

POLITICS, LEGAL ORDER, LEGALITY

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In the course of discussing the subject of legal order and politics, a many-sided analysis is inevitable. Even the designation of the subject indicates that a *legal theoretical approach* is required, first of all. Within the legal theoretical investigation, some restriction is needed for the subject to be analysed from several different points of view, by the participants of the discussion. For this reason, I approach the problem from the aspect of *legality*.

I

1) One may state, in general, that investigating the relationship between legal order and legality is very essential from the point of view of getting a more thorough knowledge on law and legal activity. It cannot be ignored that, in a closer relatedness, law is cognizable on the basis, and in the framework of other phenomena—first of all, power— and political relations, —and that comprehensively, it can be approached within the totality of the society.

It is a scientific *evidence*: 1. law exists within the totality of the society; 2. in the interaction-system of societal phenomena law is determined or influenced by other phenomena law is determined or influenced by other phenomena, 3. it plays an independent role; and 4. it is historically conditioned in the process of social development. Among the interconnections of law and other phenomena, it stands out the interrelationship between politics and law, because the qualitative characteristics of law are essentially connected with power— and political relations. It is to be underlined, however, that both politics and law are also separated, and have an independent influence, within the society, on each other, on the one hand; and on other societal phenomena —mainly economic and cultural relations— on the other. One may approach specifically the interconnections of these two phenomena, by bringing into focus the correlation of politics, legal order, and legality.

2) Wishing to explain the general interrelations between, and the theoretical questions of, politics and legal order, one must refer to their being *conceptually unelucidated*. The general concepts of politics and law are defined in various ways, in terms of the different world views and trends. It would be difficult to find a consensus now, and to establish generally accepted definitions. The concept of legal order is similarly unexplained, and the concepts of law, legal system, and legal order are identified with one another, by the various trends. Beyond disapproving this explanation, I have no possibility for a more detailed polemic. I only wish to state that law is a general concept; legal system embraces the characteristics of the concrete valid legal matter; whereas legal order differs from these, since it expresses one of the essential characteristics of law and legal system. There are numerous schools of thought not making a conceptual distinction between legal order and legality, and identifying them with each other. They do not see any essential difference between these two concepts. One has this experience in relation to both bourgeois and socialist explanations.

3) In contradiction to the identification of legal order and legality with each other, I underline the fact that by these concepts, *different contents* are covered. That conceptual difference can be characterized from a negative aspect, in the following simplified way: the opposite of legal order is anarchic disorder, and the opposite of legality is despotism and arbitrary jurisdiction.

The concept of legal order within the legal system, contains the regulation of legal activity —and within this, law-making, application of law and law enforcement—, the arrangement of relations among the organs of jurisdiction, the formalized procedure, the formal restrictions, the formulae, customs and solutions of judging legal disputes and legal remedy of grievances. It embraces, besides, the elementary requirements of registration, the arrangement of utilizing legal-technical means. Legal order, within a certain legal system, depending upon the level of development of the social order, expresses on the one hand, the regulated and well-arranged state of legal activity, and on the other hand, the arrangement and regulation guaranteed by law, in human coexistence and in day-to-day social contacts —in economic, political and cultural relations—. In other words, the well-arranged state of legal activity aims at securing a certain social order: it contributes to the legal arrangement of social coexistence, and —by the means of legal arrangement of human relations and building up the legal framework for them— to the order of political, economic and cultural relations, as well.

4) *Legality*, too, appears within the legal system. However, it has to be indicated forthwith that it occurs as a certain peculiarity of some modern legal systems only, on the basis of certain preconditions, and under certain circumstances; it does not exist in every period of legal development. For this reason, it cannot be discussed either as one of the characteristics of the general concept of law.

If one may stress, as the most important feature of legality, its not being manifested within every legal system, then it has to be determined at once what circumstances bring it about and make its appearance and realizations necessary, within a given legal system. On the basis of historical experience, it may be stated that there are *two essential preconditions* of the appearance, development and realization of legality.

a) Legality has, first of all, political and power-preconditions. The most essential condition is the *democratic political system*; without this, legality cannot manifest itself. Historical development proves that in antidemocratic —autocratical— political systems, no legality exists. Legal order may exist, but legality does not.

b) The second precondition involves the recognition of equality and right to liberty of the people, the rejection of the system of privileges, the prevalence of *political human rights* in political practice and public life as well as in the relationship between organs of power and the individuals, and in that of the individuals among one another.

