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LAW

Venellin L. Stoychev

King Lear of Karlukovo



*Rationale for an interdisciplinary study
of public reservations to the abolition
of the institution of prohibition*

2024, Sofia

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Summary¹

The text focuses on the current debate on the abolition of guardianship and the introduction of a model for supported decision-making. The analysis reveals the removal of legal capacity and placement under guardianship as a practice that contradicts some of the deepest values of Modernity. The article mobilizes resources from the research tradition of sociological perspectives on modernity to contribute to freeing the debate about the abolition of disqualification in our country from the "gravitational fields" of typologically significant macrostructural social tendencies whose manifest forms are often perceived in our country today as environmental, gendered, generational, or personal deviations. The exposition takes us through the themes of the "comicality" of forensic-psychiatric expertise (M. Foucault), civility and the tendency to "follow the rules" (N. Elias), the social construction of the structure of personality (H. Marcuse, P. Burger and T. Luckmann), the threats to modern freedom embedded in the structure of modern societies (B. Constant), the realization of some of these threats (E. Fromm and H. Arendt), the socio-historical context for the replacement of "arithmetical justice" by the principle of inner conviction (M. Foucault), in order to defend the thesis that it is not the rupture (through interdiction) but the conscious construction and sustainable reproduction of social bonds that fosters the establishment of a socio-cultural context that more effectively protects the rights and interests of people with (mental) disabilities.

¹ This study is part of the Bulgarian Center for Not-for-Profit Law's "Next Step" initiative, aimed at abolishing neglect and adopting supported decision-making for people with disabilities. The theses expressed by the author are entirely the author's own and the Bulgarian Center for Not-for-Profit Law is not responsible for the opinions and theses shared.

1. An introductory analogy

From the distance of time, it is reasonable to assume that King Lear was characterized by some form of mental retardation². However, this did not at all prevent him from successfully ruling Britain for many years, thanks to 1) the "supported decision-making" contributed by his trusted court counsellors, daughters and sons-in-law, and 2) the traditionally delegated "professional therapeutic service" provided by the jester. Moreover – even if he was not 'feeble-minded', King Lear was obliged (at least occasionally) to play the role of a 'man with intellectual difficulties' in order to ensure the normal reproduction of social reality.

The king must be naked (actually wearing invisible clothes); the prince must trade places with the beggar; during the carnival, the pauper must be proclaimed king, ride a donkey upside down and be pelted with rotten fruit – literally "power ascribes to itself the notion that it has sprung from someone who has been theatrically disguised, painted as a clown, as a jester"³. This carnivalesque turning of the pre-modern world on its head releases social tensions and not at all weakens, but further stabilizes the power of the ruler and the social order he embodies⁴.

Tragedy strikes when King Lear decides to abdicate and divide his "material assets" among his three daughters, and soon after "unleashes a paranoid schizophrenia"⁵ – he starts claiming everywhere that he is of noble birth; there are haunting fears that the King of France will invade Britain; suspects Edmund, Gloucester's illegitimate son, of scheming and plotting a coup; can't sleep a wink at night because he has learned that his beloved daughters, Goneril and Regan, have actually deceived him to get at his inheritance, and "do not love him with all their hearts."

At this point in the play, contemporary public opinion is already polarised, subliminally corralled by mainstream media and social networks. We can imagine how the imagination of one paints

² We must begin this text with gratitude, apology and explanation: gratitude to all the contributors who made the effort to read the draft text and offer their invaluable recommendations, which contributed greatly to improving the content, but could not make up for all the omissions made by the author; an apology to all the activists, relatives and professionals who sincerely defend their causes and will feel offended by what was written; here's the explanation – when there is an acute social problem that deeply affects us, we often expect analyses to confirm the rightness of our own position, but sometimes addressing just such problems requires us to look at the situation from a different angle, and this is the only justification for the disingenuous language of the analysis.

³ Foucault, M., "The Anomalous", LIC, Sofia, 2000, p. 27

⁴ See for details the analyses of Michael Bakhtin, Ronald Bellek or Michael Beck on the "inverted time" of the carnival.

⁵ We use Paul Eugen Bloiler's early twentieth-century term because it has now acquired pejorative connotations, even though Bloiler's aim was precisely to get rid of them in the treatment of people with mental illness. "Schizophrenia" literally means "divided soul" and therefore suits King Lear.

chilling pictures of King Lear clutching a kitchen knife on promotion (of those who – unlike kings – never grow dull), lurking for the appearance of the King of France in the shadows of the neighbourhood garden. On morning TV blocks, such people usually demand that King Lear be involuntarily committed for treatment and never leave the state mental hospital again for the sake of the general welfare. At the other pole are citizens who sincerely believe that Lear (these people don't respect titles, reportedly addressing His Highness as "King" or "Learcho") can be reintegrated into the community, go to music therapy and learn to play the lyre, teach English at the retirement club so that the elderly can communicate with their grandchildren over Viber because "modern kids don't understand English anymore."

The two poles have barricaded themselves behind examples from practice, forensic-psychiatric expertise, good world models and are exchanging mutual accusations of insidious greed, malice, manipulation and irresponsibility. Of course, the **duel is on the ground of wardship** – can the former king mind his own business, or is it best to appoint a guardian to decide for him.

From a purely formal point of view, the problem is that on 26 January 2012. On 26 January 2012, the Bulgarian National Assembly ratified the Convention on the Rights of Persons with Disabilities, and Article 12, paragraph 2 of this document states that "States Parties to the present Convention recognise the legal capacity of persons with disabilities on an equal basis with all others in all spheres of life". At the same time, we have the remnants of the Persons and Family Act⁶, according to Article 5 of which "minors and adults who, by reason of dementia or mental illness, are unable to care for their own affairs shall be placed under full guardianship and become incapacitated. Adults with such afflictions, whose condition is not so severe as to be placed under full guardianship, shall be placed under limited guardianship." To overcome this legal absurdity, in 2014 The Constitutional Court obliged the National Assembly to pass legislation that complied with modern legal understandings and to abolish interdiction. The new bill passed a legal committee in 2016 and the debate then was why it took parliament four whole years to comply with the convention. The bill never became law and today, several (as many as full) terms later, there are over 8,000 people under interdiction in the country (according to civil society figures because official information is not publicly available).

⁶ Since September 10, 1949, because ideology, not law, has been the main construct of social regulation in socialist societies, and on September 9 the people's elected representatives have been busy with other commemorative rituals against social amnesia.

2. About the pilot study

In the summer of 2023, on the initiative of the Bulgarian Center for Not-for-Profit Law⁷, 22 in-depth interviews were conducted with persons under guardianship, judges, lawyers, educators, social service providers, expert witnesses (psychiatrists and psychologists). Our team would like to express our immense appreciation to all of them for their time, attention, and the privilege of thinking out loud together. Unfortunately, this text cannot cover all those topics related to judicial reforms, the role of judges in society and local communities, the importance of the rule of law, etc. that were touched upon during the interviews.

