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The Origin and Attributes of Justice.

Delivered at the funeral of a very close friend of justice, the Honorable homoródszentmártoni Biró Sámuel, a trusted councilor at the Superior Court of the Principality of Transylvania under our Imperial, Royal and Catholic Highness in 1721, February 23, at Kiskend.

Groan, I say unto you! Oh, groan! Groan, Transylvania, our dear homeland; mourn with our shared sadness, and shed your tears like raindrops from a shower that flow down your face! To quote a poet: *It is pleasing to give grief the full control over ourselves.* Because the unending blows strike with such a force, they strangulate so incredibly, that in our daze we can barely breathe. One bitter anguish followed by an even more exasperating one, as if our tribulations were like colossal rolling waves of the ocean moving forward and then crashing onto the shore. Oh, these endless calamities of our homeland; how they encircled you like multiple columns of guardsmen. How many billions of encampments of bloodiest warfare have been set up on your soil? Throughout the centuries how much blood of your people soaked your blood-stained grounds? How many faces have been darkened by suffering from the relentless and unforgiving famine? How many times have we been forced to acquiesce and accept unfamiliar and even repulsive provisions? How wide a tract of devastation was left by the ten-year long plague? How great has been the ruination of villages and small and large towns from that contagious pestilence?

Let us think back to the year of 1716 when Nature was so jealous, so stingy with our summer that the early start to the continually freezing cold weather yielded only unripe fruits in the fall; and the vine, if we even want to call it vine, was worse than anything in the past centuries, and the harvest came with thousands of floods.

And right on the heel of that in the year of 1717 a new blow struck us; grief followed grief, our faces were soiled by unexpected, horrible filth, as the Tatars attacked our

homeland, with terrible bestiality they plundered it, and, woe unto us, many were taken into captivity! And the year wasn't even over with that.

After a year of daze and numbness, the plague, sickening air appeared yet again inside our homeland. Thumb through the pages of yearbooks, and answer me if you find a more mournful year than 1718. If in the year of 1716 the long-lasting cold weather denied us the vine, then in 1718 the excessive hot weather took from us our bread, as the heat scorched the wheat, and even the soil itself. Rivers and lakes dried up. How many places were destroyed by tragic fires, and what a loss they caused. Amidst so much misery the most soothing medicine is the opportunity to forget. But then renewed suffering started from fresh blows, and from blows recurring from the past. Just look at the contagion-filled year of 1719 that spread the plague throughout our homeland so much so that while some infected locations were quarantined, in some others guardsmen could not be found to enforce the quarantine. And then it is still fresh in our minds how in the prior year of 1720 many kinds of produce was destroyed by countless worms and insects, and it seemed that the normal course of Nature was reversed, and it seemed that the calamities formed a continuous chain that colluded against Transylvania.

An overcast day is usually followed by a bright sunny sky. However, Nature had denied us the usual changes in the weather. Because, while the end of the plague brought some consolation to our aching hearts, new blows struck us clawing deeply into our hearts. *Lightning always strikes the tallest.* Nature carries out her immutable law especially against masses of people during the war, even though they may have escaped the plague and the famine! We cannot observe the grieving of our homeland from a distance, like we would look into a mirror, when we say that lightning strikes the most outstanding people: you know very precisely how many patriots we lost during the year of the revolution not only from among our military and civilian ranks, but from among the patrons of our church. How many supporters of our homeland, how many pillars of Transylvania fell, how many bright lights were extinguished; their fate bring tears into our eyes, and they showed us the path to follow for future generations. The death of General Steinville created a bleeding wound in our hearts. Don't forget the funerals of Baron Teleki Mihály, Colonel of Kővárvideke, Csáki István, Nalácz Lajos, and Boér Ferencz, the Counts of Kolozs, Hunyad and Kraszna counties. Rhédey Pál barely started his tenure in the Royal Court of Law when he passed away; the Black Death took from us Rhédey László, Henter Gábor, Suki Mihály, Pekri Gábor, and other officials of the Royal Court. Was there anyone who escaped the coffins of such mournful fate? Death wasn't afraid to cut down medical doctors as well, and managed to evade the healing powers of pharmacies. The goddesses of Fate, the Parcas, are forcing us to relive our unspeakable grief yet again, and they don't exempt even dignitaries of any profession. Oh, woe unto us! Even the capable councilors of our worldly ruler were quickly taken from the council chambers of His Royal Highness, and placed in front of the throne of judgement of His Heavenly Highness, our God: first Baron Mikes Mihály, and then eight days later his colleague, homoródszentmártoni Biró

Sámuel was forced off the stage of life. Oh, how I wish he was the last one! Oh, who could give me the tears to soak his casket? Oh, who could guide my tongue, if not with the eloquence of Cicero, but to speak the words that rightfully belong to the eulogy at the time of our final respects of a great man whom neither the homeland nor myself can sufficiently mourn? What power will help me gather my strength to speak when mourning has already exhausted me? Only the power of the obligation to pay my proper final respects can do that. How I wish this day ordained for eulogy had never dawned! How I wish this mournful task wouldn't be allotted to me! How I wish I had fallen first, and not after him! But I have digressed from the topic; my grief caused me to stutter and stammer. I came to believe that the most proper topic of my presentation in front of the gathered expert practitioners and supporters of justice, would be if I could speak - trusting in your patience - about the origin and attributes of justice over the casket of a man who labored in his entire life in the administration of justice.

Alas, let us consider: *Piety was dead and virgin Astracea, last of the immortals to depart, herself abandoned the blood-soaked soil.* What does this have to do with justice? Slow down when you would hurry up, as I will attempt to bring justice down from the sky and return it to you, because I believe that justice, like Astracea, journeyed into the sky when she was defeated.

