

The State and law-making

1. *Analysing social leadership*

One of the key issues of research in present-day social sciences is connected with questions of political character in both theoretical and practical respects. This problem is caused by the synthesis of the character, form and content of the direction of society. The major question to which all thought of a political kind tries to find an answer is, what is the role of the modern State in making decisions of a social nature; how can the values which can properly express social demands be found. Enumerating interests and values is, of course, a process of a historical nature; consequently, we need to take into consideration the political context in the midst of which this hierarchy takes shape.

The analysis of practical political life has always affected, from the point of view of the history of scholarship, more than one branch of learning. In the ideas of the political philosophers of Antiquity, it still constituted an integral part of philosophy, and the period of bourgeois revolutions had to come that it might form an independent discipline. The precondition of this was the social fact that *the State organization and the whole of society be separated*. Not only in the sense that the State as the central social organ for decision-making expresses, in the last instance, the interest of the ruling class, but also in the way that it keeps itself apart from the ruling class, as well. The separation presents itself in the fact that, unlike in the earlier slave and feudal systems, an *independent* State apparatus emerges organically and, consequently, the organizational interest, the State interest appears, too. In the last resort, this is connected with the interest of the ruling class, without being identical with that interest. The emergence of the *synthetic character*, typical of modern social relations, can be observed. There is society, with reference to which the State power exercises its functions of *making and administering the law*, then there is the ruling class interested in making State decisions, nevertheless the State does not eliminate from the mechanism of expressing interests the elements not belonging to the ruling class. The ratio of interestedness is always determined by the given political context. The fact that a mediating mechanism is created for *connecting* the State to society also originates from the separation of society from the State. This mechanism is the *political system*.

The appearance of the political system opened a radically new Chapter in the development of political sciences. From this time on, besides the State organization, all the relationships and connections, which were parts of the mechanism performing the function of *expressing interests* have become objects of research. From then on, this relationship has been the object of scholarly research, and the connection between traditional State life and the newly created political science and theory, as well as politology, became controversial. By certain approaches, mostly by those that kept some elements of the earlier conception, political science is identified with the theory of

politics. This is characteristic of authors under the influence of Allgemeine Staatslehre. In the Anglo-Saxon world, however, a broader definition of the political system can be found. However, the sociological approach, as a result of certain empirical inquiries, could not explore the system and implications of the social determination of political relationships and their connection with objective conditions.

As to the socialist theory of political science, it is the period — at about the beginning of the 1960s — of the ripening of the idea that the theory of State should go beyond mere investigation into the inner relations of the State organization — and even further beyond the simplified way of thinking noticeable in constitutional law, i.e. normative thinking — and the object of research should be extended. This extension concerned, first of all, the elements of the political system meaning, in this context, not the State organization but an organism expressing, representing and protecting the interests of the different social strata, and classes. In this way came into being the State theory as an analysis of the whole political system, which might also be considered from this point of view as a political theory. Another opinion was formed as to the expediency of not extending State theory to the domain of political theory but just the other way round; in this approach, political theory was given a broader definition and State life was only a part of it.

At any rate, on approaching the question from any of the above directions, we find ourselves facing the problem that we should study the entire political system as a whole, its inner connections — where an outstanding importance should be attached to State organization —, and the relationship of the entire political system with external social relations.

This analysis cannot proceed without making use of the branches of learning the primary task of which is not to investigate political relations, but their use is none the less indispensable from a methodological point of view. Such disciplines are e.g. sociology, statistics, psychology, demography etc. The field of the investigation, the possibilities of interpreting social direction can, theoretically, be extended, enriched with special considerations, by an analysis of a technical nature, considering the law in its *means-character*, as a means to directing society, as a kind of social technique. The complexity of the method does not allow that the research be one-sided.

Which are the relationships that may reckon in our days on the interest of students of political life, in the first place? Above all, it is to be emphasized that, besides structural considerations, an approach to the functional character of political relations is also needed, covering the historical aspect, as well. For studying a social phenomenon, its rise, changes, development and demise need to be analysed.

