

## LEGAL ORDER AND POLITICS

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Socio-economic base and superstructure are the starting point for the analysis of relations between legal order and politics.

The base is production relations as a whole forming the economic structure of the society at a given moment in history; they are composed of the following elements:

- relations, connected with the ownership of production means;
- the position of various social classes and strata resulting from these relations in the process of production, their mutual relations and functions;
- forms of distribution of products and income within the society dependent on both these elements, the share of these classes and strata in the social income.<sup>1</sup>

Principal changes of the base take place in the process of transition from one socio-economic structure to another, higher one. Accordingly, appropriate types of socio-economic bases are differentiated.

The base also undergoes changes within the framework of the same socio-economic structure. Although the base proper of a given socio-economic structure belongs to the same type it can somewhat differ from country to country depending on the connection between various economic structures in a particular country, on the course of history in that country, on its geographical and international conditions.

Legal order and politics are not elements of the socio-economic base. They are, however, components of superstructure. In a broad sense, superstructure as a whole, embraces forms of social consciousness, ideas and institutions such as social organizations the shape of which is influenced by the socio-economic base and which play an active role in relation to the base; either strengthen it or fight it.<sup>2</sup>

<sup>1</sup> Compare: *Encyklopedia Powszechna*, PWN, Volume 1, p. 226, Warszawa 1973.

<sup>2</sup> Compare: *idem*, Volume 3, p. 213, Warszawa 1975.

Elements of superstructure are shaped through the socio-economic base, are conditioned by it, constitute its product, reflection, are in various ways tied to the base. This tie is more or less direct, stronger or weaker. Politics as its component part are more directly and strongly tied to the base than legal order. It is also necessary to notice that various parts of politics have a more or less direct tie with the base, for example, in relation to the foreign policy of a given country the connection is more detached than in the case of domestic policy. By analogy, the same applies to various parts of legal order, for example, certain elements of civil or criminal law are more closely tied to the base than international private law or norms applying to the protection of the natural environment or also traffic regulations.

Schematically treating, certain elements can be differentiated in superstructure which serve, support, strengthen the existing base, elements that are relicts from the former superstructure, conservative as well as elements representing the future socio-economic structure, which are ahead of the contemporary ones, forerunning.<sup>3</sup> Certain elements of superstructure are able to serve various bases, for example, some religions and denominational associations. Elements serving the existing base are those elements of superstructure which justify, support and strengthen all the existing means of production and not only a dominant one. For example, in Poland today there are elements of superstructure which serve production relations in the State and cooperative sectors as well as individual forms in towns and in the country.

Politics reflect the characteristic features of the base and all changes within it in a most sensitive way. On the other hand, politics exert an influence on the base and its particular elements very strongly. The tie between superstructure and the base characteristic for legal order is somewhat different. Legal order is less receptive to changes than politics. Its role is first of all that of consolidating the base. What are politics? They are a social activity aimed at gaining, maintaining or executing State authority, and indirectly, other kinds of authority. Politics are connected with drawing a program of State activity in all its fields, and also applying means and methods which serve to gain accepted aims and acknowledged values. The subjects which conduct politics are: the State with its whole presently expanded organization system, political parties as well as every other social organization which either takes part in the fulfilment of the State's policy, or attempts to influence this policy within accessible limits. Politics are also

3 Compare: *Marxist Philosophy*, Second Edition, corrected, PWN, p. 312, Warszawa 1971.

conducted by international /intergovernmental/ organizations from the moment of their establishment as well as social organizations of international range.<sup>4</sup>

Class and national interests lie at the base of politics. These interests are decisive for the subject, directions, forms of emergence and social value as well as the effectivity of a given policy. Other factors which have an impact on the subject of politics are, for example: local, professional or denominational interests.

The decisive role, however, belongs to class and national interests.

The ruling class always exerts a decisive influence on the State policy, although other classes and social strata living in a given country also exert an influence. The policy of an international organization is dependent upon the interests of its members, especially the most powerful ones. The sphere of politics is a sphere of struggle and clash of aims, values and efforts.

The State, defining aims it wants to reach as well as searching for means and ways of achieving this goal, although it is sovereign, cannot proceed at will. It is limited not only by the laws of nature and social life, technical and material means at its disposal at a given moment, but also by the structure of class power inside the State, the structure of national interests as well as other factors such as the structure of religious denominations. It is also often limited by opposing trends and organizations in other countries. All these factors have a decisive influence on the aims that the State can outline effectively in given circumstances as well as the scope and fields in which these goals can be reached in reality.

The State accomplishes its political goals in various ways. One of the most important way is law and legal order resulting from its application and observance. Law is dependent on State policy: policy *de lege ferenda* as well as *de lege lata*.

What is legal order? It is social order being the fruit of the implementation of law.

Whereas law is general norms of social behaviour as a whole which in the end express the interests and will of the ruling class in a given society as well as the allied classes and strata which are established or acknowledged by the State, the observance of which is secured by the State and give order to those social relations which are most essential from the point of view of the needs and interests of the State. Law expresses what the ruling class in a given country considers just,

<sup>4</sup> Compare: A. Lopatka, *The State and Perspectives of Polish Politology. Studies of Political Sciences*, No. 3, p. 23, 1973.

convenient both for itself and the whole society in whose name it speaks.<sup>5</sup>

Legal order is the most important sphere of social order in the State. Within legal order, those class, national and other interests find their embodiment which are expressed by the State's policy. Together with the change of the ruling class, the class character of law, legal order in a given country change appropriately. Legal order is, therefore, historic in character.<sup>6</sup> The social value of a given legal order is decided by its class and national substances. There is a legal order restraining progress and social development, there is a legal order stimulating revolutionary and progressive changes. There is also a legal order serving consolidation and development of stabilized and widely accepted legal relations. Depending on class and national points of view, the actual legal order can be evaluated differently: it can be approved or negated. Generally speaking, it is always criticized to a greater or smaller degree. This holds when it comes to choosing between various legal orders. The matter is somewhat different when there is a choice: legal order whatever it is or its absence. There is a considerably unanimous conviction that life in a society without law and legal order would be more unbearable than under conditions of an existing legal order, however bad. It means that there are certain positive values in legal order itself whatever it is.<sup>7</sup> These values merged with socially positive substances of a legal order make it a moral value of high status. On the other hand, these values are not able to balance socially backward substances of a defined legal order. Nevertheless, even a bad legal order is better than the absence of any legal order or conditions of low social effectiveness of the law.