Justice is the queen among the virtues, the lifeblood of any state; without it alliances wither and no nations or citizenry and not even the world could stand. Even those who intend to carry out misdeeds could not live without at least a little of it. Without it the state becomes a burden and a loot. Because when justice is unblemished everyone is guided by a shared ideal; however, when justice is absent, faith and trust in the state are broken. Without justice what is the state if not a den of robbers? Without justice what are the principalities if not workshops of wickedness? Without justice what is the citizenry if not caves of wretchedness? Without justice what is society if not a refuge for shamelessness and cruelty? Justice is the mortar of the state that makes a country blessed, while the loss of justice makes a country miserable and calamitous. When a Spartan king stated that a most blessed state is the one whose borders are marked by spears and swords, Pompey corrected him by saying that the most blessed state is the one whose borders are marked by justice. Historians far and wide have attributed victories in battles to justice which led to the frequently heard saying: *The strength of soldiers is sapped or fortified according to the cause they are fighting for.*

The influence of opinions is so great that no one would join forces with those who do not respect the law, justice and conscience. Those who dedicate themselves to serve justice are elevated higher than bejeweled royal crowns, because nothing is more instrumental and permanent than the things rooted firmly in justice. Eliminate justice, turn it into a dead body, and a multitude of noble and respected people would mourn it. Just like with Homer's Cyclops, who staggered when he lost his only eye, and then collapsed, large multitudes of people would collapse without the justice that judges the merits of a case, and then sentences the guilty and rewards the noble acts. Justice is

preeminent among the virtues. According to Theognis justice is the virtue that incorporates all other virtues. Aristotle pronounced justice brighter than the Morning Star. Pythagoras calls it the treasure chest of virtues; Cicero calls it the countess of virtues; Piccolomineus calls it more bright than Southern sunshine. For that reason, in times past, the evaluation of innocence was red hot iron and fire, because God takes vengeance on those who scorn justice. The Spanish king Henrik IV, when two noblemen were suspected of murder, but it could not be proven, ordered the two to be thrown off a cliff. But because both were loudly proclaiming that they would die innocent because the ears of the king were closed to their arguments of defense, they summoned the king before the judge of the highest court who gave the king thirty days to conduct his investigation to find the truth. If we are amazed by the turn of those event, if we are concerned because of our fear of God, then that is appropriate and honorable, for even the most powerful ought to be concerned. Because there are villainous councilors and advisors who agree with what Caligula declared: *Everything is allowed for the powerful under any circumstances*. Memmius, Roman public defender, expressed it this way: *The essence of royalty is to do anything without due punishment*. The thesis of Lucanus is nefarious: *The authority of royals would disappear if they would examine the rightfulness of their actions*. Be gone, all those who teach, study, and enact such ideals. The guardians of justice must step forward. This next one is an ugly idea as well: *If it is desirable, then it is allowed*. This is much nicer: *The slightest expression of partiality is inappropriate for those to whom much is allowed*. When a flatterer once told Antigonus, the king of Macedonia, that *for kings all actions are honorable and just*, the king answered: *Only for the kings of barbarians*. Antigonus then declared a public decree that *if his orders were in conflict with the law, then citizens ought not allow it or accept it*. The Turkish sultan, Mahomet II, made a sacrifice for virtue when he had his son Mustafa strangled because of the lewdness of the otherwise kind Mustafa. The friends of Lysander pressured Callicrates to allow the murder of one of Lysander's enemies, and sent Callicrates 50 talents (2662 forints). However, once Callicrates learned that the murder would be contrary to justice, he prohibited it. Cleander, the treasurer of Callicrates returned the money with these words: *if I was Callicrates I would have accepted it*. To which Callicrates replied: *If I was Cleander I would have accepted it, too*. Emperor Trajan loved justice so much that once, in front of everyone, he handed his sword to the chief justice of the town and said: *Take this sword, and if my reign is just then use it alongside me, and if my reign is unjust then turn it against me*. Alphonsus, the king of Aragonia, opined that those who do not respect justice are *similar to people who are very sick*, as justice is a type of nourishment and sustenance of life.

Peace is the loving sister of justice, they kiss each other; those who enacts justice will find peace, as she will kiss them. Peace and justice are like girlfriends. You might prefer the first, and neglect the other. There is no person who doesn't want peace, but despite of that not everyone labors in the interest of justice. If you don't like the girlfriend of peace, then peace will not like you either.

Justice is borne of rights and laws. There is no justice where there are no rights, no possibility of rightful action, and no rightful demand and possession. The possibility of rightful action, demand and possession arise from laws that direct rightful actions, or at least do not obstruct it. Rome existed for a long time without civil laws. Not only Rome, but the entire world, from the creation through long centuries, was guided by natural law. Today we live under civil law. Although Plato points out: *Where the laws are numerous, the state is corrupt.* According to Tacitus: *Where the laws are numerous the lawsuits are numerous, living conditions are bad, and morals are lacking.* However, Canon believes that: *Changing of a familiar law may cause confusion because of the novel nature of the new law.* Cleon's statement (a paradox) is surprising: *The state that is bad, but uses unchanging laws is better than the state that is good, but uses changing, wavering laws.* Just like a change of diet doesn't happen without undesirable consequences on one's health, the changing of laws and the upending of societal habits do not happen without the confusing and unraveling of the citizenry. Justice and the laws embrace each other; there is no legal right to act when laws forbid it, and just actions don't run counter to laws. Because laws ought not be evaluated on the basis of whether it is favored by one or another, but, rather, on the basis of the frame of mind of the lawmakers from where that right originates from, and where the laws express and clarify the intent of it.

We ought not appraise the effectiveness of laws by how many people are being punished, because innocents may have been unjustly punished, while guilty perpetrators may have gone unpunished. *The spider's web captures the small flies, but it gives way for wasps and bumblebees.* Legal procedures are rarely initiated against the biggest thieves and adulteresses, although they don't have the right to harm others. In our civil courts legal procedures are not initiated against ungrateful people, despite the fact that there is no bigger and more heinous burden on the face of the Earth than an ungrateful person. No one brings a suit against you if you deny alms from the needy, although you had no right to deny it, because it is God who endowed you with the ability to give. Therefore, what you give is not yours, only the privilege of giving is yours, so by denying giving you run afoul of the laws, although due punishment is never handed out.