As to the inner relationships of the State organization, it is necessary to deal with certain fundamental criteria of the concept of this organization; these are — independently of certain other, different conceptions — objects of theoretical political tendencies. Such problems are e.g. the functions of the State, including the relationship between political objectives and the actual activity of State organs, the sovereignty of the State ensuring the supremacy of the State organization over society, and the inner organizational relations of the State, including the major problems of its hierarchical connections.

The State organization cannot be separated from its social context. The immediate external context of social relations is the political system. The conception of the political system, by broad definition, includes besides its

structural aspect its functional element, as well, and extends beyond the objective relations to the subjective elements affecting consciousness. The political system is in direct connection with the social *interest relations*, its common determinants can be found in the economic basis. The economic relations, having developed into interest relations, can influence or determine State decisions, primarily through the mechanism of political parties. It is, therefore, of outstanding importance to analyse the types, functions and mechanisms of political parties.

Besides political parties, other social organs may also be parts of the political system. These may be different as to social function, character, influence, their functions may be diverse but, within the mechanism of expressing and representing interests or making decisions, the importance of their role is evident.

The relationship of alienation to the system of deciding under modern conditions presents a particular problem. The elimination of alienation under socialist social conditions suggests some problems, such as if alienation be connected with private property relations alone, then the demise of the social formation based on the exploiting system would mean, equally and automatically, the end of alienation itself. What the socialist social system is about is, in the first place, the elimination of political separation between the State and society by the process of the withering away of the State. One of the most important means to this is the creation of such a *decision mechanism*, where the separation typical of capitalist society is eliminated, the State organization becomes the central element of decision making, its decisions are supposed to be made in the interest of the entire society, but represent, basically, that of the ruling class.

To give an answer to the above problems would evidently require a rather long period of learned investigation and it is only natural that no final answer can be given to the problem.

One of the possible approaches to the above-mentioned practical and theoretical problems may be to explore the content of the direction of society *in connection with* the functioning of the State and the law. This is obviously a narrowing down of the scope as compared with what we have been just analysing above; the direction of society is not connected with the functioning of the State alone, for the law is not only a social means, and law-making is but a part of the deciding system. Nevertheless, within the totality of society, it is particularly important, what form the functioning of the State and the law takes.

It is a fact that the rules of law are characteristic, in one way or another, of the entire process of social progress. The prevailing law is always, by strict definition, actual; it is an attribute of the State or of the conditions of the age. It reflects social and economic achievements, for the very reason because legal rules are recording — actually or, at least, in principle — the results already achieved by society. These are not merely intentions or programmes. It would be, nonetheless, a biased exaggeration, to identify the development of the rules of law, or even that of legal life, with social progress or to consider these concepts as equivalent. Social development is inseparably connected with the activity of the State, which is directing it. In this respect, the law has an essential part to play, because it regulates social relations in general. But it is only a means to social development.

The law as a social means may also be considered to be a *particular*

social technique. This interpretation can be found rarely enough in literature as a fundamental approach, approaches from political, legal-dogmatical or sociological aspects are much more general. What is the meaning of the word *technique* in this context?

Technique means law-making and making the law function, by a rationalized process. This technique can be acquired from the theory and practice of law-making and law applying, as well as from methodically applying other knowledge needed for solving practical tasks. The point is, therefore, to acquire specific knowledge liable to systematic ordering, the parts of which are not inherently homogeneous, but connected to one another by the feasibility of the working process. These parts of knowledge are primarily those needed for realizing particular objectives, generally extracted and integrated from a great variety of pieces of scientific and other systematized practical knowledge. This knowledge is put to use with the aid of a peculiar technique, and this work process can be considered as a kind of technical skill.

The above-mentioned technical skill was generally taken for granted, and as needing no separate investigation. This conception is, however, no longer accepted as correct.

Directing society and the law are becoming more and more complex. This state of affairs can be best presented with reference to the fact that *the law changes in its character of peculiar social technique*. This change is, therefore, characteristic of the method as well as the technique of law-making and of making the law function.

Of the issues concerning the State and law-making studied here, we are now dealing with certain technical problems. Seen from this aspect, the method and conception of approach are as follows:

— The essential form of directing society is State leadership. This is connected with the forms of State activity which show direction to be a concept of activity on a smaller scale.

