Int J Semiot Law (2020) 33:133–146
https://doi.org/10.1007/s11196-019-09668-7

"Jurisdictional Realization of Law" as Judicium: A Methodological Alternative, Beyond Deductive Application and Finalistic Decision

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Published online: 22 October 2019

Abstract
The proposed reflection intends to present the problem of *judicial adjudication* as a *substantially-axiologically* founded autonomous moment on the *practical realization of law*, and to explore this understanding in confrontation with external exigencies, mostly *teleologically* determined—hence, beyond strict *deductive application*, as a (normativistic-positivistic) *syllogistic* reference of *facts* to *norms*, and *finalistically* determined *decision*, as an *option* among possible *alternatives* to achieve specific *aims*. The main objective is to enter into a discussion on the methodological meaning of "*integrity*", "*hard cases*" and "*right answer*", as presented by Ronald Dworkin, and a critical reflection on the criticism(s) of that approach levelled by Neil MacCormick, so as to confront the relevance of *principle* and *policy arguments*, in order to bring about a different methodological approach, an alternative *jurisprudentialist* conception of *adjudication*, incorporating a practical-normative constitutive dialectics between *legal controversy* and *legal system*, such as that presented by Castanheira Neves. The focus will, then, be the legitimacy of the connection of *arguments of principle* and *consequentialist arguments* in adjudication, its selection and its justification, stating, therefore, a specifically assumed *judicium*, a *judicative decision*, having the *legal system* as its horizon of *normative reference* and of *substantial* and *institutional autonomy*.

Keywords Judicial adjudication · Deductive application · Finalistic decision · Judicative decision · Legal system · Autonomy of law

This Paper was presented to the Special Workshop *The Public Power of Judgement: a Challenge To Phronêsis or Practical-Prudential Legal Rationality?,* IVR 2015—Washington.

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1 A Reflection on the *Meaning* of *Judicial Adjudication*: *Syllogism*, *Consequentialism*, and the Possibility of *Judicium*

Reflecting on the problem of *judicial adjudication*, now specifically seen as a *substantially-axiologically* founded autonomous moment on the *practical realization of law*, and to explore this understanding in confrontation with external exigencies, mostly *teleologically* determined—hence, beyond strict *deductive application*, as a (normativistic-positivistic) *syllogistic* reference of *facts* to *norms*, and *finalistically* determined *decision*, as an *option* between possible *alternatives* to achieve specific *aims*—, means assuming a specific concept of law, of its practical realization and of the corresponding legal thinking. The main objective intended in this reflection, in order to accomplish the aforementioned aim, is to discuss the methodological proposal presented by Ronald Dworkin and the critical reflection on the criticism(s) to that approach levelled by Neil MacCormick (Sect. 1.1), and, beyond these, to propose an alternative comprehension to that of the practical realization of law, anchored in a specific *autonomously material comprehension* of law and of legal systems, inspired in the version of *jurisprudentialism* presented by Castanheira Neves (Sect. 1.2).

The meaning of *judicial decision* will mainly be considered here, and, in this sense, the questions presented by the relationship between the *legal system* and the *legal problem(s)*, mostly through and analysis of the meaning of "*integrity*", "*hard cases*" and "*right answer*", as presented by Ronald Dworkin, and by a critical reflection on the criticism(s) to that approach presented by Neil MacCormick, so as to confront the relevance of *principle* and *policy arguments*, in order to bring about a different methodological approach, an alternative *jurisprudentialist* conception of *adjudication*, incorporating a practical-normative constitutive dialectics between *legal controversy* and *legal system* (Sect. 2).