What are the mutual relations between politics and legal order? They are relations between two elements of social superstructure and constitute a part of the internal structure of superstructure. Politics, legal order as well as relations between them are conditioned by the socio-economic base. It is their common feature. Nevertheless, this conditioning is stronger and more direct in relation to politics than in relation to legal order.

In relations between politics and legal order, politics are a more

<sup>5</sup> Compare: A. Lopatka, *Introduction to Jurisprudence*, Third Edition, corrected; PWN p. 86, Warszawa 1975. D.A. Kierimow understands law in a similar way. *Filosofijskie problemy prava*, Moskwa 1972 Izdat. Mysl. p. 192.

<sup>6</sup> Compare: *Marksistosko-leninskaja obszczaje teorija gosudartwa i prava. Osnownyje instytuty i ponjytija*, Moskwa 1970, *Juridiczeskaja Literatura*, p. 540 and further.

<sup>7</sup> Compare: W. Lang, J. Wróblewski, S. Zawadzki, *Theory of State and Law*, Warszawa 1979, PWN, pp. 460-462.

active and determining factor. Politics exert a decisively greater influence on legal order than legal order on politics. However, the impact of legal order on politics cannot be underestimated.

Speaking of the impact of politics on legal order one must distinguish between the influence exerted by the policy of the ruling class and its class allies on this order and the influence of that policy expressing interests and aspirations of other social classes and strata. The policy of the ruling class expressed through the State determines the substance of law, the main element decisive for legal order. The policy of other social classes and strata is only a factor which must be taken into consideration in the process of creating law, but its impact on the substance of law is insignificant. Also the implementation of law depends, in a decisive measure, on the policy of the ruling class, on the State's activity. Nevertheless, within this sphere, the influence of policy on other social classes and strata can be and happens to be significant. The influence often lies in restraining and paralysing the influence exerted by the ruling class. In periods of revolutionary crises this influence becomes decisive, leads to the overthrow of the former, backward legal order and gives rise to a new, progressive legal order.

The determining influence of the policy of the ruling class is not equally powerful in relation to various fields of legal order; it is decisively dominant in the sphere of constitutional, administrative, criminal and civil law. It is limited to a large degree by the influence of the policy of other social classes in these sections of legal order which are directly within the sphere of life of these classes. In the bourgeois system, for example, this applies to the sphere of work relations or social welfare, agrarian relations and the like. The ruling class must accept the mentioned limitations of its influence in its concern for the effectiveness of the given domains of law. This effectiveness lies in the consistence between actual results reached as the result of the implementation of given norms and social aims for the reaching of which these norms have been laid down or acknowledged.<sup>8</sup>

But what is the impact of legal order on politics? Legal order is a framework within which politics are created and conducted, or at least its essential elements and substances. The substance of legal order in particular domains of life is a point of reference for important substances of politics in given fields. It is so because politics aim either at a change in the substance of legal order in these fields, or at an

<sup>8</sup> Compare: *Effektivnost prawowych norm*, Moskwa 1980, Juridyczeskaja Literatura, p. 22.

increase or limitation of the effectiveness of obligatory legal norms in a given sphere.

The receptivity of legal norms to changes in politics is limited. If given norms are the result of a still existing system of class, national and other forces, tendencies for their change have small chances of being carried out. Political aspirations, concerning these norms, originating from various social circles neutralize each other. This applies both when aspirations of various factions of that same social class or different social classes with contradictory interests are concerned. The change of norms can be then only the result of changes in the system of social forces, the achievement of balance on a new plain. Legal order up to certain limits can, therefore, be an effective barrier for carrying out a defined policy. It can also be a tool for spreading and strengthening the influence of a defined policy.

The impact of legal order on politics is essential. It is not, however, as important and decisive as the impact of politics on legal order. This truth is constantly verified by political struggles lead in almost all countries for the substance of the constitution and the practices of its application. By analogy, the same applies to other important legislative acts, especially codes. Law is effective only when it has adequate support in politics. Politics have an active and important partner in legal order. It is, however, a visibly weaker partner.<sup>9</sup>

There are also circumstances resembling a stalemate. The ruling class or its dominant part has enough power to block changes in the existing legal regulations. Yet, it is too weak to ensure their implementation. On the other hand, social classes or strata opposed to the ruling class or dominant strata have enough political influence to paralyse the effect of law in this field. They, however, have no potential to lead to the establishment of law in accordance with their interests and will. Such situations, however, are in most cases, of a temporary character.

<sup>9</sup> Some Polish authors speak extensively about the so called politics of law. In their understanding it is that part of politics which deals with the formulation and changes in law as well as its application by the State. The author of this idea was L. Petrazycki —1867-1931—. For a few years now, main attention in Poland has been drawn to the policy of formulation of law. Compare for example J. Bafia: *The Principles of Formulation of Law*, PWN, Warszawa 1980.