— Legal life is also a major form of actually directing society. This is also connected with forms of activity. These activities are the following: making, applying, conforming or rather not conforming to the law. These activities present legal life as a concept of activity on a smaller scale.

— State leadership in the above-mentioned sense and legal life are phenomena, processes which are inevitably interconnected and interpenetrating. Making and administering the law through the authorities are self-evident forms of State activity.

— State leadership and legal life are both considered as motions of the forms of activity; for the implementation and realization of the motions, a relevant technique is needed.

— The forms of activity for implementing social motions are — in general terms — *motivation techniques*. This is one of their common traits. When studying the life of the State and legal life, our starting point may even be the motivation technique itself.

This method limits and, in a certain sense, also condenses the problem. The effect mechanisms of State direction and of the law are also changing in their character of *motivation technique*. We are trying to expose this with a method taken from the study of relationships, with a further qualification: of the legal motion processes, primarily law-making is taken into consideration.

2. Social techniques of direct and indirect motivation

Society is, from a certain point of view, an *organized co-operation* with the help of which man assures his life on earth. Society is the collective activity and power of human beings and of their organizations, arranged systematically in deliberate harmony. This is a co-operating community of interests, on a grand scale, — in the last analysis, a special self-creating, self-regulating mechanism — within the functional unity of which neither the people connected with it, nor the individual values, nor the forces maintaining and connecting the co-operation are equivalent.

The result of bringing about this co-operation is harmonious functioning. On interpreting this harmonious co-operation, three circumstances merit particular consideration:

- stabilized social connections and typical social situations;
- values and familiarity with these values;
- motivation as a special social technique and its realization. These circumstances are interconnected.

The being, existence of man — as well as his self-supporting accommodation to the biosphere and to society — means basically adaptation, conforming to others, where the demands corresponding to the accepted interests are generally satisfied through stabilized connections. The stable element of the extremely manifold experience of continuous adaptation is the social technique of *motivation*, the conscious aspect or purposeful constituent of co-ordinated activity. Motivation as a method adjusts itself to the nature of acceptance and evaluation, acquiring on this ground the skill of how to motivate behaviour, becoming a mechanism for implementing expediences, directing conduct. Motivation is, therefore, the technique through which people could be made to comply with one another, to subordinate their own interests and aims to those of the community, to implement common purposes etc. Motivation is thus the means to co-ordinated activity. And in this activity, it makes a difference to become acquainted with and to understand the power of harmonization and relatedness, meaning in this connection the element of discipline and loyalty.

Direction is a peculiar form of motivation technique. By its mechanism, direction is inserted, through the feasibility of satisfying needs, in the process of evaluation and choice. It indicates one, or one type of, possibility, narrowing down choice to the acceptance or non-acceptance of this feasibility. If direction is effective, the feasibilities are not equivalent from the point of view of motivating behaviour. The persons, directing as well as directed, come to be adapted to one another this way.

This technique presents a number of types functioning side by side, in interconnection. This kind of direction, based principally upon self-motivating, prevails most of all in small structures. Such a — rational, emotional, irrational etc. — motivation, eliciting a self-identifying acceptance and willing obedience, may function faultlessly, e.g. between parents and their children, teacher and pupil, doctor and patient, in other paired connections or, generally, in small communities. Here the rational, emotional and other elements of the content of direction — including its being charged with power — are generally not in sharp contrast.

This is the technique of *direct motivation*, functioning fundamentally without retribution. The direction which rests on motivation alone is not able

to decide its own dimensions and scale, the scope of its prevalence is thus limited. In small communities, it may function; within the limits of its competence, it may even prove to be extremely powerful. It is also suitable for neutralizing, eliminating other motivations than its own.

But the technique of direct motivation is not capable of leading, directing, motivating the entire society. In several types of situations, direct motivation is indifferent to effectiveness on a macroscale, sometimes it may even strengthen it, in other situations, it may enter into competition with other motivation techniques.