This text does not deal with the legal side of the prohibition, the legal capacity and the understanding of the legal subject. Nor does the text deal with the medical aspects of dementia and mental illness. Even if we have to touch vaguely in a few places on the reproduction, effectiveness and change of disciplinary practices that are institutionally reproduced in the school, the 'madhouse', the detention centre, the barracks, the courts, etc., our focus is not on these practices, even though they deserve a much larger and more thorough study.

This pilot project aims to justify the need to organize and conduct a large-scale interdisciplinary study on the issue of interdiction involving a team of lawyers, psychiatrists, psychologists, sociologists, neuroscientists, economists, etc. This justification calls for **a more informed public debate** to resolve an acute social problem that we appear to have managed to tangle in a Gordian knot. The trouble is that we cannot cut the knot with a light (or 'firm' according to some public expectations) hand, because the fates of living human souls are entangled in it. Therefore, the task of this text is **to sensitize us** as a society to the social dimensions of stigma – to the gravitational fields of those macro-structural social processes that often influence our opinions, attitudes and positions in hidden ways. The purpose of the analysis is not to scandalise, but to provoke – not pity or mercy, but reflection, conversation and a little better understanding that will move us away from the stalemate in which we currently find ourselves⁸.

⁷ <https://bcnl.org/>

⁸ One final preliminary note: if by some unknowable ways of the Lord (or artificial intelligence algorithms, which is the same thing) these lines have reached (individuals or entities) who feel that the text is disrespectful to the monarchy, the world's literary classics, government, the courts, or science, we would strongly advise those individuals to abandon the present writings first, or the writings will abandon them. We commend to these persons Max Weber's texts on the unmaking of the world in Science as a Profession and Peter Burger's on the heuristic potential of irreverence and voyeurism in An Invitation to Sociology.

3. About Everyday Consciousness

3.1.

The two extreme viewpoints on the issue of disqualification have been presented quite closely in the public domain in this country, and so we will only sketch them here for the purposes of this paper, although they certainly deserve much more in-depth and serious analysis in a subsequent large-scale study. Respondents who defend the status quo and the institution of restraint insist that *"restraint undoubtedly has flaws that need to be fixed,"* but *"to completely abolish restraint is like having a flat tire on your new car and instead of gluing the tire on or buying a new one, you throw the whole car in the garbage."* Such people are convinced that there is still no alternative in the country and that abolishing the prohibition would mean that *"many people would be left in the lurch", "completely defenseless against fraud and abuse",* and that it is the state, through the prohibition, that is *"called upon to defend their rights and interests"*. People under guardianship are *"like small children, they are incapable of looking after themselves – if you leave children to decide for themselves, they will watch TV all day and stuff themselves with chocolate"*⁹. That is why our society *"needs to develop sensitivity to the suffering of people with mental illness", "be much more compassionate" and "instead of taking me to the European Court of Human Rights, so-called human rights defenders should become guardians, sit on guardianship boards and care for the sick and suffering with mental health problems"*¹⁰.

On the other hand, respondents calling for radical reform and immediate abolition of restraint argue that *"restraint is civil death,"* that the alternative lies in *"supported decision-making,"* that limiting rights through restraint is a disproportionate measure that *"does not protect the best interests of the mentally disabled at all."* *"Modern medicine, neurology, psychiatry, psychology are so advanced that now many illnesses that were once considered incurable are under control, patients are in long term remission, they do not have crises for years, but because of the interdict they cannot work, they cannot dispose of their property, they cannot travel, they cannot marry, they cannot manage their own lives at all, they are literally civil prisoners"*¹¹. Therefore, *"the arguments that (people with intellectual disabilities) will take out a loan or make a bad deal and*

⁹ We mention this notion of children and upbringing not because we share it, but because it is indicative of the paternalistic attitudes that dominate the camp of convinced prohibitionists.

¹⁰ The statement was made by an attorney from Sofia and we quote it only as an illustration of the need for a calm and thorough dialogue in society on the topic of incapacitation, not why we support anti-rights rhetoric.

¹¹ Representative of the civil sector from Sofia.

*then regret it are completely untenable because we all make mistakes all the time that we then regret and we just have to learn to take responsibility for our actions*¹² .

Proponents of restraint cite numerous examples of elderly people with severe dementia, of "nonverbal" persons¹³ with profound mental retardation, of people experiencing crises that threaten not only their lives and health but those of others. Opponents of restraint, on the other hand, have examples of people with mental retardation and/or mental illness who are successfully going to work, maintaining friendships, falling in love, getting married, managing their property and their destiny, when they have a secure environment and support of confidants around them.

3.2.

While, by the logic of media rationality, the two dominant viewpoints on the issue of injunctive relief seem not only completely irreconcilable but also aggressive toward each other, a little closer scrutiny of the contending parties' rationales reveals many overlapping fields:

1) Both major groups share the concern that it is *the social environment in our country that is unfavourable*, that our society suffers from severe alienation, selfishness, corruption, lack of compassion, (domestic, street and school) violence, and therefore people in vulnerable situations are particularly at risk of fraud and abuse, against which no one is fully insured. In this sense, the argument is not what is best for people with intellectual disabilities and/or mental illness, but what is least dangerous for them (and for society).

At the same time, advocates of guardianship themselves cite examples of individuals who were fine while their parents cared for them but were placed under guardianship "for their own good" after the parents died and there were no meaningful social services to take over. Lawyers – leading and winning cases to lift the conservatorship – say that *"I worry every time because I know how it is in Bulgaria and I cannot be sure that everything will go smoothly after the lifting"* (of the conservatorship). Thus, the second point of contact is in 2) the understanding of the interdict as **a temporary measure, as an institution that is subject to revocation, but when there are sufficient guarantees in the environment for the rights and interests of vulnerable persons**¹⁴ .

¹² Human rights defender from the country.

¹³ In the project interviews, the social service experts divided their 'users' into 'verbal' and 'non-verbal'.

¹⁴ The more radicalized opponents of the ban insist that the postponement of the repeal legitimizes the inaction of political forces and state institutions that would never change the status quo without a public scandal.