Gaining personal profit ought not to be used to appraise the effectiveness of laws either, because by that measure, we all would be justified to rush out and kill and pillage. Wouldn't you agree with that conclusion? Your livestock, your property, your money, your estate could be my gain. I would have the right to take it from you. Oh, that silly invention of Carneades: calling justice a fools' errand! Carneades stated that personal gain is the birth mother of justice and fairness. I do believe that personal gain, profit, respect and wealth may be a consequence of justice and rights, but if personal gain is the motivator that may lead to lawbreaking with harmful consequences. Our actions to further our personal interest is limited only by our own attitudes, as if were to believe that our personal gains may harm others, we would refrain from acting on those interests. However, there is not a single person who thinks the same way all of the time; one minute we may agree with something, and the next minute we disagree with it. In

addition, not everyone is motivated by the same desires. *To each their own favorites are pleasant and true.* Pliny said: *You may find a single typical character in a thousand of foxes, but in people you may find so many different desires that if you give people, driven by the motivation of personal gain, the right to fulfil their desires, they would look like a mob of brawling lions, wolves and dogs.* Thoughtless animals are driven by their gut instincts and material needs, and would try anything to fulfil their wants; they would, without any soul searching, tear apart, maul and disembowel anything they have a taste for. Because they have no laws to forbid such action, they aggressively fight to obtain what they desire, and they wouldn't shy away from robbing public or private wealth accumulated by others. The hungry stomach of wild animals is pacified by the spiceless meals from nature, and when they are not hungry they are not angered and not moved into aggression, unless provoked. Nature provided animals with a fur coat, but people use pretention to hide their naked vanity and arrogant egotism. People are filled with unclean emotions and desires that are not seen in animals. Excessive desire to possess, overbearing disdain, the desire to rise above others, seeking glory and vanity, wanting to prevail in arguments, to outsmart others, superstitions, the burdensome thought of the future, snooping, the need to understand, frequently and repeatedly beleaguers this mortal mankind. Because such emotions are not present in animals, the arguments, the wars, the disagreements, created by the above desires, are unknown to animals. Just what would human life be if we, knowing about the influence of thousands of human emotions and the desire for personal profit, would base our laws on obtaining personal profits, and would not construct laws that restrict the means by which such profits might be obtained? What each of us find useful and fair judging our own affairs, we ought to find useful and fair judging the affairs of others. Thus, you will find it useless to rob others with brute force to obtain their hard-earned wealth, because they, with similar rights, may do the same against you. Or, would it be to your advantage to break a promise or your given word when your action may be an example for others to do the same against you? If we were to measure everything by such fleeting gains, even the lives of the most powerful would be at risk every time someone could seek personal gain from their demise. Demosthenes thought that praiseworthy are those who don't put personal gain before justice.

We should not administer justice based on power or strength, like the suggestion by this barbaric statement: *The more powerful someone is, the more rights they have under justice.* What could be more unjust than that? It is the characteristic of animals that they don't gain rights or rank, or access to food, unless they have sufficient strength. Once the people of Argos were fighting a border war with the Lacedemonians, and the Argosians maintained that their own claim was more just. Lysander then drew his sword and said: *the one who is stronger than this has the most just claim about the border.* Oh, what a foolish statement from an arrogant man. When Themistokles demanded silver at Andros he said: *I'll bring two deities to you: force and advisement,* and by that he meant that if he didn't get silver through advisement, then he would take it by force. Plutarch warned him forcefully: *Neither justice, nor peace may exist where the powerful uninhibitedly oppress the defenseless.* Oh, how many times justice is cloaked in the

disguise of the following statement: *In the midst of great uncertainty the more powerful will get the benefit of doubt.* This riddle comes from that previous statement:

Tell me please: *What rules throughout the world?*

Your answer might have three words, but three letters are enough;

Not three words then, only three letters will do;

Jus. Now exchange two letters and you get *vis*;

From *Jus* to *vis* just by altering the first two letters;

The world might be ruled by *jus*, but force is altering it.

Palingenus said: *Those who possess power are unafraid of laws, because the law is suppressed by power.*

Forceful suppression of rights is the first-born daughter of injustice; she either denies what ought to be given to someone, or takes property that belongs to someone, or brings about destruction where she doesn't have lawful authority. Nothing is more contrary to law and justice than coercion and falsehood, two sisters in embrace, both born of suppression of the law. If falsehood doesn't reach its desired goal, then right on its heels comes brute force; and even if that is resisted or thwarted, there is no limit to the cunning nature of the fox, if justice doesn't have the needed courage. Peisistratus seized the governorship of Athens by deception, and oppressed Athenians by his tyrannical reign. Under the rule of Tiberius, a person named Clemens pretended to be Agrippa. Tiberius contemplated whether he should use force or deception to unveil that pretense. On one hand a deception would make the pretender doubt himself, while using force would bring the pretense to an end. However, there is no deception or violence that will not be revenged, as, usually, both will be met with violent opposition, so that the initial forceful offense will be brought back onto the head of the offender. In Macedonia, a person called Andriscus was put into chains for pretending to be Phillip, the son of the king, Perseus. Antiochus, a ruler for nine years and ten months, was eventually murdered for maintaining his rule that he obtained by deception. Mitridates, king of Pontus, ruthlessly removed his mother, his brother, his three sons and three daughters; he was deposed by the Romans, and was killed by his son. Ptolemaeus attempted to remove by force and cunning those children of Alexander whom he thought might present an obstacle in his path to become the ruler, but shortly thereafter his head was carried around on a spear as a warning to others. This is how God returns justice to the perpetrator, and avenges the scorn of justice. Because by itself justice is vulnerable and frail, unable to harm anyone, or to force anyone to violate the law. The justice that falls to the ground on the street will perish, unless someone is there to lift it up; if it has no champion during a trial it will stumble and collapse; without a patron, a

protector its cause will be lost at the courthouse. *It is useless to expect fairness if we are not willing to stand up for it and support it.*

