, merophs, in Dushan's Code terminology. There were three kinds of them: those of the ruler, Church and lords, depending on the fact whether the land they worked on was that the ruler, Church or lords. They were entitled to use it (dominium utile), i.e. it was a subordinated heritage (heritage under burden) which was hereditary. It was under the direct property (dominum directum), consisting of using the fruits of the land, under the burden of obligations (unpaid labour and tributes) in favour of the direct owner of the land (the ruler, Church, secular lords). It was just that the hierarchical structure of the land ownership corresponds to the hierarchical estate structure of Dushan's Serbia. It is important to mention that merophs did not enjoy the freedom of movement, that they were bound to the land, which means that they were private subjects. In addition to merophs, dependent population also involved sokalniks (most of them worked in a kind of "home industry" /Taranovski/) and craftsmen (bricklayers, blacksmiths, tanners, potters, tailors, etc.). Alike merophs, they did farming, but also practiced the above mentioned additional jobs. That is why their unpaid labour and tributes, they owed to the direct owners, were less than those of merophs. The Vlachs were also a constituent part of the dependent population. They were cattle breeders obliged to pay grass tribute to the owners of free heritages, the pasture of which they used to graze cattle, or depending on the type of cattle breeding, they had some other obligations. Their legal position was basically the same as that of merophs. Distinguished from the Vlachs should be shepherds from merophs circles, "who worked as paid servants or, in addition to farming, did shepherds unpaid labour"¹²⁶. They were paid in kind, and in the event of cattle lost they were freed from obligations. Of all the layers of the dependent population, otroks (not free or slaves) were in the gravest position. They were the property of the free heritage holders. Like agrarian slaves, the otroks also existed in times preceding Dushan's Code, to which numerous chrysobulls point to. In addition to the work on the land, they did other jobs, such as personal servants and escort for the lord when on the way. In addition to the agrarian, there were also palace slaves, on the legal status of which there are no reliable testimonies. Finally, a part of the third estate (of dependent population) were city dwellers. If coastal cities were exempted, i.e. city dwellers in them, of which Dushan's Code even does not make any mention, as well as the conquered Greek cities, the privileges of which, granted to them by the Byzantine emperors, were recognized by the Serbian rulers to go on living in them, the city dwellers of the cities in the provinces of Serbia were a "factual category of the city population" composed "of different estate elements"¹²⁷. Dushan's Code contains provisions on cities, but not on city dwellers, first

¹²⁵ Ibid., p. 79.

¹²⁶ Ibid., p. 113.

¹²⁷ Ibid., p. 126.

of all, from the military, but from the economic point of view as well (free arrival to marketplaces, freedom of markets, performance of goldsmith craft). Although the city dwellers had certain privileges, they did not compose a particular estate in Dushan's Serbia.

The instance of the dependent population, as the third estate, although very heterogeneous, may show the principle of situational justice, the ruling principle in Dushan's estate monarchy. The rights and obligations of the dependent population are in direct correspondence with their role in the society. Since the military function (along with that of the court) was the principal function in the Middle Ages, it was natural that agrarian, cattle-breeding, artisanal, etc. jobs would be less valued and that the dependent population would live under the burden of different obligations. It was only in that manner that the privileged estates could devote their off-time to the principal functions in the state. It was, therefore, that the rights of the dependent population were measured according to their merits, i.e. according to their position (rank) in Dushan's Serbia. On the other hand, inside each layer of the dependent population, the same degree of equality, which was the central part of the justice, was provided by Dushan's Code to all the members of the subject layers. The members of the ruling estate could not overstep the threshold of the established rights and obligations of the dependent population. Legal status of the dependent population was guaranteed by Dushan's code. Witnessing on that, in addition to other things, is one provision from Article 139: "No lord shall be authorized anything under the law against merophs of my emperorship, except that what my emperorship has put down in the law, which is to provide him with the unpaid labour. If he does anything illegal to him, my emperorship orders that each meroph shall be authorized to be engaged in a lawsuit with his master, or with my emperorship, or with the lady empress, or with the Church, or with the lords of my emperorship, or with whosoever, that no one shall be authorized to keep him from the court of my emperorship, but that the judges shall judge him according to justice, and if meroph wins the lawsuit against his master, the judge of my emperorship shall guarantee him how the master shall pay all to the meroph in due time, and then that that master shall not be authorized to do any evil to the meroph"¹²⁸. There are no reliable facts to which extent this provision, pursuant to which personal and property freedom of the dependent population was guaranteed, was applied in the court practice. But its very existence, even if not applied, that it was fictitious, is, in view of the times it appeared in, of great significance.