The motivation techniques intended for macro-scales are basically built upon *indirect motivation*. Some degree of direction must prevail in all connections, the common aim of which is to satisfy the needs of major human groups or of the entire society. The formally established direction organizes people into a co-operating community of interests so that it consolidates one of the content elements of direction, e.g. the penalizing and premiating power element. Thus, this element no longer reacts upon any other element as equivalent. Power is, similarly, an evaluation of feasibilities. It is wedged in the process of choosing between options. It makes a single feasibility supreme, not only expecting it to become effective but also consistently and institutionally ensuring its prevalence by force or inducement.

The feasibility selected this way becomes expedience and has in its functioning an element of *compelling* added to *guaranteed recompensation* and utilitarian considerations. Having established itself, the direction expropriates for its own purposes the power to compel. The direction resting on motivation is raised to a higher plane and suffers thereby a fundamental change. It goes beyond using restrictions of a merely rational, emotional or irrational kind directly, on the scale of the direction, and based on direct motivation and, this way, becomes immediately suitable for directing macro-structures.

This kind of direction is the means to the exercise of power. The rational, emotional or irrational element is here directly connected with enforcement or premiatio, privilege and suitably generalized standards, set by the governing person or body. And this is forced on society in the way described above. The expediency made supreme becomes itself a general standard.

The necessity of formal recording appears in this moment both to fix the attributes of direction and the position of those participating in it. The connection between directing and directed persons is sub- and superordination, not only functionally but also formally, i.e. this is one side of the force-provoking mechanism. And the other side is that the socially organized, institutionalized impact of the functioning of the mechanism contributes to orienting the conduct of people to the established, required direction. These are the phenomena peculiar to stimuli through power machinery motivating the conduct of the individual members and organizations of society. Whether these stimuli act as advantages or disadvantages, they are indispensable elements of the coercive mechanism.

In this way, the motivation of behaviour becomes *indirect*, as well: this is just what is important in its technique.

The social technique of direct and indirect motivation is *relative* separation. Direct motivation is a technique rather on the small scale, while indirect motivation belongs rather to the large scale. Both can be applied with

success on these terms. In specific situations, for particular behaviour they may confirm, weaken, extinguish one another or may enter into a passive connection with each other. Their scale and dimensions being different, they generally can not be substituted for each other. As to the difference in scale, it is not important, whether we speak of a means being suitable for motivating micro- or macro-communities, what matters, among others, is the fact, that the average person comes into contact with indirect motivation, is submitted to its impact; with direct motivation, this is less obvious.

3. *Dimensions of the decisions made by the social leadership and of their implementation*

Direction as *guidance* organizes, integrates people, making them into a whole; as *leadership*, with reference to the entire society, it expresses and even confirms the structural organization of society on the rational grounds of recognizing its interests. The commonest and best-known social uniting force is power. Power creates and maintains a consciously constructed *order* built on the relations of sub- and superordination of director and directed, with the aid of influencing and implementing-compelling forces, which are essential to asserting leadership.

Power does not prevail in general terms and is not without certain degree of differentiation: it wants to enforce an order constructed with social structures and social functions in mind. The will to power is determined by social being, by life in society. Consequently, the orientation of power is generally influenced by the spheres where people become integrated into the community. Therefore, the "anatomy" of power is based in part on *social structures* — i.e. on their organizations, social classes concentrating people, strata, groups and interests — and in part is *functional*, as an economic, ideological and political power.

It is also essential from the point of view of directing society that in this structural build-up a class is continuously — from the historic creation of the State on — in a ruling position owing to its place occupied in the hierarchy of social production and that an organization, the State equally prevails. But the ruling position of the State and that of the ruling class are not identical, except, in their structure. The State is possessed by the ruling class in its capacity of power organization. But the ruling class does not have the State at its disposal as an object of property, because the State is also an organization of general authority over the community, for organizing and co-operating the satisfaction of the most general social needs and interests.