On many depictions the figure of justice is deformed, as it has no hands, so, it cannot accept gifts, thus it would not be drawn near the doorway to greed, and, thus, cannot hunger for money. Oh, what an upside down, reversed century this is! Where, when opportunity arises, the tongue and the hand can be cunningly purchased behind the back of justice, where the legal rights and litigation are stymied by catchy and tortuous words, where the laws are misrepresented by individual opinions, where verdicts are delayed, and the plaintiffs give up or are forced to seek a settlement either because their funds ran out or because they had enough of the long wait. The Hungarian saying expresses it this way: *Laws favor the ones who can commandeer them to their advantage.* Hesiod complained that the unjust seem to have more rights. However, Laertius notes: *The profit from wickedness is not a gain, it has no benefit, as it is rather harmful.* Judges frequently pretend that they work to the point of getting laryngitis, like Demosthenes, but in reality it is silveritis (the hunger for becoming rich) that burns their throat. Demas cleverly notes in Plutarch: *More people have been persuaded by the spear of gold or silver than by an iron spear.* This why judges receive a generous pay, so their material wants do not interfere with administering the law, or with their impartiality; the smaller the judges' pay the stronger their need to accept gifts.

In paintings, justice is sometime pictured as blind, and sometimes as looking to the side as to indicate that it ought to be free of personal prejudice when bringing a verdict. In their wisdom the Supreme Courts of Lacedaemonia and Athens held their meetings at night, so they could not be influenced by undue leverage or by requests of leniency, because justice shouldn't be influenced by a father or a mother. The citizens of Thebes made the busts of their judges with eyes facing backward as if saying that they ought not see and desire the gold that frequently blunts the edge of laws. Justice and judges are pictured with eyes pointing sideways, as if saying that during the fulfillment of the laws they ought not be deterred from the straight path because of friendships or payoffs. Anacharsis said that laws are similar to spiderwebs in which the weak gets caught, but the powerful can break free. If a fly or a mosquito get trapped in a spiderweb they are stuck, but when a wasp or a bumblebee is trapped the web breaks, and they fly away. Ovid said this: *The courthouse is closed to the poor, as wealth brings friends, recognition and status, but the poor, who do not have all that, are ignored without recourse.* Isidorus notes: *Unjust judges mutilate the poor worse than the cruelest enemy.* Friends and distinguished people come straight up to the judge, but the poor and the destitute come, lurking, from the sides. The ancients may have pictured justice with eyes pointing sideways, so the poor would be noticed. Someone said that those who do not come to the aid of the poor, or do not protect the weak, the destitute, the forsaken and the orphaned, are just as delinquent as the parents who abandon their own children. The eyes of justice are pointed backward, so the desire for personal profit does not conflict with the interest of society, because the purpose of justice is to improve the well-being of the average people; the true North of justice is the happiness

of king and country. There are many of those who sell justice and laws, who use them to make a profit, and then there are the ones who in outrageous fashion mold their advice like a piece of wax to obtain a favorable view of their clients, or to create hate towards their opponent. I wish that many would return unto friendly term with the words of Aristides. As one litigator, who wanted to picture himself as likable, and the opponent as hateful, said that the opponent disrespected Aristides. But Aristides just raised his head and said: *That is not now the matter of our consideration.* Once a woman brought a complaint against her husband. Emperor Gratian replied to her: *Why should this be of my concern?* Then the woman said: *He is hostile against you and bad-mouthing you.* The Emperor replied: *Why is that your concern?* And he dismissed the embarrassed woman.

Although justice is blind or it has eyes turned sideways, it ought not be deaf, but, rather, it ought to listen attentively to the arguments from both sides. Judges who decide in a hurry are rushing towards regret. When judging, hastiness is a mistake. Nothing makes justice more untrustworthy than a quick verdict that may not have explored the arguments from both sides, or may not have systematically interrogated the witnesses. The honesty of judges is not demonstrated by quick decisions, but by adhering to the law. Denying the time necessary for the defendant to refute the charges is not inherent to justice, as a lawful defense is part of the natural law, international law, and civil law. If the first witness wins a judge over, then the lawsuit will be decided at random, because the decision will favor the party whose witness was chosen to appear first in front of the judge, even if that witness is in the wrong. Seneca said it correctly: *Someone who brings a decision without listening to both sides is inconsiderate, even if the ruling happens to be a just one.*

From these examples it is clearly apparent that the fulfillment of justice represents a constant and robust need: to provide everyone their rights. The just person has this in their heart: *Harm no one, but give unto everyone what is theirs. The person who is just is not the one who completely refrains from harming or insulting others, but, rather, the one who choose not to harm someone when given an opportunity to do so.* As the poet Philemon states in Stobaeous: *If one gives others what is rightfully theirs only by mistake, they do not deserve to be called just.* Pliny says this: *The wicked have carried out praiseworthy things, yet they don't deserve praise, because they acted without the intent of doing good.* The daughter born to justice is equality, who, accordingly to Aristotle, wants to ensure that the wealthy don't suffer injustice, and that rank and file people don't suffer unfairness. True justice seeks and delivers justice for people and for their possessions. Justice is also desired in areas where people have interactions with each other, such as commerce, contracts, and others. When conditions are being established within a particular interaction, the intent of each party is to provide as much advantage to themselves as the other party finds acceptable. When one party is selling a house, the expectation is that the sales price will not be established based on the wealth or the social class of the buyer, or on the cash available to the buyer, but on the value of the house. Here is a divisive idea of justice: the donation of one citizen ought to