1.1 Beyond *Deductive Application* and *Finalistic Decision*: A Dialogue Between Neil MacCormick and Ronald Dworkin

Neil MacCormick proposes, differently from Ronald Dworkin, the possibility of *weighting principles*, in which one may prevail without requiring the other or others to lose their validity, and the impossibility of an analogous situation in the case of a conflict of "*rules*" [23: 155–156, 3: 14–80], a view of "*legal rules*" aimed at a particular purpose which are taken to be valid, or a general form of conduct that is considered desirable, and the expression of that purpose or that way through a *general normative enunciation* ("*a general normative statement*") translates the enunciation of a *legal principle* ("the principle of the law") underlying them [23: 166]. Therefore, it will be not so much the balance between *principles* but rather the interaction of *arguments of principle* with *arguments of consequentiality* that will allow the decisions of the "*hard cases*" to be justified—the situations in which the «rules» would be insufficiently clear or in which the characterization of the facts was itself questionable, or even when there was controversy about the question of the

existence or inexistence of legal basis for a certain case, there would be room for a «*the second-order justification*» , always maintaining the need for coordination with the directives of *coherence* and *consistency* [23: 100–116, 129–194, 22: 99–112].

Consequently, on the one hand, a *judicial decision*, meant as *constitutive* and not merely *declarative*, is not bound by deduction starting from *rules*, but by the reasons justifying the mobilization of *rules*, which, as consequentialist considerations of its objectives—and, thus, *policy* dimensions—will be determined by the content of the *rule* itself, constituting the normative expressions of such reasons- «*policies*» justifying and rationalizing statements of *legal principles* ("Statements of '*legal principles*' are normative expressions of such rationalizing or justifying policies") [23: 166]. Such a decision, intended in this way, is, therefore, subject to restrictions, not *freely* constitutive but *interstitially* constitutive, and thus restrictively *innovative*, different from the legislative establishment of law [23: 187–191].

On the other hand, the analogical mobilization of «rules» in the area of "case law", as a binding precedent system, would itself be analogous to the analogical mobilization of "rules" of "statute law" [23: 194]—and, thus, both subject to the double requirement of valuating argumentation, and, hence, *coherence* ("(…) some good evaluative argument for the decision give, minimally the value of coherence in the absence of any countervailing consideration (…)".)—, and of justifying the admissibility of mobilizing analogy arguments or legal principles as the support for future decisions ("Secondly, there must be some general reason why arguments by analogy or from legal principles should be conceived as providing "legal support" for novel decisions, in the sense of being necessary conditions of their permissibility, rather than making them obligatory as do directly applicable mandatory rules".) [23: 186–187].

A distinct requirement here will then be *consistency*, taken in the *strict sense*, as a limit to the convening of consequentialist arguments when these contradict the fundamental rules of the system [23: 106], then translated into the theme of interpretation and into the problem of the corresponding determination of cases as "*easy*" ("*clear cases*") or "*difficult*" ("*hard cases*") [23: 195]. The first type of cases would be decided by *deduction* [23: 199–200], whereas for the second *interpretative rules* could be established, which would allow not (always) selecting the sense closest to the literal one, in order to achieve, in the light of principles and/or of consequentialist arguments, other senses. The obvious problem would then be to admit the existence of cases of the first and of the second type and to define the boundaries between them—this would result from the conjunction of the ideal of *coherence* with the ideal of *consistency* [23: 227–228].

Admitting that, in the case of «*statute law*» , the very *clarity* of the literal meaning of the legal norm would also be liable to arise from its reference to the meaning conferred to the *principle* or *principles* that inform it [23: 205], many meanings would hypothetically be available to the interpreter. This would, in turn, require on the one hand an effort to maintain *linguistic consistency* between the text of the enunciation and the meaning to be given to it, and on the other hand the combination of *consequentialist* and/or *principle* reasons in the intended interpretive sense [23: 206–213]. And, between the interpretation of *precedents*—"*case law*"—and the interpretation of *statutes,* the difference would not be a question of *gender*, but of

degree [23: 213]. Besides, the interpretation of *statutes* would often be conditioned by *precedents* [23: 215].