Finally, the very monarchic moment in the state is primarily connected with the military obligation, i.e. function, which perfectly fits into the timocratic form of rule. The ruler's obligation was to organize military forces and to command them (which was his right). Even in this field, his power was restricted, since the army, as it has already been pointed out, was estate-based. It should always be kept in mind that there "existed certain power competition"¹²⁹ between the ruler's power and that of the privileged estates (in military questions of the secular lords). In addition, the ruler was a titular of the supreme title to the land (dominium eminens). From the supreme property, as a real right, he

¹²⁸ See: *Dushan's Code of 1349 and 1354*, translated and published by Nikola Radojčić, pp. 126-127.

¹²⁹ See: Teodor Taranovski, *The History of the Serbian Law in the Nemanjić-Dynasty State*, p. 187.

ceded direct property (*dominium directum*) to the secular lords and the clergy, and the property to use (*dominium utile*) to the dependent population. His power over the land was "his primary right", and that over the people "secondary"¹³⁰. Consequently, the power over the people was derived from his real title to the land. His power was direct towards the privileged estates, in the fields where those estates had obligations towards him, and towards the dependent population it was patrimonial.

Law-creative activity of the Serbian rulers was, before emperor Dushan, of a particular character. Testimonies on that are chrysobulls. It was only under emperor Dushan, autocrat, which is one of the trait of his title (Greek: *autokrator*), that the ruler's law activity took a legislative form. Legislative activity in the Middle Ages was exclusively connected with the empire¹³¹. Emperor Dushan put his signature as the emperor of Serbs and Romania (i.e. Byzantium), so as to provide himself with the dignity of a successor to the Roman Empire. Mostly, he wrote in Greek, as a worldwide language, but not in Serbian. Otherwise, legislature was a common function of emperor Dushan and the Parliament.

The ruler took part in the judiciary power as well (for example, in lawsuits pertaining to the Church land /Article 78 of Dushan's Code/) or through the court at his palace (for example, in criminal acts done at the palace /Article 175 of Dushan's Code/).

Administrative power of the ruler, in addition to that military, which, pursuant to the tripartite division of power, falls into the administrative power, is made evident through the power of the ruler's direct organs (*cephalias*) which, viewed from the personnel standpoint, originated from the secular nobility (the so-called "security police" /Taranovski/) and through the financial power. In addition to the "subordinated powers" (*cephalias*), there were also "mediating powers" (privileged estate), which "mediated between the ruler and the population"¹³². The germs of the administrative power, understood in a narrower sense, like clerks (bureaucracy), as a professional part of the governmental machinery, hardly existed.

What was the character of Dushan's estate monarchy? Was it constitutional or absolute or monarchy *sui generis*? No doubt that it was not absolute monarchy. The monarch, in an absolute monarchy, is not only a sovereign personality (personality having exceptional privileges which put him above the law, politically and legally not responsible personality), but he is also a sovereign (supreme) organ. Dushan's power, however, was restricted by the existence of other organs he shared the power with. His power was restricted both on the extrinsic and on the intrinsic side. On the extrinsic side, by the Christian law he had to respect. On the intrinsic side, by the power of the secular lords and the Church. The legislative power was restricted by the Parliament, regardless of the fact that in a number of provisions of Dushan's Code it was stipulated that the Code was emperor's. A mention has already been made that even his military power was restricted due to the estate character of the army. That the ruler's judiciary power was also restricted can be seen not only from the fact that it was bound by the Code, but also

¹³⁰ Ibid., p. 186.

¹³¹ Se: Teodor Taranovski, *Pravo države na zakonodavstvo* (*The Right of a State to Legislature*), Šišićev zbornik, Zagreb, 1929, pp. 371-379.

¹³² See: Teodor Taranovski, *The History of the Serbian Law in the Nemanjić-Dynasty State*, p. 207.