be in proportion to the status and donation of other citizens; then the advantages ought to be proportional to the contribution of the citizens. People are not equal in their age, position, strength, talent, and smartness, as this is the demonstration of the artistic ability of Nature who did not hand out the same qualities to all mortals. The lawmakers of rights and responsibilities intended that people remain in harmonious relations amidst such differences. Thus, those lawmakers enacted laws that bring about equality in justice. Therefore, in all the well-managed countries, there are citizens who surpass others in position, and wealth, yet they have freedoms identical to others. In our homeland, the three nations have different customs, unequal population, and unequal number of nobles, yet they are enjoying rights identical throughout the homeland. Not unlike the religious denominations that might represent entirely opposite beliefs, and their rank, as measured by the number of the believers, may be very different, yet they are equal in their freedom and rights. Similarly, the age and skills of siblings may not be equal, yet they receive equal share of their inheritance. Thus, while some people possess superior spiritual or physical qualities, they do not have more freedom to harm others. We ought to carry out justice toward others no less willingly than we expect others to carry out justice toward ourselves. Even Nature did not deny anybody, even the lowest classes, the access to natural laws, and to justice, her daughter. What someone may expect from you in a given circumstance, you may expect the same from that person. If you have responsibilities toward the upper class, the upper class owes you the same responsibility. Those who established the laws that affect you, ought to apply those laws to themselves as well. The Sicilian Diodorus states: *Those who construct laws for others ought to duly abide by those laws.* Seneca says this: *A fair judge does not adjudicate his own affairs any differently from someone else's.* According to Quintilianus: *An important consideration for those who adjudicate is that they demonstrate that their verdict would be the same if they themselves were on trial.* Those who bring a different judgement in cases of others from the judgement they would bring in their own affairs contradict themselves. If I am allowed to act in a particular fashion, why deny that to someone else under similar circumstances? From that it follows that those people who do well in keeping a society healthy, are the ones who could naturally listen to and identify with the voice of others; people don't enthusiastically join others who consider themselves above the rest, who believe that they are allowed to do anything, and who approve all of their own actions while condemning the actions of others. From that it is easy to understand the directive of common law and the natural law: *Those whose rights are not questioned should not demand more rights for themselves just so they have more to themselves than others, rather, they ought to allow others to enjoy the same rights as they do.* Livius says this: *Anger, shaming, vengeance or human nature is behind the situation where one group of people is allowed freedoms that other groups are denied.* The question by the American barbarian: *Why don't the beggars who go from door to door for a handout, just rob those wealthy homes?* was indeed a barbaric one. From that directly follows: *Those who live off the work of others, act in ways that benefit those others.* As the proverb says: *One hand washes the other.*

Sworn witnesses frequently become the enemy of justice. We can marvel at the excesses and deprivations that appear during an unfair trial, as those who overstate their testimony, deceive, or lie, may obtain an undue excess of justice, while depriving others by leaving less justice for them. At one time Leo, the son of Encrates, was asked: *In what type of society would citizens feel most protected? In a society where the citizens do not possess more or less than the others*, he responded. In other words, in a society that cares about the administration of justice, as justice assures that everyone receives what is owed to them according to the laws and their rights. This is why justice is sometimes pictured as a balance.

Equality brought forth two grandchildren to justice. The first: Do unto others as you would have them do unto you. The other grandchild: What you don't want to happen to you, don't do that to others. The principle of law is: Setting voluntary limits to rightful action. More clearly: Give alms to the needy even when the law doesn't force you. Be lenient when the circumstances allow and do not pursue your lawful rights to the full extent. Earn the gratitude of others by your acts of valor and refrain from acts that provoke someone's temper, or enrage their emotions.

Until today I believed that justice is poor and that it moves about with only a small entourage, but now I sense that it is wealthier than you or I - as wealthy as the entire world. Nobody can give something they don't own or possess. An attribute of justice is that it is a giver. Justice gives to me, to you, and to them, one by one, respectively, what is mine, yours, and theirs. Do you still think that justice is of little means? However, justice gives only what is mine to me, gives you only what's yours, and justice keeps everything else for herself. This may make one's thinking difficult and conflicted. In order to carry out justice, we must discover and reveal what each recipient has possessed in their rightful state. No one can give it you what is already yours, and you aren't supposed to accept it, but keep in mind that neither could anyone ask for what is yours. Now I'm suddenly thinking that if I'm given what's mine and you're given what's yours, then what's mine is different from what's yours. Such differences have a disturbing effect on the peace of mankind, as such differences are the root cause of all disagreement and wars. If you remove the words "*mine*" and "*yours*" from our affairs then there would be no more wars, only peace without arguments. You would accept what's yours in peace, and wouldn't want to take what's mine, such are the attributes of justice and fairness. And while you may be wealthy and I might be poor, you would have no more rights because of your wealth, and I would not have less because of my poverty.

In addition to giving, another attribute of justice is the act of judging, the act of giving through a verdict. What is a more majestic act than crafting a judgment over the fate, property and life of others? To restrain those oh-not-so-sincere folks sometime with punishment, and sometime with rewards? To listen to the complaints of all, but most importantly those of the widows, orphans, and those down on their luck? To view all statements with a fair mindset, and after an examination to bring an even-handed

verdict that helps both parties? And to serve in this world as a representative of the one who is the author of all laws? What could be more uplifting for any person? What stands closer to God who governs all? For these reasons once you hold the office of judgeship you ought to perform eminently. It is the obligation of a judge to bring verdicts, to make decisions in a fair, sincere fashion, without fear, even if Phalaris himself wants you to be deceitful, dishonest, or even if he tortures you to force you to break your judicial oath of office. It is the obligation of a judge to allow easy access to justice, to shield the weak from intimidation, to tame emotions no matter which direction they come from, to employ the highest level of skills and experience, and to refrain from delaying, postponing, or stretching out lawsuits. The kings of Egypt made their judges take an oath that they would not bring an unfair decision even if the king commanded them. Cambyses had the corrupt judge, Sisamnes, skinned, and his skin was displayed at court proceedings during his son and successor's, Otthan's, time in office.