Its most important legal manifestations are constitutionalism, equality before the law, and civil liberties. It is associated to the prevalence of the democratic political system and the political —human— rights in the various legal systems, the elaboration and realization of democratic solutions, institutions, and basic principles of legislation, application of law and law enforcement. This is concentrated, mainly, in the concept of legality.

5) In contrast with arbitrary jurisdiction, the concept of legality excluding *abuse* of power, means the constitutional function of state organs, and lawful relationship between state organs and citizens —with respect to the democratic liberties, the guarantees of civil rights, the *independence* of the courts and other legal requirements.

It results from the power —and political preconditions of legality, too, that the state of development of democratism in the given political system, and the function of the institutions of *democratic participation* in public life, essentially determine the functioning of jurisdiction, the specific features of legality. Thus, the forms of democratic participation, for instance, influence the function of democratic institutions of legislation —popular initiation of laws, popular

disputes on bills, and the practice of plebiscite— as well as the possibilities and organizational framework of the participation of the legality in application of law. In other words, values of democracy are being realized in the field of law, too.

As one aspect of legality, one may point out its contribution to the constitutional function of the organs of power it also means a certain control of power, contains the legal framework for the action of public life, promotes the political activity of the population, their participation in jurisdiction, and provides the legal framework and the legal guarantees, for this. As to the other aspect, conversely, it may be pointed out that jurisdiction in the course of judging legal disputes and grievances, enforces the requirements of legality; first of all, the values of law.

Legality, as a matter of course, attaches to the solutions of the democratic political system; besides, however, it also has its *independent legal significance*, and crystallizes as a specific legal principle, too. Legality becomes the leading principle of legal activity, the main content of legal outlook, a living guide to day-to-day legal practice. Thus, legality is of fundamental significance from the point of view of the internal life of law. It aims at, mainly, the elimination of the negative phenomena, for instance, terminating arbitrary jurisdiction as well as the materialization of the requirement that jurisdiction must not be utilizable for the service of tyranny, courts of law must not administer justice on the basis of political decisions, and judicial murders —justizmord— must not occur. Whereas from the positive side, *values of legality* such as civil liberties, constitutional guarantees, independence of the judge, and other requirements of legality are to be enforced.

II

1) In the course of the universal historical development of law, its immanent contradictoriness —confrontation and fight of the positive and the negative, of progression and regression— has manifested itself. With respect to this, in the course of social development, law has been attached either to the progressive or to the reactionary forces and relations. From the contradictory course of development, it still stands out its moving on, from the inferior toward the superior. From this development, it can be filtered out the *progressive schema* of legal development: legal order, legality, humanization of law, the attachment of these periods to one another.

On a low level of legal development, in the socio-political relations,

the elementary political arrangement, the elimination of anarchy, and securing public order are in the foreground. And it is attached to them, the requirement of legal order: that is, securing the elementary legal arrangement, the prevalence of certain legal restrictions and privileges. One may say that in the precapitalist types of law, building up legal order appears as a positive result.

The emergence and development of capitalism, beyond legal order, have resulted in the idea and the system of requirement of *legality*. It is determinable that the spiritual preparation of the way for the capitalist society, the system of thought of the bourgeois enlightenment and humanism created a theoretical basis for fighting against the arbitrariness of jurisdiction as well for implementing the requirements of legality.

It has often been stressed the formalism and class character, the limitations and contradictions of bourgeois legality. Besides admitting these facts, it still has to be underlined that in a historical perspective, legality is the fundamental *achievement* of legal development, which having served the exclusion of arbitrariness, the legal protection and guarantee of human freedom and equality, reflects a qualitatively higher state of legal development. Legality is, in fact, a significant *value* of the development of human culture and public life.