from the fact that there existed different courts, in addition to that emperor's and the palace court (church court, patrimonial court, estate court, /coastal and Greek cities/, special court for foreign residents in the country, mixed court between the residents of Dubrovnik and the Serbs, state court and military court, as a subgroup of the state court). Finally, the administrative power of the ruler was also restricted. Financial power, as a part of the administrative power, was restricted by the "economic immunity" (Taranovski) of the privileged estates. In the remaining part, administrative power was restricted through the secular power, the representatives of which made personnel substratum of the "subordinated" and "mediating" power. A thesis that Dushan's monarchy was, to a certain extent, a constitutive monarchy could be, partly, defended. For, considered in a material sense, Dushan's Code also contained provisions of the constitutional character. Since Dushan's Code is one of the rare examples of the universal codification, it is completely evident that contained within it were also provisions of the constitutional character. The provisions of the constitutional character are those dealing with the organization of the state and the competence of the central governmental organs (emperor and parliament). Also, the provisions relative to the basics of the social and economic structure and, first of all, to the ownership relations, which are a legal expression of the principal economic relations are of the constitutional character as well. Finally, norms-principles of the criminal law and the court procedure, as well as of the court organization, make a component part of the constitution in the material sense. Since Dushan's Code was binding for emperor Dushan himself (a question is to what extent factually, but normatively, yes), it seems acceptable to partly consider Dushan's monarchy as a constitutional monarchy. In any event, as a estate monarchy, it represented a form of a restricted, but not absolute monarchy, since the ruler's power was restricted by the estate rights of the secular lords and the clergy.

I hope that I have shown that Dushan's estate monarchy was a well-organized state. Due to the military function as a principal one, the secular estate, together with the monarch, as a military estate, had a dominant influence and power in it, which was, because of military needs, economically provided (free heritage), which rather resembled the timarchy of Plato as a form of rule the least far from the perfect (fully righteous) state. As for the dependent population, particularly serfs, titulars of the subordinated heritages, their legal status, especially due to the lack in labour, was not worse than the position of that category of population in other European countries. This also, *mutatis mutandis*, refers to other layers of the population. Dushan's estate monarchy enabled culture to flourish: people's literature, fresco painting, architecture... If "buildings", as reported by Jireček, "are the most magnificent monument of each previous cultural period", then there are in Dushan's Serbia "a considerable number of great and beautiful churches which speak for themselves on the one-time riches of the country and reign and people's sense and love for art"¹³³. As for the culture, the Serbian medieval state can be freely said to have not lagged behind or at least to have not significantly lagged behind the developed countries of the Catholic West.

¹³³ See: Konstantin Jireček, *Istorija Srba*, (The History of Serbs), (Yu edition), translated and supplemented by Jovan Radonjić, Book II (cultural history), second revised and supplemented edition, Beograd, Naučna knjiga, 1952, p. 218.

2. Aristotle's Justice and Dushan's Estate Monarchy

Aristotle, disciple of Plato, universal genius of the classical ages, along with Hegel certainly the most versatile and deepest philosopher of all ages, has formulated, in his work *Nicomachean Ethics*, classical teaching on justice. Aristotle's justice is the second and more recognizable constituent of justice in Dushan's legislature.

a) General Justice and Special Justices

Like Plato, Aristotle puts justice inside the organized community, state, as "the most powerful" of all communities¹³⁴. Its purpose is, like with Plato, accomplishment of the most supreme good. The state is, says Aristotle, "more important than an individual"¹³⁵. Only "a beast or God" can live outside it. As a man "without virtue is the most perverted and the most splendid being", so a state "without a law and justice is the worst of all – because the armed injustice is something the worst"¹³⁶. Thus, justice is with Aristotle by fate connected with the state, as the case is with Plato. It is "a need of the state, because justice makes a structure of the state community, and its function is to decide what is righteous"¹³⁷.

As we can see, Aristotle has explained in *Politics* his opinion of justice *in grosso modo*. However, in *Nicomachean Ethics*, the work which "is one of his most original"¹³⁸, combining Plato's and Pythagorean teaching¹³⁹, with his own working out, Aristotle has explained, viewed from the formal standpoint, a teaching on justice unsurpassable to date.

Like Plato, Aristotle understands justice as supreme and total virtue "which is almost equal to the very bliss"¹⁴⁰. Since ethics is a teaching on the supreme good, there is a permanent unity of ethics and politics, as with Plato. For, as I have already pointed out, each state is the accomplishment of the supreme good. Under the general justice Aristotle understands the rule of law, i.e. performance pursuant to the law, legality. He says: "Since the illegal man has proved himself to be unrighteous, and the legal man to be righteous, it is crystal-clear that all legal things are somehow righteous as well, because all the things that are set up based on legislature, they are legal, so that we say that each of them individually is also righteous. The laws regulate all things, striving for common benefit, either for all or for those best or for the powerful (according to strength) or whatever similar; so that in a way we name righteous all the things which create and keep bliss and its component parts in the state community"¹⁴¹. Here, naturally, it should be

¹³⁴ See: Aristotle, *Politika (Politics)*, foreword by Miloš N. Đurić, third edition, Beograd, BIGZ, 1975, p. 3

¹³⁵ *Ibid.*, p. 5.