Therefore, MacCormick concludes, as does Richard Posner, that the interpretation of (and the consequent decision on the basis of) "*statute law*" is different from the interpretation of "*case law*" because of the binding force of the literal element, present in the first and absent in the latter [23: 221, 53–72] (referring to [51: 58–59, 72, 100, 105]), [49: 247–261, 262–285, 14: 22–23]. Concluding also that—something that is not entirely negligible here—that interpretation must submit itself to the *arguments of principle*, supported, at least partially, in which it will be stated whether the *sub judice* case is "*clear*" or "*hard*" [23: 231]. In this sense, both these approaches are different from the one presented by Joseph Raz, which locates the fundamental difference between "common law" and "statute law" in the easier reversibility of the first when compared to the latter—given the strict binding force of the *ratio decidendi* in the singular mobilization of *precedent* for the case *sub judice*, in view of the generality of *statute law* [50: 180–209, 194–197, 207]. Notwithstanding, it is recognized that there is a bind of continuity between the *application* ("*law-applying*") and the *judicial creation* of law ("*legislative and judicial law-making*") [50: 206–209].

Thus, concerning the meaning and content of principles, MacCormick affirms—in addition to saying that this thesis leaves unexplained the analogous application of *rules*—, differently from Dworkin, that, in terms of interpreting, the *rules* effectively compete with *principles*, and will not be invalid in the case of non-application, considering that it is possible to distinguish the delimitation of the *application field* of a *rule* in a given context for determining its validity or invalidity; even admitting that a *rule* may involve the delimitation of the meaning of a principle and be applied to the detriment of this one, when it might be contextually justified. Agreeing with Dworkin on the assertion that *judicial decisions* refer to rights, MacCormick distinguished, on the one hand, between *legal rights based on rules* ("*rule-based rights*") and *legal rights based on principles* ("*principle-based rights*"), and, on the other hand, *moral* and *political* rights, which would be mainly based on *principles* [23: 230–232] (referring to [21: 256–258]).

However, like Dworkin, MacCormick affirms that judges do not have (or are not burdened with) "'*strong' discretion*" before "*hard cases*", but only "'*weak' discretion*", though not exactly in the same sense. Indeed, if for Dworkin "'*strong' discretion*" would imply deciding in the light of the arguments that would appear to the judge to be best suited to the case, for MacCormick "*discretion*" would always be limited by the argumentative requirements of the system—*principles, consequentialist arguments* and the "*consistency test*" [23: 251]. In addition, and unlike Dworkin, MacCormick asserts that the possibility of presenting different possible solutions for "*hard cases*" does not raise a primarily theoretical disagreement, «speculative» , and, as a result of this, "practical", but *primarily* practical—not simply practical, but practical in a limited sense, in the light of the *binding force* of *rules*—, concluding, argumentatively, by the "*right solution*" ("*right answer*") in a case [23: 246–250, 265–274, 10: 31–32, 68–71].

In short, for MacCormick, if in the *simplest* cases, in which there was no controversy concerning the clarity of a *criterion*-"*rule*" and its *applicability*, it would be

enough to prove the *facts*, and the criterion would be *applied* in the light of a deductive argumentation [23: 19–21]. But in the—very common—cases where there was controversy concerning the clarity of the *criterion*, there could arise problems of interpretation or of classification. In these cases, the justification of the decisions would have to go beyond the mobilization of the *validity theory*—the "*rule of recognition*", *rectius*, "*institutive rule*"—and mobilize the arguments coming from *legal principles* or from *analogy*—and, in this sense, "*coherence*"—to justify the decision; this would be necessary, but not sufficient, to accomplish such a justification, so, a consequentialist argument should additionally be invoked, which should take part in the justification of the decision. And a third argument should also be invoked, namely one of "*consistency*" (in the absence of principles or analogy that could justify the decision)—the "*consistency test*", through which it would be determined whether the criteria in question would refute any established rule of law or not, given an "adequate" interpretation or explanation ("*'proper' interpretation or explanation*") of such a rule in the light of the "principles" and "policies" [23: 250, 24: 190–193].