The next point of truce is that 3) restraint in its current form *is not flexible enough to meet the individual needs* of people with mental health problems. Therefore, the respondents put on the table for discussion a series of proposals that would protect the interest of vulnerable persons, taking into account the deficits of social services and supportive environments in society:

- abolishing full guardianship, retaining *"some form of limited guardianship"* with stricter control over the actions of the guardians (because at the moment *"as his guardian I supposedly write some formal reports to the mayor, but there they let me know that nobody reads these reports and doesn't care, they just want me off their heads"¹⁵*);
- introducing (limited) guardianship (**for a limited time only and without a declaration of incapacity**) depending on the condition of the mentally disabled person, after which there should again be court sanction (because "science is evolving and many mental illnesses are being successfully managed" and we humans "tend to institutionalise");
- introducing ("sort of") disqualification only in **certain sectors or activities** (because *"very often people with mental illness have problems only with specific areas such as taking out private loans and bank loans, buying and selling property, cars, etc."*, without this in any way affecting their ability to make reasoned, responsible and well-informed decisions on other matters);
- tighter **controls on property transactions** and loan drawdowns, so that action can be taken if a person with a mental disability or mental illness is found to be caught up in a fraudulent scheme;
- Development of a supportive network, adequate **social services**, host communities and public ownership;
- **training** (for all): for police officers "so that they do not handcuff people with mental health problems every time"; for judges so that they know "how to communicate more fully with people from vulnerable groups" and "what to demand and expect from expert witnesses"; for social service providers; for psychiatrists and psychologists; for the media and for society in general.

¹⁵ Guardian of a person under complete disability from Sofia.

4. An apparent opposition

All these proposals are, of course, subject to extensive further study and discussion in professional circles and the general public before being codified, adapted or rejected. The problem is that, given this division of public opinion and the fragility of the 'governance architecture', it is difficult to expect the accumulation of sufficient political will for radical changes in the regulation of the matter in the short term. But because of the direct application of the Convention on the Rights of Persons with Disabilities, even the current legal framework allows the court to refuse requests for prohibition and to revoke the prohibition of persons already declared incapable. This puts a huge responsibility on the shoulders of the court and the experts called as experts in cases of incapacity and compulsory treatment under the Health Act, because – as has already been made clear – the issue is not only the (current) mental state of the person, but the (deficits of) the social environment, which is part of ourselves.

The present study provides evidence to support the view that an internal division between "more conservative" and "more liberal" (or "more progressive") has become entrenched among magistrates and experts¹⁶, that there are prosecutors, judges and experts who are more likely to rely on the institution of injunctive relief in their work. That is why, according to lawyers surveyed, the outcome of a restraining order case *"very much depends on which judge you get."* This is why *"I am even considering changing my client's address registration because his chances in this particular court are next to none"* and *"his restraining order was lifted by another court while he was in the psychiatric hospital, but his relatives' lawyer appealed and we are back to square one"*.

Of course, the fact that a decision or determination depends to such an enormous extent on the personality of the judge is an obstacle to modern law as a leading social regulator claiming abstractness, universality and legitimacy, but we discuss this issue at the end of the analysis. For the purposes of this justification of the need to explore the issue in more depth, it is now important to present how judges' attitudes are changing in their own view, because the *lives and fates of many people with mental disabilities and their loved ones depend on their value-determined stance on incapacity.*

In interviews, judges often share about such transformations, *"The first time – probably 20 years ago now – I heard them talking to me about lifting the restraining order, I straight up kicked them*

¹⁶ With each of the two main groups having its own "moderate" and "harder" wing, and the "moderates" being more willing to dialogue with each other, while the "hardliners" are more reserved about the efficacy of compromise.

*out of my chambers. But then I started thinking about what we were actually doing and why. Until then, I hadn't problematized the issue at all*¹⁷ ". According to participants in the project, such significant changes in attitudes occurred mostly due to: 1) "international exchanges", "on-site visits to more developed countries", learning about "models that work successfully in practice", meeting "judges and professionals who apply these models"; 2) "a lot of reading" – of (international) legal literature, of court decisions, of analyses, of scientific research; 3) seminars and conferences, but ones that are "devoted not to dry theory, names and dates, but to the concrete application of an international instrument – such as this convention – to concrete cases"; where "specific cases from our practice are discussed and possible solutions are played out"; where *"the moderators and speakers are real professionals, not people who put together some lectures and presentations over a weekend to make up the numbers"*; where *"the goal is not to give some money to an expensive hotel, but to actually learn something and be able to discuss among ourselves"*¹⁸ .

Beyond these specific tools (which we hope will be useful in the organization of the next exchanges, seminars and trainings), aimed at professionals, the participants in the study are also sensitive to the role of: family education, school, media, propaganda (but we will not go into details here, because it is a bit like pissing on the bad weather instead of opening the umbrella).

At this point in the unfolding of the submission, we are obliged to recall the validity of the "that's the way it is in Europe" argument and the *claims of value superiority* of those international instruments that we have ratified. Moreover, there is a clear awareness that Bulgarian law did not originate on its own roots in our country (the literary puns on the Krum Laws only confirm this awareness), but is secondary to models from France, Belgium, Germany, Italy, the Soviet Union and the European Union. This consciousness fuels the tension between 1) law as an instrument of social modernization from above (social engineering through legislation) and 2) as a regulator of already established social relations because of doubts that left to itself, *"our social reality has no potential at all to generate social relations that require legal regulation."* This is also why 'more liberal' magistrates are perceived (and are perceived from the outside) as the *vanguard that puts into practice in our country the 'modern understanding of law'*, while 'more conservative' ones are in the role of expressing the *voice of experience and reason (common sense)* that recognizes that legal regulation is ahead of social development, but insists on not going too far to *avoid a complete break from what is perceived as normal in the legal norm and normal for society* (in our case, not to rush into a complete abolition of the guardianship until support networks and social services

¹⁷ Judge from Sofia.

¹⁸ Judges from Sofia.

are in place). In principle, these stones should be in the legislature's garden, not the judiciary's. But this is the other side of the same coin insofar as political entities in this country are not so much stabilised through the representation of consolidated civic interests, but rather through access to the redistributive mechanisms of the executive, which includes European funds. Thus arises the need for (at least imitation of) transposition of legislation that is incompatible with prevailing social practices and their respective value attitudes (hence the suspicion of huge social groups towards his various conventions – Istanbul, Rome, New York). By virtue of this logic, "overly liberal" magistrates should be "ground down" when they over-confide international law, and "conservative" ones are publicly legitimized as guarantors that the process between right and legal in this country will not widen to a canyon. Against this backdrop, it becomes clear why the research team's initial expectations – that the mechanisms of value transition from the "conservative" shore to the "progressive" shore would be registered and analyzed, but not vice versa – crashed in the empirical data: the study also found the opposite tendency, in which *initially "progressive" magistrates adopt more conservative views* (following their inner conviction/ conscience) which, predictably, affect both their positions on prohibition and their cases. As the classic says, by their works you will know them.

5. Research questions identified by the pilot study

Understandably, our problem is that for the same mentally disabled person, the internal conviction of some magistrates and experts insists rather on incapacitation, while others insist on capacity. The present pilot study abounds with concrete examples in this direction, and explanations that *"thank God we are now in the EU and European legislation is in force"*, or that *"the higher authorities are more inclined to apply European legislation, and it may come to Strasbourg after all"*¹⁹, may alleviate but do not overcome the problem of interdiction and the contradiction between the Convention and the MCA.