¹³⁶ *Ibid.*, p. 6.

¹³⁷ *Ibid.*, p. 6.

¹³⁸ See: Danilo Pejović, *Aristotelova praktična filozofija i etika (Aristotle's Practical Philosophy and Ethics)*, in the book *Aristotel, Nikomahova etika (Nicomachenan Ethics)*, foreword and philosophical revision by Danilo Pejović, Zagreb, Globus and Sveučilišna naklada Liber, 1988, p. V.

¹³⁹ See: Giorgio del Vecchio, *Pravo, pravda i država (Law, Justice and State)*, (Yugoslav edition) treatises on the philosophy of law with a foreword on idealism G. del Vecchio by Dr. Đorđe Tasić, Beograd, Geca Kon, 1940, pp. 12, 18-22.

¹⁴⁰ See: Danilo Pejović, *Aristotelova praktična filozofija i etika (Aristotle's Practical Philosophy and Ethics)*, p. XIII.

¹⁴¹ See: Aristotle, *Nicomachean Ethics*, p. 89.

kept in mind that Aristotle under the law does not understand a mere state creation, but an act based on the nature of the things, i.e. idea, reason. Thus, sophistic disagreement between *nomos* and *physis* was overcome, and discussion on justice put into the forefront. General justice is named "perfect strength" by Aristotle, and he points out that "all the strengths are collected"¹⁴² in it. He says that "neither the evening star nor the morning star are so beautiful" like justice.

In addition to the general, Aristotle singles out two particular kinds of justices as well: distributive and corrective or synalagmatic. Distributive justice appears in the field of public law. It is demonstrated in the relations of the state and individuals. It is applied "in distributions of honours and money or other things that are divisible among the partners of the state union (because one against the other can be equal or unequal in them)"¹⁴³. It means that in the division each obtains according to his contribution, i.e. merit, which confirms the principle of equality (proportional equality). Corrective or synalagmatic justice is, on the other hand, "that what makes corrections in mutual relations"¹⁴⁴. This justice appears in the field of private law. Instead of geometric proportion characteristic of the distributive justice, corrective or synalagmatic justice features arithmetic proportion, principle of equivalency. While the distributive justice is dispensed by the legislator, corrective justice is dispensed by the judge when resolving disputes and when pronouncing sanctions for the delicts done. Since Aristotle distinguishes between the willing (agreed upon) and unwilling agreements (relations arising from a delict), it was properly done by Del Vecchio when he distinguished commutative justice ("relations of exchange according to a certain measure") and judiciary justice (relations arising from a delict "immediately after in the form of a court proceedings") as subgroups of the corrective or synalagmatic justices¹⁴⁵. While commutative justice provides norms to the very contractual parties, so that "correcting action of the judge may not be necessary", judiciary justice "should, against the will of one of the two parties, correct some unjustly occurred damage"¹⁴⁶.

Out of these two justices, distributive and corrective or synalagmatic, distributive justice is "the original form of justice"¹⁴⁷. For, corrective or synalagmatic justice "supposes", according to Radbruch, "an act of the distributive justice which provided equality, possibility of equal communications, equal status to the participants"¹⁴⁸.

b) General Justice and Dushan's Code

If Aristotle's general justice is understood as a legal justice, i.e. as application of the law, as legality, then Dushan's Code expresses, proves and affirms it in the best possible manner.

From the axiological standpoint, the most important provisions of Dushan's Code are contained in Articles 171 and 172, which I have already mentioned. Regardless of being taken over from the Byzantine law, they are of so high rank that could be found in the

¹⁴² Ibid., p. 89.

¹⁴³ Ibid., p. 92.

¹⁴⁴ Ibid., p. 92.

¹⁴⁵ See: Giorgio del Vecchio, op.cit., p. 24.

¹⁴⁶ Ibid., p. 24.

¹⁴⁷ See: Gustav Radbruch, *Filozofija prava (The Philosophy of Law)*, (Yu edition), foreword by Dr. Stevan Vračar, Radbruhovo filozofskopravno stanovište, Beograd, Nolit, 1980, p. 47.

¹⁴⁸ Ibid., p. 47.

modern law as well. It results from Dushan's Code that law and justice must be observed, while the obligations of judges are "to judge pursuant to the law" but not "for fear of my emperorship". In totalitarian structures, featuring the 20th century, neither law nor justice, nor court actually do not represent anything but ideological haziness covering all the society that the usurping regimes should be provided with the false splendour and legitimacy. Whether the provisions contained in Articles 171 and 172 of Dushan's Code were only declarative or realistic, it is hard, nowadays, to safely say because of a so long time passed. Missing is reliable data on the court practice of Dushan's times. The documents available do not provide evidence on the subject matter, while more indirect information is poor and insufficiently reliable. I suppose that performance of judges, because of the increased authority of emperor Dushan, reinforced due to his great military successes, regardless of legal orders, was still burdened "for fear of my emperorship". Even if they were only declarative, the above mentioned provisions of Dushan's Code, they represent a high law outcome of Dushan's Serbia.