The *policies* now in question are not the *collective goals* considered by Dworkin, but a set of effected actions to achieve an objective [23: 259, 10: 90, 23: 263–264]. And the *fundamental principles* express the essential rights of the *human condition*—thus constituting the principles of the so-called *human rights*, as the basis for a *theory of justice* [23: 259]. This does not necessarily mean that all *principles* are referred to *rights*, as this is not the case of many less fundamental principles, nor does it entail a definition of *policy* involving an opposition, *artificially*, between "policy" and "principle" [23: 264]. But all this presupposes, after all, that *legal thinking* is a kind of *moral thought*, albeit with *institutionalization* and *formalization* features [23: 272, 274]. And all this also implies two types of *coherence,* relevant to the decision-making process—*narrative coherence* and *normative coherence*: the first—of particular importance in the field of *legal evidence*—of a *diachronic* nature; and the second of a *synchronic* nature [24: 229]. Nevertheless, with the latter—closer to Dworkin—, the link between the *synchronic* and the *diachronic* dimensions manifests itself as essential for achieving *integrity* [24: 233–236].

This *paradigm of application*, rendered in a *subsumptive syllogism*, convokes the essential *major premise*—translated into a universally rational statement expressed in the conditional structure of a *norm*—, the *minor premise*—as an actual *subsumption* of (*discrete-isolated*) *facts* to the *hypothesis of the norm*—, and the *conclusion*—as the correspondence of the application of the juridical consequence to that *subsumption*. This *paradigm* presupposes *juridical reality* as the *field of application of legal norms*, and these are set out as *rational enunciations* gathered in a *self-subsistent* and *complete* system, which would remain unscathed before their mobilization through that *syllogism* [35: 102–106, 31: 283–336, 4: 370–376, 763–775, 19: 45–46, 146–147].

In turn, the *paradigm of decision* implies conceiving the *decision*, on the one hand, as a *finalistically* oriented *rational choice* among *possible alternatives*, in order to achieve pre-defined *objectives*—and whose chance of effecting the *results* would be measured in concrete, through *probability judgments*, if and when these were possible, and assuming *reality* as a determinant of the direction of the *option*

[35: 176–191, 36: 25–28]; and, on the other hand, as a *conditional layout of application*—an approach, though radically departing from different requirements, to the referenced *paradigm of application* [35: 189–190].

1.2 *Judicative Decision* as *Judicium*, Beyond *Deductive Application* and *Finalistic Decision Making*: The *Jurisprudentialist* Alternative Proposed by Castanheira Neves

Rejecting both the previous formulations, a *paradigm of judgment* will be followed here, focusing on the specific requirements of the *sub judice* case, starting from the latter to call upon the normatively available *criteria* and *principles* in an *open* and *multi-dimensional system*, as affirmed by Castanheira Neves. And all this presupposes *reality* in its normatively constitutive relevance, and, thus, dialectically reconstituting, in relation to this latter [35: 93–94, 20: 443–477, 475–477].

In contrast to the *model of judge* proposed by François Ost, according to which it must be emphasized that law is a specific *discourse*, with a specific *hermeneutics* [48: 241–272], the judge being personified as *Hermes*, the *jurisprudentialist* proposal, assumed here as the starting point, presupposes in its specific legal *rationale* not only an *immanentist* reading of hermeneutics but also a specifically *judicative decision*—argumentative, dialectical, practical-material and axiological-normative [30: 196]. This also means rejecting *consequentialism* as an autonomous methodological *canon*.

The concrete results, which may inspire *adjudication* and which can produce *effects*, are only accepted, in the *jurisprudentialist* approach we are considering here, as the specific *legal effects* that the decision will always have, as a consequence of the *axiology* of *normative principles* and the *teleology* of *legal criteria*: namely, the *effects* that the *Tatbestand* of the pertinent normative criteria prescribes and intends to be juridically assimilated (not as "external" and "real" empirical effects), demanding *prior judgments* or *empirical-social prognosis*, which may determine a *social justification* for the decision, will be, in this *jurisprudencialist* framework, subject to prior and dialectical-normative assimilation by the *strata* of the *legal system*—*normative principles*, *legal norms*, *jurisprudential criteria* (*judicial precedents*), *dogmatic* and *legal reality* [30: 197–205].