2) As a matter of course, legality as a legal value is not manifested in an abstract way; it involves the requirement that the crystallized, specific values should be built in the day-to-day practice of legal activity. Legality is inconceivable without the contradictory procedure, the right of appeal —securing the possibility for correction—, the publicity of trials, the independence of the judge, securing defence, etc. The materialization of the positive values of criminal regulation —*res iudicata, ne bis in idem*, presumption of innocence, the right to defence, the principle of *habeas corpus*, etc.— is to be underlined, especially.

It cannot be ignored either that the superior embraces the inferior; that is, legality includes the requirements of legal order, too. To the requirements of legal order, the highranking principle and the system of institutions of legality are attached. Legality itself is not the culmination either, because its fundamental designation is to prepare the way for a superior level of legal development. In other words, legality promotes the humanization of law, the realization of the inmost essence of the human being, of humanism and human dignity in the law, and by the law as well.

Legality cannot be considered to be some closed and crystallized principle it is developing not only in capitalism, but in socialism, too.

Specific, new legal problems and legal solutions, and institutions of law emerge. For instance, supervision of lawmaking in public administration, control of the legislation —that is possibility for correction is being built in the procese of legislation, too—, or judicial supervision of the decisions of public administration, broadening the guarantees of civic rights, involvement of the citizens' right of complaint, etc. As examples of broadening civic rights, one may mention the right for participation in public affairs, besides representative democracy, building up the legal framework of direct democracy, participation in decision-making of public life, the legal system of guarantee of the new forms of communal life, new regulations of the right to travel and information.

3) In these days, socialist movements fight for the realization of socialist humanism and for exceeding bourgeois humanism and legality. As a consequence of this, the requirement of socialist law is to materialize the principles of humanism, to evolve the human quality, personality and talent of the individual, to defend human freedom and dignity. This process should lead to *de-alienation*, to evolvement of the self-regulating activity of socialist communities.

This development flashes a beam of light on the perspective of *withering away of law*, too. Socialist legal theory of today no longer discusses in a abstract way withering away of law, but it formulates the correlation in terms of which the requirements of legal regulation are being built in the communal-legal socialization of the people, and the alienated jurisdiction is being substituted by a selfregulating and selfarranging activity of the communities: that is, injuries and disputes will be redressed by the community itself, the decisions of which will be made on the basis of a highly cultured public life.

Thus, legality is being built in the process of *humanization of law*, for the purpose of having the values of law become elements of day-to-day activity and values of day-to-day coexistence, within the communities.

The specific humanization of legal development manifests itself in two relations. In one respect, as experience shows, legal regulation, legal procedures, legally judged cases result in manifold legal- technical, legal-dogmatical solutions; a complicated legal arrangement of complicated relations of life is evolving, according to the demands of social development. In the other respect, however, it reduces the extent of both legal reprisal and criminal regulation. To serious crimes, medical regulations and humane solutions are attached; establishing crimes, enforcing punishments are supported by recent results of scientific development. It may be due to this, that capital punish-

ment is reduced or eliminated whereas stress is laid upon the regulations of health and education. This is related to the evolvment of a multiple legal responsibility, and within it, to criminal responsibility's falling into the background. Responsibility concerned with labour, civil or family law come to the front, and since as a consequence of the communal socialization of the individual, the public-spirited personality becomes conspicuous, this process is accompanied by a high-standard prevalence of the can individual responsibility.

4) In conclusion, it can be stated that values of legality and indications of law's humanization —de-alienation— cannot be found in every legal system, in every legal decision, as a dominant tendency. From the process of development of world history, one can reason out this progressive aspect of law. Growing awareness and scientific elaboration of this and a theoretical generalization of the progressive requirements of law may give a basis for us, with regards to the differences, to stimulate and promote the practical development of legal progression in the direction of this.

To this, it gives a significant help the growing awareness of this tendency of legal development in politics, in political direction and in legal policy, especially. One may point out beside the enforcement of legality, the realization, of the humanization of law, as the fundamental content of *legal policy* being a part of the dominant policy; more concretely: legal values should be built in the socialization of the individual and in the day-to-day activity of the communities.