A high law achievement is also that of the provision contained in Article 105 of Dushan's Code: "Emperor's letters, brought before the judges for whatever reason, and which are refuted by the code of my emperorship, whatever letters I have written, refuted by the court, to be taken by the judges and be brought before my emperorship"¹⁴⁹. Though I question myself here as well, when "emperor's letters (...) refuted by the court", how the judge went "before my emperorship", if there were such cases, and how he returned and whether he reached home "safe and sound", without any consequences for himself, his rank, his property and his household. In any case, on the normative plan, the provision of the subject article was one of the guarantees for court independence and the principle of legality.

Whether adoption of Aristotle's general justice, i.e. the principle of the legality in Dushan's Code, in addition to the decisive influence of the Byzantine law, was affected by other sources as well, such as "western", and if there was "mediating" role of Dubrovnik¹⁵⁰, is of irrelevance from the point of view of the subject discussed herewith.

Otherwise, Taranovski has established in his *History of the Serbian Law in the Nemanjić-Dynasty Serbia* that Dushan's Code "explicitly proclaims the principle of legality" in view of "regulating the judiciary", "norming estate and social relations" and "regulation of the administration performance of the state"¹⁵¹ so that there is no need to discuss the subject.

c) Distributive Justice and Dushan's Code

Since Dushan's Code predominantly contains provisions of public law character, it is obvious that distributive justice, applied in distribution of honours and goods, is represented in it to a great extent.

In accordance with the distributive justice principle, distributed to the individuals by the state are honours and goods in proportion with their contributions to the state. That the distributive justice is also represented in Dushan's Code was observed by Taranovski,

¹⁴⁹ See: *Dushan's Code of 1349 and 1354*, translated and published by Nikola Radojčić, p. 119.

¹⁵⁰ See: Teodor Taranovski, *The History of the Serbian Law in the Nemanjić-Dynasty State*, pp. 299-300.

¹⁵¹ *Ibid.*, pp. 294-296.

although he followed another course, empiric and positivistic: "Privileges increase or decrease, but always come as the consequences of duties, thus like *posterius* with reference to them, while duties remain as a basis of the governmental structure, as its *prius*"¹⁵². The rights are, therefore, something secondary, originated and derived from duties, which come to the forefront. Since the military function in Dushan's Serbia was a primary function, it is quite natural that the secular lords, as a military estate, were privileged. Out of their primary obligation to "wage wars", the secular lords were granted a title to the land (*dominium directum*) and other rights by the state. Consequently, the secular lords could require from the dependent population to fulfil only those obligations which were stipulated under the Code. Testifying on that is, for example, Article 68 of Dushan's Code: "The law to the merophs all over the country: in a week, for two days to work for the proniar, and to give him emperor's perper a year, to mow grass for him one day, as well as to do vineyard one day, and he who has no vineyard to have other jobs done for one day, and what meroph has done to keep it all, and nothing more, against the law, to be taken from him"¹⁵³. Should the lord's obligation in the military service be greater, he shall be granted more honours and rights. Thus, for example, Article 129 of Dushan's Code stipulates: "In the army, in each one, voivodes to command as much as the emperor, what they say to be obeyed, should anybody refuse to obey them in anything, to be punished as well as those not obeying the emperor; and courts small and great in the army to be judged by voivodes, and no one else"¹⁵⁴. To what extent Dushan's Code took care of fulfilment of obligations towards the state, and in connection with this of the resulting privileges as well, Article 61, in addition to other articles, reads as follows: "When a lord comes home from the war, or any other soldier, and if anybody summons him to the court, he is to stay at home for three weeks, and then to go to the court"¹⁵⁵.

Since the clergy also had important obligations towards the state, which were highly appreciated in those times, granted to them under the Code was also a significant participation in the distribution of honours and goods, in real estates (*dominium directum*) as well as in others, what I have already discussed.

The most important were the obligations of the emperor, particularly in the military function of the state, so that is why the greatest honours and goods, economic (*dominium eminens* and *dominium directum*) and others, were granted to him under the Code.