Therefore, by virtue of formal logic, we are now obliged to revisit the individual perspectives that the pilot study registered and present an entire thesaurus of explanations for why our society has failed to overcome this legal contradiction for more than a decade. These explanations should be the focus of interest of a future interdisciplinary in-depth study of the problem. Blame is attributed to:

- "the populism of MPs" who "always postpone to infinity when there are any value contradictions in society" and "no lobby interests";
- human rights defenders²⁰ – the "grandstanders" who "litigate to lose" and "condemn the state in Strasbourg": *"anyone who has set foot in a courtroom can recognize when a lawyer is litigating a case to win it, and when he wants to lose it – they (human rights lawyers) want to lose because they cash in on it and do everything they can to make the judge's life miserable, not to mention the trauma they inflict on people under disbarment by lulling them with false promises..."*;
- Mothers of (intellectually) disabled people who *"want to have power over their children because that power is all they have left"* and *"don't want independent living"*, don't *"want their children to be free"* because *"if they could choose, they probably wouldn't choose their parents as personal assistants or caregivers"*²¹;

¹⁹ Judges from the country.

²⁰ We are obliged to reiterate that we reproduce here verbatim the respondents' jargon, only in order to contribute to a more meaningful dialogue between stakeholders.

²¹ We present these radical opinions of civil activists as an illustration of the polarization in society on the issue of disability and civil rights protection – these attitudes exist and will not go away if we replace them with "politically correct and neutral" language.

- Banks that *"hold as negotiable the money of 7 000²² people under disability", "only our consumers have over 300 000 BGN in the bank, and they are a drop in the ocean", "we are 20 people, multiply it by 7 000 and you will understand why the new law has not passed the National Assembly for so many years";*
- relatives *"who want to get rid of the responsibility", to "imprison their relatives in the madhouse" and/or "take their properties";*
- the property mafia (*"when we put him under arrest, it became clear that he had already signed preliminary contracts for the sale of all his apartments – the mafia sniffs out such people very quickly and acts with lightning speed²³ ");*
- doctors from psychiatric hospitals because *"if there is no prohibition, their clientele will shrink – they will have to have signed informed consent for treatment and many people will refuse";*
- Expert witnesses who *"are on a conveyor belt on cases like this – I saw the same psychiatrist appear on three cases on the same day – 3 for £400-500 is a good fee for a few hours... I wouldn't even say 'work' because it's not²⁴ ".*

We will not analyse these accusations in depth now, because they deserve special attention, and **illegitimate private interests can always be found fishing in the water when the common interest is not clarified and protected.** But fairness to the empirical evidence requires us to mention another problem that the study registers – the existing suspicions that magistrates and expert witnesses (psychiatrists rather, but also psychologists) fail to meet **the highest standards** not only of moral integrity (which undermines confidence in conscience and internal convictions) *but also of professional competence.* Examples include *"diagnosing out of the gate"; "expertise that is written on a conveyor belt and they changed the name but forgot to change the EIN"; using "scientific language that makes no sense"; expertise that is "obviously written in template because the person is male and the expertise is in the feminine, for example"; etc.* At the same time, *'there are young fellow judges who write words with an "e" at the end'; 'people think it is corruption, but very often it is simply a matter of insufficient competence'; 'being a judge is a diagnosis – everyone suffers from an obsession with greatness'; "I asked the judge not to question him in the courtroom because I knew him, but she didn't comply and the first time he looked away he jumped up, hit two thuds on the window and glass from the third floor of the courthouse came crashing down onto the pavement below",* and many others.

²² 8,000 according to other civil sector sources.

²³ Judge from Sofia.

²⁴ Lawyer on the bar.

The pilot study records that the reasons for these discrepancies with the highest standards of professionalism and ethics in the field of law and medicine are mostly sought in:

- training (*"the training of psychiatrists in Bulgaria is under any criticism", while at the same time "I have reservations about colleagues who graduate abroad, because you have to know the cultural context well to practice this profession"; "in Bulgaria law is taught too theoretically", and "internships are formal, you just pass for certification", etc.*);
- lack of sufficient life experience (*"at 24-25 you become a junior judge, coming straight from the university bench"*);
- the collapse of the socialist system (*"Under socialism, important issues were not decided in court, but in the politburo, and this allowed the court to be close to the citizens and quite independent, because they dealt mainly with family and domestic disputes. After 1989, without being prepared for it, the court was suddenly tasked with deciding issues that affected huge economic and political interests and this put the judiciary under powerful pressure"*);
- the lustration (*"in our country there was a de facto lustration only in the courts in the 1990s, when 300 judges were expelled for political reasons, without any criteria and arguments"; therefore "the vacancies had to be hastily filled with people who were not always the most suitable"*);
- low salaries (*"judges' salaries were deliberately so low that you had to be extremely motivated to stay honestly in the system – otherwise you either quit or get corrupted"*);
- political influence (*"every executive is tempted to influence the judiciary", but the question is "whether the judiciary has a strong enough immune system to resist"; "before the king, attempts at political influence were quite discreet"; "from the outside it seems a contradiction, because people expected that the entry of so many academics into politics would ease the political pressure on the judiciary, but in practice the opposite happened"; "with the arrival of GERB and Tsvetanov it has already become brutal – they did not even pretend that they were not cadres"; "the SJC has one main function at the moment – to ensure political control over the judiciary", etc.*);
- corruption (in both senses – as personal gain and as lack of a system of checks and balances to ensure the rule of law).

Although presented here in outline form, all of these explanations have their own solid arguments and deserve a much more detailed and in-depth analysis, which touches on the issue of the rule of law in our country, but **goes well beyond the scope of the current pilot project, which focuses on highlighting the problem areas in the debate on restraint.** Moreover, the study is also replete with numerous examples of exceptionally high levels of professionalism, responsibility and dedication

on the part of magistrates, psychiatrists and psychologists whose work does not go unnoticed by professional communities and the public. In order to be able to answer reasonably the question of how the judicial system can tolerate those **individuals** who manage, through personal effort, will and character, to resist attempts to interfere with illegitimate political, economic or criminal interests, to compensate for the deficits of our family upbringing, our education system and our administration, we need a *frame of reference that increases our sensitivity to the construction of personality*. To this end, let us go back to King Lear.