A scholar of law defines a judge as: a good man who understands the law and justice and meticulous and firm when deciding a lawsuit. It is important that a judge is a good man, and not a malevolent one: Because who would go to the swamp in search of clear spring water? And then who would want to drink from muddy water? Sophocles noted: *How could anyone accept a decision about their affairs from someone who doesn't manage his own affairs appropriately?* How could a judge be eminent or outstanding in his judgements when he has low moral and ethical standards? In a wicked mind there is no room left for the counsel of good will. If someone lives a life that is not an honorable and good life, it becomes impossible for that person to judge and act honorably. Remember then when you elect a judge to elect someone who is most similar to yourself.

It is necessary for a judge to understand fairness and the laws: Because how could he bring a verdict citing the law if he doesn't know the law? Then, some judges do know the law, but they abuse it. This is why Caligula voiced this threat when he demanded that lawmakers focus on the matters of justice during their debates. Judges ought to bring verdicts in accordance with the laws and with the intent of the lawmakers. The obligation of a judge is to make decisions in other people's affairs, and no judge should bring a verdict in their own lawsuit. *It is not permitted for anyone to be the judge and the plaintiff in the same lawsuit.* This is why even rulers frequently trust their lawsuits to courts of justices in other lands, so they can accept the decision. How could someone who cannot apply legal reasoning occupy the judge's seat? No judge is more unjust than the inexperienced and the unskilled. Oh, what an unfortunate country is ours! Here physicians kill while learning to heal, and judges confuse and subvert justice while learning to judge. They ought to understand the law first, and then apply it to the acts of misdeeds. Oh, what an unfortunate country is ours! Here, because of the lack of learned judges, untrained people occupy vacant judicial positions. The individuals who are pushed forward to fill the honorable positions are the ones who, as they say, bring nothing to the judicial bench but their robes and their beard, but they believe all the while that they are outstanding jurists, comparable to the sons of Themis. In truth, they

have limited knowledge of the customs of our homeland, and they barely looked into Verbőczi. Tacitus favored judges *who know the law and understand the spirit of the province*. Cicero speaks this way: *We must appoint to the governing council people who know the country*. Oh, these crossbreed youth of our nation, unfamiliar with their homeland and inexperienced in her affairs. They describe foreign customs in great detail, and how they want to experience them, but they are oblivious about their current locale, and aren't interested to learn about or get to know it. Nowhere in the world is there such an educational effort for youth wanting to practice law than in Transylvania, yet here is where the knowledge of the law is lowest. You attorney candidates and practicing attorneys alike, don't just occupy your time with chasing after opportunities of foreign positions, the prosecutorial bench, or a probate attorney position, but read and learn day and night about the laws and rights of our homeland. It is an outrage for a preacher to ignore the Bible, and it is shameful for judges to bring a verdict contrary to the laws in the Tripartium, Approbata, and Compilata. Just like a theologian ought to be red-faced for not relying on the Holy Bible, a judge ought to be red-faced for not relying on the law. *No one can give if they don't have anything to give*. Many of our judges rarely look into our books of statutes, the Corpus Jurist, and if they looked into the Tripartium, the Approbata, or the Compilata, they didn't study them well-enough to understand the differences between them. It pains me! With such judges around how could you trust your affairs to them? Our laws require that judges bring a verdict only after hearing prosecutorial evidence and the presentation of the defense. Without the arguments of the attorneys and their views of the law many judges would remain quiet as a fish, and wait curiously for the opinions of others. But if the attorneys themselves twist the meaning of the law, what kind of verdict will result from that? A verdict based on happenstance and uncertainty. If even the most wise judges can occasionally be misled, then those less-experienced ones will only rarely stumble upon a just verdict. How could judges unfamiliar with the law could acquit the innocent? And we know that it is far worse to convict just one innocent than to acquit a hundred guilty ones. In addition, it is not sufficient for a judge just to understand the laws; those laws need to be followed and applied according to the circumstances of the case. The respectability of a judge originates from the law. The laws are weak, silent, and worthless without a decent judge. Who would put any trust into a verdict of a judge who is not guided by the laws, but, rather, ignores the law and follows his personal ideas? A judge is obligated to bring a verdict that follows the letter of the laws to such a degree that the verdict could be read directly from the laws without pronouncement from the judge. As the judge understands the rights and the laws, the judge must become the living law, and represent only the law.

Do not wonder why I felt obligated to discuss the nature of justice on such a solemn occasion. I did it, because I know just how much the Honorable honoródentmártoni Biró Sámuel delighted in serving the cause of justice, as he frequently said even when it didn't agree with his personal interest: *The laws of our homeland do not allow this*. Even without espousing any other of his virtues, his relentless pursuit of justice makes him worthy of our respect; he who not only through his actions, but by name as well, was a

judge, strived to serve everyone's rights to the highest degree. When he didn't adjudicate a case, it was because of his ill health, and not because of purposeful inaction. Have no doubt, he rendered unto God the things that are God's, rendered unto the homeland the things that are the homeland's, rendered unto the Emperor the things that are the Emperor's, rendered unto the people of Transylvania the things that are theirs, rendered unto his kin folks the things that are theirs, and rendered unto his family the things that are the family's. He served God through serving this church that he loved so tenderly, so much so that he labored day and night on her behalf, and toiled for her benefit all the way until his death. In order to serve God he dismissed those futile things and temptations that have lead many other people astray. In return, God displayed His love for him. Biró Sámuel accepted with a kind heart three and a half years of suffering from continuous illnesses and ailments from the hand of God. Even in his last days he wanted to show his gratefulness when he said: *My Lord! It is well that you humbled me.* He requested that this topic be discussed at his funeral, so when he could no longer speak, others may witness his statement of gratefulness he expressed in private, and from now on others may present it publicly as an example to others. He attested to this in his Latin poems he wrote in his calendar from 1718 through 1721:

Anno 1718:

Auspicium felix, felicem germinet annum,
Auspiciis cum sit Christe benigne tuis.
Optavi nova dona Dei, paralytica porto,
Non nocumenta animae, sed documenta meae,
Perpetiar dignum est, hic me pater flagella,
Concute, conculca scinde, perure tere.
Dummodo ne mihi me tradus, vel desere totum,
Corpore concussum spesque Fidesque beet.