The concept of the State is the mental reflection of social relations and contains the essence of the State., its common traits and qualities in general terms. As changes would occur in these relations, the concept of the State can obviously not be something static, definite, absolute, but it should be — with more or less independence — adequate to the social development. In the concept of the State dynamic elements may be concentrated which can be considered essential to the specific relations of the State structure in different historical ages. It is natural that different conceptions should be formed and exist even today concerning the conceptual elements of the State. It is, at any rate, considered as a rather common criterion that every definition of the State tends to contain the basic questions of the functioning and structure of the State.

The functions of the *socialist State* are generally connected with the properties of the parts of the State structure which prove effectual within the State structure including them; but while being connected with the State structure, these properties are not characteristic of it. To make this more clear, the following has to be stated:

(a) An organizational unit of the socialist State can only perform its function if it has a stable, standing and durable position within the organization of the State. It is virtually a precondition of "coordinating" the functions that the normative rules relating to the construction and functioning of the given organizational unit should not become dysfunctional right from the beginning;

(b) the activity of the organizational unit of the socialist State is not characteristic of the function of the socialist State organization unless it harmoniously co-operates with the other — principally State — organizations (e.g. the function of the representative organs of State power cannot be analysed separately, without studying its relation to either the executive-administrative or the jurisdictional apparatus);

(c) this function may be expressed both in the activity within the socialist State organization and in that directed towards the external relations. Though the former is evidently typical, if we distinguish the internal from the external relations of the State, it is nevertheless justified to range the external forms of activity within the scope of State functions, as well.

Observed more closely, the *function* of the socialist State is the concrete activity of each State organ and it proceeds within the objectives set before the State, but it is not identical with either of these. From this point of view, the concept of the function of the socialist State means the *major groups directing the activity* of the organs of the socialist State in order to achieve the short- and long-range social objectives. The integrating, system-creating factor of the activity is the objective, this is the fundamental criterion for determining several other elements of the activity. As to the other elements of the activity, they have little opportunity to change within the structure of the activity. And, besides, the objective itself remains unchanged up to the point when it is realized. The objective, the achievement of the objective is the criterion of the effectiveness of the activity.

State concentration and decentralization of the surplus produced by the socialist society serves partly the organization and supply of the *all-social functions* (affecting society as a whole), partly it expresses the interests of the working class, exercising the organizing-directing function on its behalf.

Looking at the great variety of forms taken by the functions of the socialist State between the poles of objective and activity, the most important category-forming criterion is the formation of social connections towards which field the State objective determining the given activity is directed and where the concrete activity of State organs prevails.

The State objective is the aim set by the State organs before the State. The State function is the total result of the impact made by the State on society. If the full realization of the State aim were possible, then the State aim and the State function would coincide. But the State aim differs from the State function, because the former can never be realized entirely.

The socialist socio-economic superstructure can be broken down to economic, political and ideological levels. (It is worth noting that this division is made by taking into account formal logical considerations — though this

fact is still but slightly reflected in present-day conceptions — it presupposes every „colour” and contains the elements of others.) All three spheres are virtually present, both within the given society and in the international area. Its further internal division in regulating the relations within the socialist society is implied by the fact that the main orientation of the activity points towards the inner relations within the socialist State or to the relations directed outwards, towards the entire society. In this way, the division of social relations and their connection with the State functions can be presented as follows:

	within	society	outside
	within	the State	outside
economic	aa	ba	ca
political	ab	bb	cb
ideological	ac	bc	cc

The reason why functions exist inside the State is that the State may also have certain aims, realized by its own activity, directed inwards. (aa) In the economic domain, this is the guaranteeing of objective conditions for the functioning of the State structure; (ab) The system of decisions affecting the interest relations within the State organization has to be arranged in this domain in political terms (e.g. cadre policy). (ac) Within the scope of its internal ideological function, the State organization takes care of raising the ideological and professional level of the apparatus.

The function system of the socialist State, regulating the economic-politico-ideological relations of society is traditionally established and well-grounded. (ba) The State has not performed its economic-organizing functions always over a wide area. In the States of the exploiting type, this function is of incomparably weaker intensity and different in its content than the same function in socialist States. In the capitalist State based on free competition, this function is comparatively poorly developed. But its intensity is increased and its content becomes extended in the capitalist State of the age of imperialism, when the State intervenes in social life, in order to balance the dysfunction caused by the spontaneity of the economic processes.