As for the dependent population: merophs – farmers, Vlachs, cattle breeders, artisans and others, no matter how much important jobs they did, their participation in the distribution of honours and goods was proportionately lesser, since they did not belong to the military estate, but it existed, anyway, both in economic field (*dominium utile*) and in other areas.

There existed one more particular form of the distributive justice in Dushan's estate monarchy, discussed by Leibniz. Leibniz's *iustitia distributiva* or *aequitas*, one of the three subgroups of justice (the other two are *iustitia commutativa* and *universalis*) also

¹⁵² Ibid., p. 287.

¹⁵³ See: *Dushan's Code of 1349 and 1354*, translated and published by Nikola Radojčić, pp. 108-109.

¹⁵⁴ Ibid., p. 126.

¹⁵⁵ Ibid., p. 106.

contains in the subgroup *suum quique tribuere* a duty of beneficialness and charity, which is provided for and regulated under Dushan's Code as well. Thus, for example, Article 28 of Dushan's Code, which speaks of food for the poor, regulates: "With all the churches the poor shall be fed, as is bequeathed by the founder, and he of the metropolitans or bishops or priors who does not feed them up shall be removed from his office"¹⁵⁶. Also, in Article 64 of Dushan's Code: "A poor hemp producer to be free like a priest"¹⁵⁷. Then, Article 73 of Dushan's Code stipulates: "A poor woman who is not able to engage herself in a lawsuit or to answer, shall provide replacement, who will answer for her"¹⁵⁸. Recognized in this provision is the right of the poor, a law institution in the modern procedural law. In the sense of this particular form of the distributive justice (Leibniz's) also indicative is Article 179 of Dushan's Code: "Judges shall walk the country, visiting their respective regions, and shall maintain the justice of the poor and the wretched"¹⁵⁹. Radojčić thinks that this form of the distributive justice, which corresponds to the philanthropic duties, here of churches and courts, also originates from the Byzantine legislature, and even further back, from the Roman law¹⁶⁰.

d) Corrective or Synalagmatic Justice and Dushan's Code

Out of the two corrective or synalagmatic justices (commutative and judiciary) in regard of Dushan's Code, it is only the judiciary justice that can be presented. As I have already said, commutative justice is applied in the civil law. However, Dushan's Code only slightly contains provisions of the civil law since they are contained in Matthew Blastaros' Abridged Syntagm, i.e. in the legal part of Dushan's codification. The judiciary justice, however, is applied in the criminal law with, as Aristotle says, unwilling agreements, i.e. legal relations arising from a delict. Hence, only the judiciary justice is being made problematic here.

A question is being raised why Aristotle has placed the judiciary justice, as a criminal justice, within the frame of the corrective or synalagmatic justice, i.e. private law justice, but not distributive, i.e. public law justice? For, criminal delicts do not offend only an individual, but the state as well. A generally accepted standpoint today is that the criminal law is a part of the public law. Aristotle's intention, however, was to reestablish, by means of the court (criminal justice), "the disturbed balance between the injurer and the injured", almost overseeing the difference "between the indemnity of a damage and the penalty"¹⁶¹. Both Pufendorff and Vico have also observed this illogicality or "anomaly"¹⁶², according to Del Vecchio.

While the distributive justice is determined by Dushan's Code itself, the criminal justice is determined by the judge, by judging the cases arising from a delict. That is why Aristotle says that "to go to the judge means to go to that what is righteous, for the

¹⁵⁶ Ibid., p. 96.

¹⁵⁷ Ibid., p. 107.

¹⁵⁸ Ibid., p. 110.

¹⁵⁹ Ibid., p. 137.

¹⁶⁰ Ibid., p. 137. Radojčić's note accompanying Article 179 of Dushan's Code.

¹⁶¹ See: Giorgio del Vecchio, op.cit., pp. 24-25.

¹⁶² Ibid., p. 25.

property of the judge is to be the very righteousness"¹⁶³.

In pronouncing criminal justice, the judge searches for the middle "between the loss and the gain". Aristotle says: "If one is wounded and the other has wounded, or if one has killed and the other is killed, then suffering and action are unequally distributed, so that the judge strives, by penalty, to make equals, taking away from the gain"¹⁶⁴. It is equality that is also in question with the criminal justice, but not in geometrical (as with the distributive justice) but arithmetic proportion (equality between the criminal delict and the penalty).