6. Personality as a key modern value

Who actually is Lear²⁵? Is it the King's social role, is it Lear's conflicted feelings, is it his madness, is it his royalty, his blue blood, his subjects, his allies, his memories, his plans, his subconscious, his early childhood traumas caused by his tyrannical father and estranged mother? In the Middle Ages, all of this is syncretic, and Shakespeare's genius lies in his sensitivity to the processes of disintegration of this wholeness, and the emergence not just of distinction but of acute tensions between these 'elements' of Lear's personality as the New Age dawns. The foolish king does not understand that his two married daughters flatter him not for his own sake, but for the sake of sharing the kingdom. Cordelia, Lear's as yet unmarried daughter, is exiled and disinherited because she unacceptably allows herself to disentangle "sincere feelings for her father" from respect for status obligations to the King (and she can afford this indiscretion precisely because she is unmarried – i.e. she is irresponsible). The Duke of Burgundy withdraws his claim to Cordelia's hand when he realizes that she is disinherited because Cordelia herself disappears from his sight – there is nothing inside the king's clothes if the crown and scepter aren't there, which is why no one notices that the king is naked²⁶ (except the children, who are not yet human because they have not completed a course of full socialization).

The links between Modernity, Market, Law and Science are not just temporal but substantive. Let us recall them briefly. As a load-bearing macrostructural precondition of Modernity, the market exerts pressure for greater competitiveness, and hence encourages innovation and entrepreneurship in reducing the non-production and production costs of making goods for abstract customers. **Entrepreneurship is at the heart of differentiation in thinking**, in production (first in the case of manufactures, and then in machines and computer algorithms), in social worlds that are beginning to **follow their own logics, accompanied by corresponding everyday ideologies**. The proliferation of ideologies, of different perspectives and value systems, acutely raises the question of truth, because entrepreneurship requires that the world – both its natural and its social dimensions – be managed, and for this it must be known. That is why science is needed to lead to the truth. According to the project of Modernity, the more science develops, the better we will know and manage the world, and when we know it well enough, we will be able to be happy on Earth, to have no more wars, disease and suffering. **Modernity means the promise of happiness on**

²⁵ This text is not and does not pretend to be a literary analysis. Shakespeare's tragedy is used only as an illustration of the complexity of the issue of mental health.

²⁶ Why the king is naked and not the queen is a question that requires psychoanalytic competence and we will not go into these depths of the subconscious.

Earth. Modernity means that man is the author of his life. But we humans live in a society and therefore there can be no authorship if there is no influence on the conditions for the unfolding of our human potential (society). Thus Modernity bifurcates us – we must both play on the public playing field (as individuals pursuing our private interests) and participate in the construction and maintenance of that field (being active in defining and defending the public interest). Modern self-interest is not identical with selfishness, as advocates of collectivist ideologies often claim. On the contrary, the word derives from the Latin *inter*, inside, and *esse*, I am: **we have an interest when we are inside some public task, cause, mission, vision, adventure.** Our interests – the threads that connect us to others in society – make us modern humans who have the potential to unfold as individuals (to have this – albeit mediated and torn by tensions between "public" and "private" – authorship over our lives).

That is why personality is a basic modern value. In order for personality to unfold, a predictable environment is needed, which is why law has become a key social regulator in modern societies. The cause of the actual – not merely declarative – inclusion of all human beings under the umbrella of law, regardless of socially and naturally determined limitations (including mental disabilities and mental illness) is an *expression of the understanding of the value premises of modern law, and of modern society itself.*

By virtue of this logic, disinhibition, which by removing capacity severs ties to society (which is to say, it cuts off the inter-selves and strangles the individual), must be overcome in favor of practices that restore and build connections, such as the modern (natural and social) sciences and the development of technology increasingly provide.²⁷ .

In this context, it also becomes understandable why King Lear, cutting his ties with society (abdication and separation from his daughters and court society) provokes the disintegration of his very personality and goes mad in the void (it is no coincidence that the madness of Shakespeare's characters always manifests itself in the desert, the storm or the night, where boundaries disappear and personality spills out into the chaos of disorder, of non-being).

²⁷ But by virtue of the same logic, we tend to project personality onto everyone, even though personality is a complex social construct and not everyone and everything is a person. On the other hand, the construction of personality is also a matter of socialization. That is why treating children and infants (even in the prenatal phase) *as persons* is conducive to their development as persons.

7. Resources from the Sociologized Study of Modernity

Viewed from this perspective, the question remains why we still have expert witnesses who "instead of doing their job" and working for "the best for people with mental disabilities that modern science provides", often times "become ridiculous" in the courtroom because "*they made a diagnosis from the neck*", "*they changed the name but not the ID number*", "*they parade with scientific language*", etc., and why there are still magistrates whose conscience (or inner conviction) tends to defer to the expertise of such expert witnesses. Let's ride along.

First of all, let us recall that it is not only in our courtrooms and not since yesterday that forensic psychiatric examinations sometimes provoke ridicule. "These everyday discourses about truth that kill and that make us laugh, they are here, at the very core of our judicial institution. Not for the first time, the workings of judicial truth not only create problems, but also provoke laughter. It is well known that at the end of the eighteenth century the way in which proof of truth was presented in criminal practice sometimes provoked both irony and critical remarks."²⁸ But this laughter is not due to any characterological peculiarities of the particular psychiatrist, but is intrinsic to the social role: "the buffoonery and the function of the expert psychiatrist are interrelated: it is precisely in his capacity as functionary that he is a buffoon."²⁹ . The problem is by no means the science, but the (mis)use of science in courtrooms³⁰ : "what the expert psychiatrist says is a thousand times below the epistemological level of psychiatry"³¹ .

This is because "one of the most immediate and most radical assumptions of all judicial (...) discourse is that there is a fundamental connection between the exposition of truth and the administration of justice. However, at the moment (...) when the court and the scientist (...) meet, certain propositions are formulated which have the strange property of being alien to all, even the most elementary rules for the formation of scientific discourse, of being alien also to the rules of law and of being (...) in the literal sense grotesque"³² . In this way, "psychiatric expertise makes it possible to construct a psychological-ethical double of the crime" and thus "to legitimize in the

²⁸ Foucault, M., "The Anomalous", pp. 19

²⁹ Ibid, p. 49

³⁰ This judgment of Foucault undoubtedly applies with equal force to the undeniable achievements of Bulgarian psychiatry in the 20th and early 21st centuries.

³¹ Ibid, p. 50

³² Ibid, p. 26

form of scientific knowledge the extension of criminal power to something other than the offence, (...) makes it possible to situate (...) judicial power in a general corpus of considered methods for changing individuals"³³. As a result, "magistrates (...) have before them no longer a legal subject, but an object: an object of technology and of knowledge to correct, to readapt, to rejoin, to rectify"³⁴. "These methods of normalization are not simply the result of the encounter (...) of medical knowledge and judicial power, but (...) another type of power that finally reaches the theatrical stage of the court, leaning, of course, on the judicial and medical institution, but which has its own autonomy and its own rules within itself"³⁵. It is about the "power to normalize".