The economic organizing function is a fundamental function in the socialist State. This may have been the source of a simplistic opinion, given expression even in socialist literature, according to which the exploiting State cannot perform an economic organizing function, only the socialist State can do this, because in the exploiting State the means of production, all of the holdings are in private hands and not in those of the State.

On the other hand, it is a fact that certain capitalist States of the era of imperialism have taken over the organization of a part of the economic and communal life, within a certain scope. (Extension of State ownership to the system of production and services, welfare policy etc.)

The economic-organizing function of the socialist State is expressed in

the primacy of State ownership, in the planning of production on an all-social scale, as well as in the redistribution and regulation of the total social production and services. However, planning does not mean, even under socialist conditions, that the instinctive tendencies in the sphere of economics could be turned into fully regulated processes. Production co-ordinated according to a plan does not guarantee in itself a situation where every kind of change is directed and implemented by the State as forecast and planned. The economic function of the socialist State *narrows down*, at any rate, and limits the sphere of spontaneity. Nevertheless, there are such economic circumstances which present themselves despite the intentions of the socialist State or which are not purposefully planned by-products of its measures.

The redistribution of the gross national product and of the services is also part of the economic-organizing function of the socialist State. The socialist State does not actually ensure that the right to participate in the production will also determine a proportionate share in the produced social goods. Consequently, under the conditions of socialism, a fixed part of the gross national product may be *regrouped*, e.g. to develop other underdeveloped economic branches or to help the economically weaker strata of the population.

The redistribution of products is carried out through various economic decisions, most of which are not passed on the basis of legal norms. In socialism, these economic decisions do not guarantee equality in the sense that every person could satisfy his or her needs in equal degree from the gross national product. The reason why this is so is that in socialism access to products and services is still limited and that the actions of the people are also motivated by several *subjective factors* which are actually characteristic of the capitalist society. It can also be stated that the redistribution of social products and services may also be dysfunctional in the sense that socialism put an end to the acquiring of class character but, nevertheless, it results from the nature of redistribution that conflicts of interests may happen between individual social strata. In order to eliminate such dysfunctional phenomena, certain proper objective and subjective levels of social development should be achieved.

(bb) After overthrowing the power of the exploiting classes, in the period continuing till the total liquidation of the earlier ruling class, the primary, fundamental function of the socialist State is to *break the resistance of the exploiting classes*. In the first phase of building the socialist State, the principal function is, in the first place, to annihilate internal oppression and thwart attempts to restoration.

This function *does not prevail everywhere in the same degree and way*, as proved by the development of the Soviet and popular democratic States.

(bc) Taking into consideration the fact that the ruling class has considerable ideological power, in a certain degree every State may be said to exercise some *cultural-educational function*. At present, the importance of this function is increasing, even in the capitalist State. This function takes basically the form of influencing and shaping the consciousness of the citizens.

The basis of the shaping of consciousness is the formation and continuous development of a definite system of knowledge. The system of knowledge relates both to nature and to society. In the body of knowledge relating to nature and its use the entire society is interested, because it does generally not come into conflict with the experience and interests of the individual

classes of society. As to the knowledge concerning society, the situation is different. As society is made up of different classes, each class gains a separate experience about the life in society. The basis of social knowledge is, therefore, not the experience of the entire society as a whole, but the traditional experience of the classes, i.e. class struggle. Knowledge is, therefore, differentiated — among several other factors — by class interest and class experience. The Marxist-Leninist ideology plays an active, creative part in building the socialist society. The aims and means suggested by the Marxist-Leninist ideology contribute to satisfying the interest of the entire population and they are also able to express general, all-social interests. The socialist State ensures the performance of the tasks resulting from the cultural-educational function, particularly through the mass communication media.

The mass communication media contribute to making the ideology of the working class prevalent, and the labour relations of Marxist ideology general. The cultural educational function of the socialist State is directed towards revealing and expressing values which ensure that the members of socialist society will show in their conduct an engagement to socialist objectives and ideas, as required.