This understanding of the *legal system* also prevents an approach to the model of judge referred to by Ost as corresponding to *Hercules*—meaning rejecting its technological-functionalist perspectivation, and only closer to the setting that Dworkin gives it to the extent that the privileged knowledge of the legal system gives the court decision its essential *integrity*, no longer in the understanding of *coherence* that guides it. But this also entails rejecting the model of judge *Hermes*—since the hermeneutically analysed *network*, at this point, in spite of positioned nearer the *jurisprudentialist* legal system, in continuous development in the dialectic between *normativity* and *reality*, is too fixed in the *narrative* dimension, combined with a social-political approach of a fundamentally pragmatic character, not meta-normatively projecting a material meaning which may guide the normative delineation and the substantial determination of law, factors that are essential to the

jurisprudentialist understanding of the legal system as the materially foundational *horizon of reference* and *normative stabilizer* of judicative decisions. Therefore, the *effects* of the judicial decision to be considered here present themselves as specifically *juridical*, resulting from the teleology of norms or other relevant juridical criteria, namely the *effects* that the pertinent normative *principles* and *criteria* take to be juridically assimilated by the *system*.

This *jurisprudentialist* option, axiologically-materially and practically-normatively outlined, is built from the *autonomous* reflection about practice that concerns law and the specifically legal content it mobilizes [37: 87–114, 106], with practical implications directly arising from the autonomization of *normative principles* and determining the understanding of the dialectical (re)construction of the *legal system* itself. This also means assuming directly the point of view of the *concrete judicative-deciding realization of the law* [30: 196–205], as a particular moment of reflection and articulation between *system* and *problem*, even between *problem*—the one stated in abstract in the foundations and criteria mobilized—and *problem* [30: 155, 2: 139][1]—the *concretum* that, spatio-temporally located, requires an answer from law—which will, in *space* and *time*, resist the *centrifugal* forces created, and *centripetally* connect the essential valuations that the law brings to the reality which challenges it [12: 91–103].

Proposing a practical-normative comprehension of the *realization of law*—neither a strict *logically formal operation*, nor a *finalistically determined choice*, but rather a specifically assumed *judicative decision* as a practical-rationally founded thoughtfulness (*ponderation*) [36: 93–94, 6: 335–373, 8: 337–359]—requires distinguishing it from *deductive application* and from *finalistic decision making*.

Concerning, thus, a pluri-stratified system as its *normative horizon of reference*, densified by and densifying the meaning of law, the treatment of legal reality will be stated as the *juridical relevance* of a *controversy*—whose elements are the *subjects* involved, the *shared situation* and *the context-order* [19: 3]. The *shared situation* is presented as a *concrete case*, whose juridical relevance will be measured, primarily, at the level of the *question-of-fact*—assuming the distinction between *question-of-fact* and *question-of-law* in the sense given by Castanheira Neves,[2] as correlated faces of the same problem, meaning that a juridically relevant controversy constitutes itself as a juridical problem, at first by reference to the meanings already conferred on law in the legal system, and then, despite that reference, by considering the questioning it presents towards that system. It will, then, be analyzed in its moments of *determination of the field of juridical relevance of the case*—meaning to understand whether the concrete problem can be configured as juridically relevant in the light of the presupposed legal system

[1] See also [1: 177–199, 3: 73–122, 110–122], and, more recently, stating the equation representing the *concrete decisory judicium* (*concreto juízo decisório*), *"Pj→Jd: A equação metodonomológica (as incógnitas que articula e o modo como se resolve)"* [7: 311–391]. Still on the specific role of the *judge* qua *decidens* (*jurista decidente*), in the moment of the translator articulation of the decisory judicium (*juízo decisório*), and on the mobilization of his *judiz*, see [5: 59–88]. See also [13: 903–908].

[2] Following the distinction-relation between *question-of-fact* and *question-of-law,* as presented by Castanheira Neves [26].

(and the corresponding qualification, that is, framing the case, once its juridical relevance is confirmed, in a particular dogmatic field)—and *comprobation*—meaning the *determination* of the *truth* of *facts* alleged in the case *sub judice*, not as a *theoretical-scientific* demonstration of *truth*, but *comprobation* of a *practical truth*, as *intersubjectively* significant [30: 163–165]. It will, consequently, be distinguished, still *analytically*, in the *question-of-law*, the *question-of-law in abstract*—whose object consists of determining the juridical criterion that will guide and contribute to founding the juridical resolution of the case *sub judice* (*decidendo*)—and the *question-of-law in concrete*—the problem of the *concrete decision-making judgment* (*juízo decisório*) that will decide this case—the *question-of-law in concrete* concerns the resolution of the case *by mediation* of this *criterion*, or, not being the case, performing, in the last term, the concrete legal judgment *by autonomous normative constitution* [30: 163–286, 40: 13–42]. All this means that the concrete *judicative decision* will mobilize the *legal system* as its *normative horizon of reference* [30: 159, 28: 11–58].