The simplest example of the criminal justice, which is considered primitive nowadays, is the justice based on the talion principle, i.e. on vengeance, that is to say on revenge. Thus, for example, Article 96 of Dushan's Code provides for: "He who is found to have killed his father or mother or brother or a child of his, that killer shall be burned on fire"¹⁶⁵. There are cases in Dushan's Code in which the criminal justice is demonstrated in returning to the previous conditions. Thus, for example, is the case of the Latin heresy: "As for the Latin heresy, that has converted Christians to communion by Host, to be reconverted to Orthodoxy, and if anybody is found not to hear that and does not reconvert to Orthodoxy, shall be punished pursuant to the law of the holy fathers"¹⁶⁶. Similarly, Article 159 of Dushan's Code regulates: "Purchasers, passing by night, whereto they come to remain for the night, if not admitted by the ruler or the lord of the village to spend the night in the village, pursuant to the emperor's law, as stipulated under the law, if a traveller lose anything, that lord, and ruler and the village shall pay everything because they did not admit them to the village"¹⁶⁷. There are, here, elements of collective (village) responsibility, which is, from the criminal law standpoint, of importance. Sometimes, the intention of Dushan's Code, when pronouncing criminal justice, is to establish equivalency between the delict done and the punishment, most frequently in the form of money, according to the then- understanding. Thus, for example, Article 99 of Dushan's Code regulates: "He who is found to have put a house or a threshing floor, or straw, or hay on fire, that village shall hand that man over, if not, that village shall pay what that man would have to pay"¹⁶⁸.

The criminal law part of Dushan's Code, in view of the estate character of Dushan's Serbia, has systematically carried out the difference between the delicts done by the members of the privileged estates and the dependent population. For the same delict, pronounced to the members of the privileged estates was milder penalty, while that to the members of the dependent estate was more stiff. For example, Article 55 of Dushan's Code regulates as follows: "And if a lord, or a member of gentry, swears at sebar, he shall pay hundred perpers; if a villein swears at a lord or at a member of gentry, he shall

¹⁶³ See: Aristotle, *Nicomachean Ethics*, p. 96.

¹⁶⁴ Ibid., p. 30. "So it is generally said in such cases, even though the name itself is not suitable, like words "gain" for that who injures and "loss" for the wounded; but when the suffered is being weighted, it is said loss for one and gain for another. Therefore, that equal is the middle between the more and the less, while loss and gain are more or less contrary; more good is less evil for the gain, while loss is opposition to that; that equal is the middle between them, which is said to be righteous" (op.cit., pp. 95-96).

¹⁶⁵ See: *Dushan's Code of 1349 and 1354*, translated and published by Nikola Radojčić, p. 116.

¹⁶⁶ Ibid., p. 90.

¹⁶⁷ Ibid., p. 132.

¹⁶⁸ Ibid., p. 117.

pay hundred perpers and be scorched"¹⁶⁹. Dushan's Code makes a difference between the lords and gentry in pronouncing justice for the same delicts. Thus, for example, for the criminal act of offence, curse, Article 50 stipulates: "A lord who swears at or disgraces a member of gentry, shall pay hunder perpers, and if a member of gentry swears at a lord, he shall pay hunderd perpers and be beaten with sticks"¹⁷⁰. Therefore, the principle of equality, middle, equivalency, criminal justice is the same for the members of the same layer, but different for the members of different layers of the same estate, particularly for the members of the privileged and subordinated estates.

Most of the criminal law provisions of Dushan's Code were taken over from the Byzantine legislature. Often, penalties were severe, closely related to the corporal crippling and tortures. Hence, ceratain parts of Dushan's Code deviate from the criminal justice. Thus, for example, Article 97 of Dushan's Code regulates: "He who is found to have pulled out the beard of a lord or a good man, shall have both hands cut off"¹⁷¹.

CONCLUSION

Dushan's legislature, first and foremost Dushan's code, special attention to which I have devoted here, that magnificent codification of the Serbian medieval law, also turned out to be suitable for study from the philosophical point of view, first of all from that axiological, from the justice standpoint, as a central law value.

Investigation of Dushan's Code, according to Plato's paradigm, has enabled me to come out with a new thesis on Dushan's estate monarchy, as timocracy (timarchy), as the least perverted form of reign with reference to Plato's perfectly righteous state. The truth is that historians, all of them, long before me had found out that the military function of the Serbian medieval state under Dushan was the principal one and that, because of that, a privileged position both in economic and other fields was provided for the secular lords, as a military estate, headed by the ruler, as a supreme military commander. The historians, however, have not estimated Dushan's estate monarchy from the perfect and perverted states point of view, i.e. from the axiological standpoint. Also, I have tried to philosophically shed light on the facts conscientiously collected by the historians and to show rationality in Dushan's legislature, particularly in Dushan's Code.