Anno 1719:

Summe Pater melius me nosti quae mihi prosunt,
Haec oro des, quae obsunt arce benigne Deus.

Anno 1720:

Vivere mors fuerat, iam mors sit vivere Christe,
Et sic vello tuum, sit mihi velle meum.

Anno 1721:

Vita salus, medicus virtus, dux et decus omne.

Infirmitati erranti sis Pater alme mihi.

Tu mihi delictum, mea spes, mea sola voluptas,

Tu columen, lumen, dulcedo levamen. Amen

He rendered unto our homeland the things that are the homeland's with the purpose of giving every single person their due. During his school years he was untiring in carrying out his academic work so much so that while at the beginning it was at an ordinary level, later it became extraordinary. While in the Unitarian school at Kolozsvár, this noble young man was named, by the uniform consent of all teachers, an instructor both in religion and in worldly poetry. His capacity to learn wasn't fully exhausted by the academic work in school, as at the age of 18 he took the first steps to learn about civilian versus government law cases at the Cancellaria. When his expert jurist father died, Teleki Mihály employed the young Biró Sámuel as his secretary until Teleki's death. Biró Sámuel continued to express his admiration and respect of Teleki long after his passing. While still a young man, Biró Sámuel earned such a great respect and gained such a tremendous experience in trying lawsuits that the Superior Court declared he was qualified for the office of secretary at the court. He then skillfully and expertly executed, as all of you know this well, at first the important office of the Transylvanian representative of the Court, and then the office of councilor. His main aspiration was to render unto everyone the justice they deserved, with a special emphasis on the widows whose plight he regarded as his own. Up until the time he suffered his second stroke in 1717, the people of his homeland considered him an unparalleled protector when it came to the affairs of the homeland, someone who was born to serve the interest of the homeland first, and his own interest second. He was familiar not only with the laws of the homeland, but also with the laws of the neighboring provinces. He didn't want to know the customary laws of only those foreign lands, but he also gained intimate familiarity with the circumstances of the homeland. He learned the laws of the homeland so diligently and carefully, that he could see which laws are in use by other nations as well. He understood the civil laws from other countries of Europe so much so, that he was able to ensure he would never be forced to borrow the laws of other countries to substitute for key Transylvanian civil laws. His life was so inseparably intertwined with, so intimately connected to matters of public affairs, that he could be called the Atlas of Transylvania, the pillar of the homeland, the chariot driver of Israel. For Biró Sámuel the love of the homeland meant the same as what the victory helmet of Miltiades meant to Themistocles. Whether he was asleep or awake, he rarely stepped away from the interest of the homeland whose public tranquility he wanted to bring about, and to secure it even if his action brought hardship on himself. The homeland was dear to him, and his primary guiding principle was: "ensure the blessed

happiness of the homeland". While God has kept and allowed similarly great people to work for the homeland, do pray with me that God doesn't call those persons away! Because Biró Sámuel, who was created to disseminate enlightenment, was himself consumed by the affairs of the homeland. If we had the power to exchange a few of our own remaining years for his return, who of us wouldn't make such offer? It was a tremendous blow to our homeland when we lost this great man in the midnight hour of January 15 of 1721. We lost him in the 56th year of his life, and if we invert that number we arrive at the 65th year of the previous century, the year he was born. We all feel that he was taken from us too early, yet, considering what he went through, he already suffered so much. Our grief would be less if he had never existed, and the loss to the homeland would be less if he hadn't passed away. He lived long enough to build an excellent reputation; he lived long enough according to God's will, but for us, especially for me, he didn't quite live long enough, not for the homeland, not long enough for the church, and not long enough for the fulfillment of hopes.

The importance of his works for His Imperial and Royal Highness is evidenced by the royal grants Biró Sámuel received. His Ulysses-like ambitions, and the interest of public affairs required him to travel to Vienna where he proved himself by his clear and straightforward works, and thus, gained the acclaim of the ministers and the court of His Imperial Highness. He humbly bowed at the throne of the His Highness who granted him the post of superintendent of the Transylvanian Thirtieth taxation. Under his wise administration the Thirtieth tax collection greatly increased! Because of this service, and not because of his privileged birth or pure luck (as it usually happens to others), but rather because of his achievements he was named a representative by the Transylvanian national assembly, and then to the post of Chief Councilor to His Royal Highness. Our blessed homeland, you have brought forth a great councilor to advance the cause of the common good. Oh, how unfortunate is the homeland to lose such a great councilor! Because it is not only the armies, stone walls and treasures that safeguard countries, but also the sound advice from a level-headed councilor. The country needs a councilor like a body needs a brain. Augustus said: *Power without wisdom will fall under its own weight. In a great calamity council accomplishes more than hands.*" The rise or fall of entire countries are connected to good or bad governors, because it is unlikely that the body would not languish when the head is ill. There is no hope for help where there isn't appropriate council. Rome was a dominating force when she was guided by experienced councilors tending to her best interest. However, as soon as tyranny began, she started to decline rapidly, as her leaders, Pompeus, Antonius, Crassus, Julius Cesar, and Octavianus subjugated her into servitude. Any power is futile without council, but all powerful with council. A splendid ancient story educated us about the gods and goddesses who, at their conference, joined wisdom with valor. That is why Homer want to take neither Diomedes nor Ulysses alone, without the other, to the Trojan war, as one excelled in wisdom, and the other in power. Diomedes distinguished himself by his power, and Ulysses distinguished himself by his artisan skills: the two of them together had the best chance for victory, while using each of them individually left victory in doubt. Rome gained possession of the war elephants