It is in this sense that it is important to thoroughly examine how those 1) psychiatrists and psychologists who, as subpoenaed expert witnesses, "do not have the courage," "backbone," "fortitude," or "professionalism" (in the language of our respondents) to assert their boundaries in court and state categorically when they are speaking "as scientists." "when out of human experience," when "simply out of conformity or sheer laziness," and those 2) judges, prosecutors, and lawyers who believe it is not their job "to insist that experts justify their conclusions based on clear, traceable and reproducible methodology", to prevent "the conflation of personal opinion with professional judgment" and of "suggestions related to my client's past that have nothing to do with his illness but with his value system", – casually **open a loophole for this subversive intrusion of dehumanizing disciplinary practices into the court** (Foucault's "normalizing" power), which may seem ridiculous from the distance of time and space, but prejudice the fates of living human souls. Moreover, the tendency towards dehumanization and discipline is also intrinsic to Modernity, and much has been written about it, from alienation from the world and the self, to the instrumentalization of everyday life, to the factories of mass production of death. Modernity also needs control, hierarchy and subordination, but violence (in all its forms), coercion are neither effective nor efficient social regulators in the long run. With a whip you can make the prisoners dig in the mines and the slaves pick the cotton: but it is much more effective and efficient if they are eager to dig, compete with each other to see who can do it better, and secretly work nights to get ahead of the others. The Supervision and Punishment Study³⁶ is dedicated to these classic modern social regulators through which **the coercion of society is internalized**. We will not dwell on them here, but we should emphasize that as a form of social regulation, **the institution of restraint is akin to those dehumanizing disciplinary institutions such as the barracks, the insane asylum, and the prison that aim to produce unquestioning obedience**. In the same way that the

³³ Ibid, p. 34

³⁴ Ibid, p. 37

³⁵ Ibid, p. 42

³⁶ Foucault, M., Supervision and Punishment – the Birth of the Prison, University Press, Sofia, 1998

barracks lords it over soldiers, controlling their access to "leave, grub and women," the banned are kept in subjection by control over "pension, cigarettes and cheese." Just as prison haircuts have little to do with lice, so the haircutting of the banned, who have crossed the street without permission in protest against being moved from institution to institution, is a mechanism for depersonalization, for alienation from the old personality and the construction of a new, submissive one. Therefore, *"although we argue that the aim of the system (the social system in this case, not the health system – n.d.) is to keep the inmates close to the community, in practice they are thrown far away so as to sever their links with the community and erase their memories; the system does not divide them by where they are from, but by whether they are 'problematic' or 'obedient'³⁷ ". Foucault's 'normalizing power' aims to turn the 'problematic' into the 'docile' through depersonalization, and this involves taking away personal space – the panopticon, the constant surveillance, the watchful eye of Big Brother. That's why the first order of business for people whose restraining orders have been lifted by the courts is to buy... "a wardrobe"³⁸ ".*

All this is the flip side of the same medal of the *inter-esses*: if personality is built through its ties to society to create the conditions for the expression of creativity, entrepreneurship, initiative, then depersonalization in the barracks, the hospital, the insane asylum and the prison systematically cuts these ties to produce subordination, passivity and resignation.

The individual needs an intimate space (in Habermas's sense, the innermost sphere of private space where the individual tries to free himself from the pressures of social roles and to torture himself in search of the "true self"), and disciplinary institutions invade this space in order to extract the memories, dreams, longings and fears from there and pour them on the plaza under the cubicles of marching recruits. The goal is achieved when not only the face, the body, the clothes, but one's own thoughts become alien. Here, by way of illustration, are the authentic voices of people under arrest interviewed for this pilot project:

"I wasn't sick then, I was angry. I was angry that they wouldn't leave me any space to move. Ours know how to push my buttons so they make me furious. Then they call the police. Every time the police beat me, kick me, put me in handcuffs, and I don't resist, I tell them I will go with them voluntarily, I just don't want to be handcuffed. But they've been told I'm crazy and they're cuffing

³⁷ Head of a social service for mentally handicapped people from the country.

³⁸ Head of service for people with disabilities.

me. Then they take me straight to the psychiatric ward. In the psychiatric ward they tie me up with the straps, keep me hungry and thirsty for three days and three nights. They drug me so I can't concentrate, so I can't control my thoughts anymore. I can observe my thoughts from the side, but it's like through the window of a train, I can't control them. I stay like that for a month or two, sometimes longer, time passes at a different speed there, then they let me go and everything starts all over again. Every time it gets worse and worse..."

Of course, from the standpoint of a science claiming value neutrality, these disciplinary mechanisms for producing a "disobediently obedient person" are perfectly legitimate "social facts" ("things"). If our society wants to produce Prigozhin's headhunters, it would be appropriate to make use of these socializing practices. Our problem here is different: from the perspective of a sociology of social regulators, the institution of the ban is identical with the barracks-slut-prison, and in this sense the claim to care for "the rights and interests of the banned, who are like little children and cannot fend for themselves" is an ideological camouflage behind which "normalizing power" is visible. In this sense, the question is **why our society has failed to "civilize" itself and we still look to coercion rather than negotiation to solve our problems** – we tend to believe that banning phones will get students' attention back, that tougher penalties will put the brakes on drunk drivers, that lynching offenders will reduce domestic violence, that incapacitation will preserve the interests of the mentally disabled.

N. Elias³⁹ would be relevant as part of the frame of reference of a deeper interdisciplinary study of attitudes towards restraint, why Elias is concerned with the transition from the spontaneous, the wild, the unrestrained, the natural (which is regulated by external punishments) to the "civilized" – to self-control, to education, to rule-following (the internalization of the norm, the "love of rules"). Elias explores the links between psyche and society, between "the long-term change of individual human structures (aimed at stabilizing and differentiating the control of affects) and the long-term change of the communities that people form among themselves (aimed at a higher degree of differentiation and integration...)"⁴⁰. The research focuses on the question of how "civilizing" occurs as "the structural change in people towards enhancing and differentiating their control over affects, and thus over their experiences and behavior – something like raising the threshold of shame and awkwardness – for example in eating in the form of differentiating the cutlery on the table"⁴¹.

³⁹ Elias, N., "On the process of civilization – sociogenetic and psychogenetic studies", ATIKA, 1999

⁴⁰ Elias, N., "On the Process of Civilization", ATICA, 1999, vol. 1, pp. 9

⁴¹ Ibid. 10.

The results of that empirical study of Elias lead to the conclusion that "no being can exist without the channeling of individual instincts and affects, without a precise regulation of individual behavior. No such regulation is possible without men exercising coercion over one another, and all coercion in the coerced man becomes fear." And in turn, "...the structure of fears is no different from that of its psychic opposite, the coercions that people exert on each other by virtue of their social relations. Fears constitute one of the connective pathways – one of the most important – by which the structure of society is transmitted to individual psychic functions. The engine of civilizational change of behavior, as well as of fears, is constituted by a precise modification of the social compulsions which affect the individual, by a specific restructuring of the whole network of relations and above all of the organization of power."⁴² .