The differentiation of the international division of labour also requires interstate co-operation to a higher extent. (ca) This process is most prominent in the sphere of economic contacts, where the growth of the external-economic function of the State is required by the creation of international organizations. This phenomenon is particularly striking in the interrelationship of socialist States. (cb) The economic integration resulted in the development of the external political function, as well. A case in point is the State objective and function connected with the different international organizations. The socialist States are characterized in the domain of the external-political function by a high degree of uniformity — or at least harmony — owing to following the same guidelines in foreign affairs and to continuous cross-checking on information. (cc) In connection with the external ideological function, the confrontation of the two world systems may be observed.

From a technical aspect, the *power position* of the ruling class and of the State results from *their social position where they implement the direction of society*. This direction is realized through exercising the above forms of activity. The characteristic general element of these forms of activity is the *decision* and its *execution*.

The decision falling within this scope in its capacity of exercising the power directing society is — by the major forms of social power — of political, economic and ideological character and quality. *These three spheres have been interconnected from the outset*: each decision covers these aspects. The connection between them can be schematized in first approximation as follows:

Connection between the spheres of decision

politics
politics
economy

economy

ideology

ideology

I.e. the political decisions have not only political dimensions and aspects. An economic decision has not only an economic but also a political aspect, and an ideological decision has political and economic aspects, too. This interconnection may be considered as the *regularity of the necessary general configuration*.

In a single decision about the direction of society, however, these aspects are not — even by their object — *of equal strength* and, besides, one or the other side may be further strengthened. Then, because of the required configurative connection and of the different *possibilities of interpretation* in evaluation, the political questions can first be transformed into economic or ideological questions, the economic questions into political or ideological ones, the ideological questions into political or economic ones. The possibility of such a transformation or disguising of decisions may be termed the *regularity of a covert dealing with decisions*.

The decisions about the direction of society are closely connected with organization as a power machinery. These decisions are not simply the acts of the ruling class or of the State. Any member of the ruling class — and, equally, all of its members — are obviously not in the position of authority needed for making such decisions. *The technical prerequisite of the power to decide is power over the apparatus executing decisions*. The organizational form and the hierarchical structure within it are of fundamental importance. The decision about the direction of society originates therefore in no way in the formally stated consensus of each member of the ruling class but, above all in the activity, or form of activity of the Party (parties) of the ruling class, in its (their) capacity of hierarchical organization.

In technical terms, the question at issue is *who* decides, about what, to which extent, with what efficacy. In present-day modern societies, therefore, the interconnection of the hierarchical system of the ruling *party* and of the similarly hierarchical *State* system is of considerable importance.

Owing to the proper organization of this interconnection, the ruling party and the State are not the duplicate forms of the same power and, in particular, they are not uniform, with identical methods. In a party-oriented political system the centralization of organizing power concentrates the decisions about the direction of society at the top of the party-hierarchy. The fundamental issues connected with the direction of society and its functioning are problems posed, first and foremost, to the leaders of the party and deciding about them is a choice between alternatives.

The technical precondition of this power to decide is the State as an apparatus for implementing the decisions, i.e. not a State organ, directly, but the State itself as a hierarchical organ of power. The decision about the direction of society as a hierarchical decision of the Party, is aimed at exercising State power, State leadership, with direct authority to integrate society. This party decision is, however, developed into a decision about the direction of society by the State apparatus. Thus, it serves as a basis of further State manoeuvres. The social role of State and party decisions is, therefore, not identical and they are at different *levels*, too. Their bearing is also different.

The decision of the *party* about matters of social direction is a *political decision for the State machinery*. An important number of these decisions are, of course, not intended directly for the State apparatus alone, but also for the entire population. In this last case, there is no direct connection of

sub- and superordination between those making the decision and the addressees; thus, in this respect, the decision is of an *agitative* (propagandistic) *nature*; the party does not lead society directly and not alone, but with the aid and co-operation of the State. It does not follow from all this that the decision of the party about the direction of society is important primarily because of its role directly affecting the State machinery, but it is a fact that each and every decision of the party about the direction of society is a *political decision implying a task for the State apparatus*.