In the field of the *question-of-law in concrete*, the realization of law *by mediation* of the *criterion*-norm could be realized *by assimilation by concretization*, by *assimilation by adaptation—extensive* or *restrictive*—or *by assimilation by correction—synchronic* or *diachronic*. This means that there is no reference to deductive reasoning.

The relationship between *criteria* and *juridical controversy* is, hence, understood as specifically *analogical*. Therefore, there may be a *non-assimilation* of the relevance of the case by the *criterion*-norm—a situation that will lead to a normative overcoming by *obsolescence*. And, by reference to the normative foundations of validity of the *criterion*-norm, *normative principles*, there will also have to be considered the possibilities of *correction*—either *synchronic* or *diachronic*—, of *preterition* and of *superation in accordance with the normative principles* [30: 176–195]. In each of these possibilities, there is always an essential *dialectical* relationship between *normative principles* and *legal norms*, meaning between the *ratio juris* of the first and the *ratio legis* of the latter. And the *judicium* rests on the pondered *adjudication* the judge builds from that dialectical reflection.

Such a *model* of judicial decision presupposes a specific assumption of the construction and the role played by judicial decision within *juridicity*. This implies an option, by the invocation of that *methodological model*, for a justified demarcation of the multiplicity of possible alternatives, and their different meanings and results, and thus in face of other *paradigms*—such as the *paradigm of application*, characteristically stated in the *positivist* proposals, and the *paradigm of decision*, in *functionalist* determinations, either the *material-finalistic* or the *formal* ones [35: 103–106, 185–190, 36: 93–94].

This perspectivization of law, decisively inspired in the proposal presented by Castanheira Neves, nevertheless emphasizes, by reference to the proposal presented by Ost, mostly the differentiation of law both as a *normative discourse* and as a specific *narrative*, and the nowadays concomitantly essential *inter-textuality*, on the one hand, and the perception of the *judicial judgment-judicium* as a *translation*, on the other. Such a position's practical implications in the effecting of the foundational *principles* in the legal system will reflect directly in—and will be determinant

to—the subsequent discussion on the *normatively legal* relationship between *normative principle* and *legal (juridical) criterion*.

This approach represents, hence, a model of *justice* in which there is a continuously constructing axiological horizon of reference of what should and what should not be *law*, which states the validity of juridical (*normative*) principles, criteria and decisions. And a model of *law* whose practical accomplishment consists in a practical and normative conception of the *realization of law*—not a deductive application nor a finalistic determined choice, but a *judicative decision*, involving *an axiologically founded juridical judgment* [36: 93–94, 3: 73–122, 6]—, whose context-*framework* consists of a *stratified legal system* before which the *juridically relevant controversy*—the concrete problem posed to law—emerges [30: 165–286]. So, the judicative resolution of the juridical controversy consists in a dialectical relation between *system* and *problem* [30: 155–157, 1, 2: 139, 3: 110–122].

Thus, such a model of law claims its *autonomy*, as a critical reflection on social *praxis*, looking for normative stability among the hallucinating acceleration of events [43: 9–82, 10–14, 44: 101–128, 18: 391–429, 426–427]. Hence, not accepting a pure *consequentialist* proposal, in which the concrete results of the judicial decision—its *effects*—would be "external" or "real" (empirical) effects, requiring empirical social predictive judgments, rather affirming, differently, specifically *juridical effects*—those resulting from the specific teleology of law, e.g., the *effects* that the *Tatbestand* of applicable normative criteria predicts and requires to be *juridically assimilated*, subject to a previous, dialectical and normative assimilation, through the *strata* of the *legal system* (*normative principles*, *legal norms*, *precedents*, *dogmatic*, and *legal reality*) [30: 205].