We recall this seminal study here because the present pilot study also registers the presence of a powerful tendency in the spirit of Freud **to universalize the structure of the human psyche**. Hence, the flaws in society that bother us – selfishness, corruption, non-compliance with rules, lack of empathy, alienation, greed, violence, etc., and so on – are often explained by the "failures of parents" in bringing up their children: *"fathers are not strict enough with their sons and so sons do not obey the laws in society"*; mothers *"neglect their daughters and so girls grow up timid and insecure and seek safety in the arms of bullies"*, and so on. But let us recall, therefore, that Herbert Marcuse already argued serious objections to the universality of the "Freudian concept of man": "at the time of its maturity, Freudian theory conceived of a past rather than a present – a vanishing rather than a prevailing image of man, a vanishing form of human existence." Marcuse mentions two key social changes that undermine the relevance of Freud's notion of the structure of the personality: 'first, the classical psychoanalytic model, in which the father and the family subordinate to the father was the agent of spiritual socialization, is invalidated by society's direct manipulation of the emerging *ego* through the mass media, the school and sports teams, groups, etc. Secondly, this decline of the father's role follows the decline of the role of private and family initiative: the son is less and less dependent on the father and the family tradition in choosing and finding work and in securing a living. Socially necessary repressions and socially necessary behaviors are no longer learned – and internalized – in the long struggle with the father: the *ego-ideal* exerts pressure on the *ego* more directly and 'from the outside' *before it is actually* formed as a personal and (relatively) autonomous subject of mediation between *self* and others."⁴³ . (p. 311)

⁴² Citation. Collected Works, vol. two, p. 329

⁴³ Marcuse, H., "The Disappearance of Freud's Concept of Man" in the collection *Sociology of Personality*, compiled by Nikolov, L. and Liliana Deyanova, Science and Art Publishing House, S. 1990

Obviously, Marcuse's arguments have also become outdated in the meantime, but we mention here this far from isolated, but emblematic, critique of Freudian theory only to justify our reservations about the expectations registered by the fieldwork that a national public awareness campaign educating parents on how to educate their children and teachers on how to teach their students, would achieve the desired change in the behaviour of Bulgarian citizens (respect for rules and the law, empathy for others, attitudes towards people with mental disabilities and disability) – **structures of social relations tend to influence the formation of structures of consciousness, which then accommodate specific contents**, including those related to the socialisation of adolescents and notions of capacity. In short, the gravitational pull of society is too strong to be overcome by PR on FET.

This brings us full circle and we return to the beginning of the paper, where we presented the relationship between the individual and the market as a macrostructural feature of Modernity. In the words of B. "We are living in modern times and I desire a freedom consonant with modern times (...) Personal freedom is the true modern freedom. Political freedom is the guarantee of personal freedom; therefore political freedom is necessary. But to require the peoples of today, after the example of the ancients, to sacrifice personal for political liberty is the surest way for them to lose the former; and if it comes to that, it will not be long before the latter is also kidnapped."⁴⁴ "The threat to ancient liberty comes from focusing attention solely on the division of public power and neglecting the individual rights and satisfactions of the people. The danger to modern liberty lies in the fact that, focused on the enjoyment of our personal independence and the pursuit of our private interests, we are too easily disengaged from the exercise of political power. The wielders of power do not miss an opportunity to encourage us in this path."⁴⁵

What Constant insisted on two centuries ago is that the **temptation to abdicate responsibility is embedded in the very fabric of Modernity**. This is why E. Fromm⁴⁶ only registers the eventual happening of Constance's warning: 'Our modern man is still willing and tempted to surrender his freedom to dictators of all kinds, or to lose it by becoming a little cog in the machine – well fed, well clothed, but an automaton, not a free man'. "In order to understand the dynamics of psychological processes in the life of the individual, we must understand it in the context of his formative culture (...) Modern man, freed from the shackles of a pre-individualistic society that guaranteed him security and at the same time limited him, has not achieved freedom, in a positive sense, for the realization of his personality, that is, for the expression of his own intellectual,

⁴⁴ Sp. "Panorama 1-2/92, p. 55.

⁴⁵ op. cit., p. 57

⁴⁶ Fromm, E., "Escape from Freedom", Zachary Stoyanov, S. 1998, c. 7.

emotional and sensual possibilities. Although it brought him independence and rationality, freedom put him in isolation, which in turn became the cause of his fears and frustrations. The isolation was unbearable and confronted him with the alternative of either ridding himself of the burden of his own freedom by indulging in a new kind of dependence and subjugation, or continuing on the path towards the attainment of positive freedom based on the exclusiveness and individuality of the human person.' Taken to the extreme, this tendency to flee from freedom produces the totalitarian man: '...a completely isolated person, deprived of all social ties with family, friends, associates and even mere acquaintances, who derives a sense of fulfillment only from his belonging to the movement, from his membership of the Party'⁴⁷ .

In "The Expanded Ontology of Values"⁴⁸ we show how the crises of Bulgarian modernization provoke and reproduce a value inconsistency that allows everyday consciousness (hidden from itself) to fill the holes between the demand for taking responsibility and the lack of environment and tools that allow for taking responsibility. The text is accessible, and we will not repeat the arguments here, but we will focus on three important exegeses related to the topic of prohibition: 1) truth; 2) taking responsibility; and 3) the importance of intuition in decision-making.

1) The study registers the perception of a truth that is not objective, not accessible through science, but a matter of PR, of "name-calling", of control over media and propaganda channels⁴⁹ . This applies to the social world (e.g. the truth about Russia's war against Ukraine) as well as the natural world (is there a new coronavirus and are vaccines effective against it). Hence, if there is no objective truth, there is no need for science to reach it. This is why schools become "*institutions of nationalist propaganda*" and universities are "*in the market hunting for prospective students*" and "*not responsible for the professional competence of graduates*". Therefore, on the one hand, the concerns mentioned at the beginning of the submission that "*not all judges and psychiatrists meet the highest standards of professionalism*" are only an arm's length away. On the other hand, there is a deepening lack of empathy, of interest in the other, in the different, which is no longer seen as an opportunity to better understand oneself, but as a burden.

2) You can't be responsible for things that are beyond your operational sphere of control and don't yield or resist influence. Responsibility is a heavy burden in a halting social environment. Such an environment therefore encourages us to believe that it is not the development of responsibility-taking skills but the release from the burden of responsibility that is the best we

⁴⁷ Arendt, H., Totalitarianism, Panorama, 1993

⁴⁸ <https://bcnl.org/uploadfiles/documents/>

⁴⁹ A further interdisciplinary study should also focus on the question of the positivist notion of science as a subject-object relation and the non-classical notions of scientific rationality that problematize these relations.

can do for those closest to us. Lack of faith in oneself fuels the search for some external supports – "objective values", "authorities", "traditions of origin", etc. Relief from the burden of responsibility is the best we (secretly) crave for ourselves, and so we attribute it to the vulnerable (intellectually disabled) – a bliss beyond the wrenching contradictions of making decisions that are never right, but at least less wrong.