Investigation of Dushan's Code, according to Aristotle's paradigm, has enabled me to come out with a new thesis on the situational justice, as a special form of ideological justice. Aristotle's general justice, understood as dependence, is represented in Dushan's Code to a high degree. The situational justice is, however, particularly demonstared through the distributive justice. This form of Aristotle's particular justice, which is applied in distributing honours and goods based on merit, i.e. according to the rank, position, is also represented in Dushan's Code and consistently carried out. As for the judiciary or criminal justice, as subgroups of the corrective or synalagmatic justice, it is evident that, in its pronouncing, there are deviations from Aristotle's middle, relative equivalency, although there are examples, as I have shown, of its consistent application.

¹⁶⁹ Ibid., p. 105.

¹⁷⁰ Ibid., p. 103.

¹⁷¹ Ibid., p. 116.

In view of the time, which is middle of the 14th century, when universal codification of the Serbian medieval law was carried out, I can conclude that higher form of justice could neither have been achieved.

Added to the masterpieces of the Serbian medieval architecture, fresco painting, national literature, may freely be Dushan's Code as well, as an expression of the powerful spirit of the Serbian people. As I have already said at the beginning of this discussion, the depth and dignity of Dushan's Code have been radiating through centuries and will do that over the centuries to come.

PRAVDA I DUŠANOVO ZAKONODAVSTVO

Milijan Popović

Navršilo se 650 godina od donošenja Dušanovog Zakonika, završnog dela univerzalne kodifikacije prava srednjovekovne Srbije, koja zajedno sa Skraćenom Sintagmom Matije Vlastara i tzv. Justinijanovim zakonom čini Dušanovo zakonodavstvo.

Dušanovo zakonodavstvo, a pre svega Dušanov zakonik, propitivano je sa stanovišta aksiološkog, po Platonovoj i Aristotelovoj paradigmi. Takav pristup omogućio je da se utvrdi umnost u Dušanovom zakonodavstvu, umesto uvrđivanja istorijske pojavnosti, što rade istoričari.

Dušanova staleška monarhija bila je timokratija (timarhija), a to znači oblik države koji namanje odstupa od Platonove savršeno pravедne države. Svetovna vlastela, kao vojni stalež, zajedno sa vladarem, vrhovnim vojnim zapovednikom, vršila je glavnu funkciju, vojnu, u srpskoj srenjovekovnoj državi, a sveštenstvo religijsku, kulturnu, prosvetnu i socijalnu. Otuda su to bili privilegovani staleži. Prema principu položajne pravde, s obzirom na svoje zasluge u državi, privilegovani staleži su imali pravo svojine na zemlji (dominium directum), a vladar i pravo vrhovne svojine na zemlji (dominium eminens), tzv. slobodnu baštinu, a i brojne druge povlastice u vanekonomske sferi. Zavisno stanovništvo, pak, s obzirom da njihova delatnost, iako nužna, nije bila direktno povezana sa glavnom, vojnom funkcijom, imalo je pravo uživanja na zemlji (dominium utile), tzv. potčinjenu baštinu, a za uzvrat brojne dažbine i terete.

Isto tako, u Dušanovom zakonodavstvu, a pre svega Dušanovom Zakoniku, prisutna je Aristotelova opšta pravda, shvaćena kao zakonitost, izričito formulisana na više mesta, a posebno u čl. 171. i 172. Kako je Dušanov Zakonik sadržavao najviše odredbe javnopravnog karaktera, u njemu je, u visokom stepenu, zastupljena distributivna pravda, koja se ispoljava u raspodeli časti i dobara, srazmerno zasluži. Postojao je i jedan poseban oblik distributivne pravde, sa izrazito socijalnom funkcijom. Naime, Dušanov Zakonik vodi računa o siromašnim, ubogim, bolesnim, oslobađa ih raznih tereta, a nameće obaveze crkvi i sudovima da ih pomažu. Najzad, Dušanov Zakonik poznaje i Aristotelovu sudsku ili krivičnu pravdu, kao oblik korektivne ili sinalagmatičke pravde, koja se ispoljava u uspostavljanju sredine između dobra i zla, odnosno ekvivalentnosti, što čini sud. Ovaj posebni oblik pravde, međutim, nije na dosledan način sproveden.

Po svojoj dubini i umnosti, Dušanovo zakonodavstvo, a pre svega Dušanov Zakonik, je primer veličanstvene srednjovekovne pravne kodifikacije.

Ključne reči: *Platonova pravda, položajna pravda, opšta pravda, distributivna pravda, sudska pravda, staleška monarhija, timokratija.*