2 *Methodologically* and *Institutionally* Stating the "*Jurisdictional Realization of Law*" as *Judicium* (*Judicative Decision*)

All that has been said means considering a *judicative decision* as an effective judgment—stated from *juridical criteria*—legal norms, judicial precedents, dogmatic criteria…—presupposing material foundational *normative principles*, meaning *arguments of principle*, which constitute a warrant of validity of those criteria, stating—positively—their meaning and content, and—negatively—their material and formal limits/boundaries.

This is an important part of the considerations, really the crucial one, though not the only one. There is the other side, for law has its own social-practical functions and normative tasks, states its own teleology, meaning its own thinking on consequences—though not strictly a *consequentialism*, in MacCormick's terms, but, nevertheless, an effective reference to *arguments of policy*, though filtered to the *legal system* by *legal thinking-dogmatic*, turning, this way, to *legal policy*.

So, this does not mean law must directly accept—even absorb…—the *aims*, *tools of understanding* and *rationality* of other social orders and practices—such as morality, ethics, politics, technology, economy—, but it surely means that law is strongly influenced by the problems and answers that practical reality presents and the demands it requires law to fulfil. In this perspective, the judge appears in some

way closer to Dworkin's *Hercules*, as also here the judge's privileged knowledge of the *system* confers upon the judicial decision its crucial *integrity*, but moving away from this conception concerning *coherence* [9: 469–518, 11: 225–275], going beyond *coherence's narrative sense*, by normatively projecting the judicial decision more immediately in reality, as it is a dialectical relation between *system* and *problem* [32: 73–100, 93–94, 37: 105–106, 12: 100–103].

All this implies referring the *jurisprudentialist* construction of the *legal system* also as a methodologically *essential horizon of reference*. And that all its *strata* participate in the judicative decision. Therefore, *normative principles*, *legal norms*, *precedents*, *dogmatic* and *legal reality all contribute* to building the adequate *judicium* on the *practical controversy*. An *adequate* answer in a space–time context on the presupposition of the meanings present and allowed by the *legal system*—so, an *adequate*, not a strictly understood *right answer*, at least not in the meaning required by Dworkin's "chain novel".

Therefore, this way, thinking of law as an *autonomous practical-regulative discipline*, and as *an effective answer to specific practical problems*, requires, on the one hand, considering it as an *objective, autonomously founded normative order*, and, on the other hand, to state that this *autonomy* is not an absolute, but a relative one: the *relative autonomy of law*, thus, is presented and represented as the result of the combination of a specific *legal system* and the specific *meaning of law* it states, as its *normative horizon of reference*—the specific meaning of what law must be in a spatially and historically concrete practical community. It means, thus, affirming a specific *normative principle* stating a *specific autonomous meaning to law*—and *filtering* it with regard to the exterior demands it faces and receives—, meaning the *problem of law in itself* [27: 1–65]—so, a specific answer, an effective *juridical answer*, constructed from the relationships entailed between that *normative horizon of reference* and the significances and problems of those practices which require of law a guiding answer, meaning the *problems of law*, after that critical dialectically continuously constituting selection.

Normative principles, understood as *values-projects*, meaning essential vectors to the inter-subjectivity that defines *juridicity*, constitute *practical constructions*—which makes them, in this sense, *self-transcendent*—; and, more than that, as substantial *intentions to validity*, they are also to be considered as *conditions of possibility* for the project of constituting law in specifically contextualized *space(s)* and *time(s)*—which makes them, in this sense, *self-transcendental*… *Normative principles* are, then, identified as the material foundations always invoked to and presupposed by *judicative decisions*, whether there are defined objective juridical *criteria* or there are not. *Normative principles* must be, thus, understood as *practical constructions* and, simultaneously, as *practical orientations*, as *axiologically normative foundations* of a *materially autonomous meaning of law* in a *juridical community*—which makes them, also in this other sense, *self-transcendental*.