3) And when decisions cannot be made on the basis of either rational, value-based or experience-based criteria, then the importance of intuition rises – decisions are made "with the gut", "with the inner voice", "with meditation", "contemplation", "insight".

In this context, the reservations expressed during the interviews about the decisions taken "by conscience" and "internal conviction" of judges, which are stated as decisions "taken with the gut", become understandable. This is why the present study registers a longing for an artificial intelligence to be a judge, because it will know all the laws, all the decisions, and will not be corrupt and susceptible to value or characterological drifts. You plug in the data and AI-judge.com immediately comes up with the most correct determination of whether King Lear is pro-injunction or not. Hem saves time, hem eliminates the issue of corruption in the system, random case assignments and salary bonuses.

It should be recalled that these phantasms were already played out at the dawn of the modern era through the principle of "arithmetic of evidence" in criminal cases. According to the 'arithmetic of evidence', in order to avoid subjectivity, corruption, bias, one has to carefully calculate the persuasiveness of the evidence in a crime – with 75% evidence there is 75% punishment, and with 66% evidence there is 66% punishment respectively. Reforms in European criminal codes in the early and mid-nineteenth century replaced the principle of the arithmetic of evidence with the principle of the judge's internal conviction. The idea of the legislators was that a woman could not be a little pregnant, a man a little dead, a crime a little committed. But this change becomes possible only with the establishment of **the modern understanding of a person who is rational, has common sense, and can be convinced by scientific arguments**. The judge is no longer a calculator, but an expression of the idea of a **well-informed abstract citizen, of the consciousness of a community of independent subjects, of our collective self**. Hence the enormous reliance on "inner conviction" – each of us, given the same information, familiar with the same facts and circumstances, will come to the same conclusions as the judge, because we are rational individuals.

Are there grounds, then, for suspecting that "inner conviction" clouds the judgment of judges in our country today and that conscience has been replaced by intuition? Absolutely not, according to the results of this empirical study. The empirical evidence gives us reason to insist that the main division in the judicial community is not so much between 'more liberal' and 'more conservative',

not so much between 'young' and 'old', between 'Sofia' and 'the country', between 'higher courts' and 'lower courts'. Not that such distinctions are not valid, but they are not decisive. Rather, the division is between those who are more determined **to act on conscience** and those who are more willing to succumb to the inertia of an administrative, associational, or formal-bureaucratic rationality. The opposite of 'conscience' is 'bad *faith*'. In the humanist tradition of M. Foucault, H. Arendt, P. Burger, *bad faith* ("bad faith" or "guilty conscience") does not simply mean malice or bad faith.

"Bad faith" means giving up the search for the meaning and value of one's actions, giving up the tiresome redefinition of actuality, of societal challenges and civic tasks because of conformity, opportunism or inertia.

In *The Banality of Evil*, Arendt shows how with "bad faith" many people can simply go to work and perform their duties, be completely clear in front of their conscience, and still participate in the building of a social machine for mass death. P. Burger gives the example of the "bad faith" of a judge who sends a man to his death simply because he "has no other choice" and obeys the law even though he disagrees with it. One need not be corrupt, immoral, or incompetent to have "bad faith." It is enough to simply *"follow the path of least resistance," "strictly follow the letter of the law," "not create our own administrative problems," and "be careful not to have too many cases returned to us from above"* because *"it will affect our career development."* "Bad faith" is the most dangerous censorship because it is internalized, because it is self-censorship⁵⁰.

⁵⁰ Of course, the issue of "bad faith" is not a problem to be solved, but a polarity to be managed, in the language of William Bennet. Systemic problems cannot be shifted onto the shoulders of the magistrate's conscience and this be a sustainable solution. Bennet therefore sees the justice-due process polarity as one of the value pairs of democratic societies that require the engagement of public policies aimed at preserving and managing this driving contradiction: Bennet, W. J. (2023). *The polarities of democracy: Research and applications study guide* [Implementation Resource]. Polarities of Democracy Institute

8. Not a conclusion, but an unlocking

In Shakespeare's tragedy, King Lear goes mad when he realizes that he is something other than the social role he has played all his life and with which he has merged. Left without the role's chitinous shell, Lear's personality disintegrates. But in his madness Lear grows wiser because he has to play other social roles and understand from personal experience what it is to be disempowered, to be poor, to be outcast, to be abandoned, to be mad.

At the dawn of Modernity, the differentiation of different social roles and the emergence of tensions and contradictions between them is a tragic process, in whose as yet unmapped underwater rocks the newly emerging modern personality (be it royal) often crashes. But the modern age, by virtue of its principle of emergence and reproduction, continuously generates the differentiation of social worlds and social roles that emancipate themselves from one another and construct their own logics of functioning. This is why Modernity, on the one hand, carves out an "intimate space" where the individual searches for the "true self", resisting the pressures exerted by social roles and, on the other hand, develops public institutions that must (re)cultivate skills of rapid and crisis-free jumping from role to role, such as the school, sports and cultural clubs, summer camps and green schools, the hospital and the prison.

So the tendency in the nineteenth and twentieth centuries to perform King Lear with a happy ending is (touchingly⁵¹) not a betrayal of Shakespeare, but a triumph of the success of Shakespeare's cause in society – a classical modern audience would hardly have taken aesthetic delight in the failure of a successful programme of re-socialisation that the King underwent during his madness.

This is why the task that King Lear and Shakespeare pose to modern societies is to what extent we will be able to push the boundary and expand the range of access to those human souls with whom we can establish and maintain relationships, have common *inter-esses* (in the spirit of the Convention on the Rights of Persons with Disabilities). The question that faces us in modern Bulgaria is whether we will be able to weave our *inter-esses* into a society⁵² that will stabilise individuals and allow the taking of responsibility to rule the law (whether Lear or whoever else is

⁵¹ Foucault calls the behaviour of those followers of Kant who strictly follow his precepts without understanding the cause behind them "touching betrayal".

⁵² The plural of this text is not just a curtsy to academic tradition, but also an expression of gratitude to all those involved in the project and of hope for building a future community of like-minded individuals united by a belief in the power of the individual.

in power), or whether we will continue to cut our ties with others and so further alienate ourselves from ourselves. In the one case, we will be able to close down the institution of prohibition and the 'lunatic asylums', and in the other we will make of our society a lunatic asylum in which everyone is a loner in his own world.

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