not by force, but by cleverness. The Latin saying comes from that: *Power is not always victorious*. The weapons are more effective when employed with skill as opposed to force. What is the use of lining up soldiers if their lineup is not well thought out? While a general must be tenacious and committed during the battle, but if wisdom doesn't temper his tenacity then it is unlikely he will set up the appropriate battle formation. On the other hand, there is no use for council without bravery, valor and loyalty; fear corrupts the advice, because who would give advice when the very act of giving the advice puts them in harms way? The honorable honoródszentmártoni Biró Sámuel, as he knew the affairs of the homeland, had the courage and the ability to give advice, and there was nothing this just, law abiding and law-respecting person could not conquer; he truly deserved the title "*Chief Councilor*". Using wisdom and power, unceasing and immovable loyalty, and undaunted courage he rendered unto his superiors the things that were due to them. The noble Biró family became famous for the use of both wisdom and power in their affairs: the lion and the pen in the family coat of arms attest to that. They utilized their intellect in 1505 and 1506 under the rule of the Hungarian king Ulászló. Then Biró Balázs and Imre were sent to the national diet to represent the entire Szekler nation during negotiations and discussions of national affairs. Under the rule of Prince Báthori Gábor, Biró György was rewarded with a donation from the prince for his accomplishments in the secretarial office of the prince. But not only through their intellect did they earn recognition by the Transylvanian rulers, but through their power as well, and they became famous for their valor throughout the last two centuries. Under the rule of the Hungarian king László, Becz Jakab, with a gallant inspiration, accepted a challenge to duel near Buda, and by placing the head of the champion of the opponent army at the feet of the king, Becz Jakab averted a serious threat to the nation. For his victorious bravery the king bestowed upon him the rank of noble, and from "Becz" he conferred the family name "Biró" to him and his descendants. The Biró name was to commemorate his possession of great strength and valor, and wasn't about the judicial post. Another relative, Biró István, was mortally wounded between the villages of Gyalu and Fenes during the live rescue of Prince Rákóczi György the Second from the threat of enemy troops. The father of Biró Sámuel was put in shackles of the Turks for five years for his loyalty towards that same Prince.

He rendered unto his fellow citizens that which was due to them, as he had a gracious and kind demeanor toward them, and he displayed careful attention and exceptional humanity toward their affairs. The saying by Sidonius fit him well: *Providence and Nature joined to endow him with the essence and the attributes of the most well known heroes*. Admire in him Cato's and Pompey' undaunted heart amidst misfortune; recognize in him the generosity of Alexander the Great; praise in him the wisdom of Lycurgus; follow in him the fairness of Aristides, and admire his spirit that was averse to the pomp of the rest of the world.

His parents, Biró István and Dósa Zsófia rendered unto their family what was due to them, and eagles do not beget a timid pigeon. If I wanted to list all members of the Biró family I would have to list names, going back in time to encompass more than two

hundred years of history to detail everyone who possessed the Biró name. I do not know the occupation and the rank of Becz, and later Biró, Jakab. However, when Báthori Gábor, that famous general of the Szekler nation, renewed the charter of privileges for the Biró family, he issued the same level of privileges as he himself possessed. You are the best judge to concur with me that Biró Sámuel extended the noble reputation of his family name. He deservedly rose to the "*ultissimus*" (baron) title (although I have the deceased instruction to refrain from addressing him with that title in this sermon) from the "*spectabilis*" (valiant knight) title given to his predecessors. Even though Biró Sámuel did not exceed all the virtues of his ancestors, it appears that the good reputation of his family's name did originate from his achievements, and it is that reputation that is now extended to his siblings: Biró Dávid, Mózes, Kristóf, and Sára.

He rendered unto his distinguished wife and children what was due them; he married the noble Dávid Klára who not only in name, but also in her action was a pure spouse throughout their marriage. It is worthy of admiration and deserves our attention to memorialize how Biró Sámuel lived with his wife in harmony during their 21 years of marriage; may it serve as an example for us. As it usually happens to bright people, they lost their first born son, Ádám, his father's delight, after six years. His namesake son, Sámuel, is staring at the casket with his head bowed, mourning such a dear father. May you be the inheritor not only his name and property, but also his virtue and accomplishments. László was not yet mature when he perished five years ago, though he was the subject of great hope and attention as he followed his parent's wish to be educated along his father's profession. His only daughter, Klára, carries on the family resemblance by her name, by her face, and by her virtues. She is pure and weak in her young age, but she is bright. Oh, with such tremendous sadness she reacted to the loss of her father; no one would think that such a thing could happen at her tender age. As he rendered unto the homeland and to other people what their due was, so he rendered unto his family their dues; especially unto his children to whom he provided an outstanding example, and wished that they be raised as children who belonged to the homeland. At the end, weighted down by the burden of public and private affairs he suffered his fourth stroke, and two days later while staying conscious all the time, he peacefully fell asleep to be with the Lord. He finished his life in such a gentle and tranquil manner! Even after life, in his death he seemed to be alive, as not too long before his passing he frequently voiced that he would die this year, and in a letter to a friend he stated that he would die very soon. How could the life of such a person ever pass? Even in life his death appeared to be part of his life. And now, Biró Sámuel, you are leaving the home you built, and entering the place you prepared for yourself, the place you determined to be your final resting place, the place that houses your remains, and then will become, by the presence of your remains, a sacred ground for your family and for your descendants. The end.