Such a reference to an *autonomous meaning of law*, as a *tertium genus*, constitutes an autonomous *axiological* foundation to law in its specifically juridical meaning, by substantially filtering the content of the *legal system* and its specific dialectics with *reality*, besides any reference(s) to *morality* (to *political morality*, or *moralities*), and requires—both in the philosophical and theoretical reflection of its

justifications and, consequently, in its correspondent effective realization as a practical subject—a *juridical translation* of *values* as *practical projects*, understood as substantial *values-projects* and stated as *normative principles* [12].

Castanheira Neves proposes, then, a substantial-axiological basis which might be mobilized as a practical-rational resource, as an element aggregating *likeness* in the bottom of *difference*, not a mere establishment of rules of dialogue, not concerning substance. Such a dialogue presupposes, then, a *reciprocal recognition*, on the one hand, and, on the other hand, a *material foundational autonomous matrix*, culturally coined [44: 126–128, 29: 1 ff., 39: 9–21, 38: 837–871, 839, 33, 34: 1–44, 46: 9–79]—whose assimilation should, then, require, in the inter-civilizational dialogue, a material densification in a *principle of translation*, as Boyd White enounces it [52: 257], and, therefore, not merely a set of formal-procedural conditions of dialogue.

Accordingly, the possibility of law to be an answer to the *juridical inter-subjectivity* problems of our times may rest primarily, as it is stated here, in its characterization as a *meta-normative* reflection on social *praxis*, at some relative distance, and at its own rhythm, so as to be able to *normatively* project itself in practice, as a factor of the rationalization of inter-subjectivity [41: 146–147, 42: 199–318, 32, 44, 45: 202–221, 25: 725–764].

The understanding of law as a *practical reflection* and a *practical realization* presupposes, therefore, the reciprocal recognition of *human subjects* as *legal persons*, in their *finitude*, but also in their *dignity*, corresponding to a substantial-axiologically *cement* aggregating an authentic *human conviviality*.

The inter-subjective conviviality proposed excludes itself from any dilution of the human subject, either in a politically or ethically conceived *communitarianism,* on the one hand, and, on the other hand, in an *individualism* which might renounce any communitarian binding—both these are extreme situations, susceptible to leading to the impossibility of accessing law, though both call upon law as an instrument—, so the construction of a *community* here requires a reflection on *difference* and bases itself on an individual and a communitarian *responsibility* by the specific legal conditions of *coexistence* and *conviviality*.

All this means not a *transcendentalization* of a certain meaning of *law*, but a *material* assertion of *meaning referents*, anchored on the reciprocal recognition of human subjects as *persons* [16: 57–66, 17: 101–120, 114–120]. This way, law must be understood as a *specifically critical reflection* on social *praxis*, rationally in dialectical relationship with the problems within that *praxis*.

The *internal critical reflection* on law requires, in this approach, even assuming the *community*—as a fundamental dimension of legally relevant *inter-subjective practice*—as its privileged horizon, is presented through invoking an *autonomous foundation* for law as a "*validity order*" [38: 868–871, 46: 78–79, 47: 154–175], allowing the *concrete realization of law* to be seen not merely as a *decision* but indeed as a *judicative decision* [30: 9–34, 159 ff., 41: 97, 42]. It will require *judicative decision* to be understood not only as substantially-legally autonomous, but also as institutionally autonomous, dialectically shaping its *auctoritas* and its *potestas* in the *adjudication*—in the connection between the legitimacy of the mobilized *arguments of principle* and the *arguments of policy*, both in their selection and in their material justification.

A *judicative-concrete decision* is, thus, the relational result of the meanings normatively expressed by the *legal system*, in its dialectical constitutive pluri-dimensional character, as an expression of the *tertiality* law represents in face of—and in relation with—*juridical relevant reality* [15: 181–236, 202, 30: 197–205]. Therefore, *judicial decision* is to be taken as a specifically assumed *judicium*—a *judicative decision*, stated on the dialectics between *normative principles* and *normative criteria*, on the one side, and *juridical problems*, on the other… And this also means understanding this *judicium* as having the *legal system* as its horizon of *normative reference*, as well as of its *substantial* and *institutional autonomy.*

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