Such a decision is a political one and, as such, is made *homogeneous*, taken at a political level, about direction, from a fundamentally political aspect. I.e. there is a choice between purely political alternatives of power or a political choice between economic and ideological alternatives. In terms of the configuration of these spheres of directing society and the legitimacy of their being manoeuvred, the decisions concerning the direction of society may be homogenized as political decisions pointing, from a political point of view, towards the *uniform trend* governing the organized, co-ordinated functioning of society. The decision concerning the problems made homogeneous and brought to a common denominator is, in this way, a synthesis of the highest degree of directing society. As a decision, it is not operative and is of non-normative character; it is the dialectical unity of both. Thus it moves across a wide scale. It induces, moves, promotes, limits State decisions, it does, however, not supplant them.

In the process of the functioning of the State machinery, the decisions concerning the direction of society, concentrated and made homogeneous this way become *heterogeneous again*, then they are becoming more and more diverse, according to the forms of activity. In technical terms, it is the scale of the decision which changes. The two kinds of scales can be compared, though they have not been identical from the outset. The technical implication is that *each can play its part alone, on its own scale*. If the decision of the Party about the direction of society and the State decision are in accordance, there is no chance whatever to compare them; they are no standards for each other. It cannot, therefore, be established e.g. how much the State policy, or the performance of any State task, corresponds to those determined by the political decision of the Party on the direction of society. Such a correspondence in scale does not generally become characteristic except where other formations are added to it; e.g. the institutional fusion of the Party and the State, making them grow particularly strong, unequalled in the political system.

Between the forms of activity, however, a certain coincidence may occur, even without the additional formation. The social leading role of the Party, in relation to the State apparatus, does not only take the form of high-level political decisions but it also includes the supervision of implementation — a peculiar control — as well. And this requires an inquiry into the activity carried on at the same level and on the same scale as where the decision is validated. The disintegration of tasks, necessary to implementation, inevitably results in the lowering of the level of information as compared to the level of decision, of the high-degree synthesis. The evaluation of experience is connected to the level of practical implementation and it may also happen that a decision made after the evaluation remains at the same general level. And, as a result, — in the particular question at issue — the political decision of the Party conforms to the scale and level identical to that of the

State decision. Thus, in fact, the Party decision does not take the lead in political terms here, it simply supplants the State decision. As, however, it cannot actually replace it, the State decision repeats, copies the political decision without the possibility of taking hold of the strings of the real solution: to evaluate the decision independently, directly, to have elbow-room for manoeuvring, often at the expense of State decisions. The possible disturbances caused by this state of affairs may, of course, be set right but, to this, new decisions are needed and for finding a smoothly functioning solution, the "time" factor is important.

Apart from the comparatively limited scope of purely political issues, not all State decisions are given expression in the political sphere or are made homogeneous to become political ones; there are also State decisions about the direction of society, of a political kind — organizing the entire society. In certain respects, the structure can be broken down to what the State apparatus does for the sake of a fixed social objective and what society does (as a whole and through its individual members, collectives, organizations etc.) for the same purpose. And the function is generally to activate social relationships on a State basis, within the framework of the State. The social objectives can be classified, in the last analysis, by political, economic and ideological spheres; these spheres, however, may not be directly identified with particular forms of activity. Thus, e.g. the economic organizing and directing activity of the State apparatus is by no means identical with the direct control over certain productive processes, even if there is a system of strict plan directives. The State in itself is not the economic life, even if it is present in the economic life as a proprietor or the exerciser of public power. The State is not the economic undertaking of society, and the country is not a gigantic enterprise. These well-known facts are supposed to make clear the technically relevant fact: *the extreme differentiation and specialization of tasks and, as result, the increase in possible combinations.* This applies to the technique of direction as well as to the technology of production. Thus, the scale and level of the organizing, directing activity is not irrelevant; a central State decision of an economic kind means obviously something different to an enterprise than to a production system or to a branch of production. All of these have to solve the task at their own levels. Here we are speaking of organizational levels: *the decision made at a higher level induces and limits that made on a lower level, but generally it can not replace it with good result.*

The decisions of the *central State organs* at the top of the State hierarchy about the direction of society are usually *high-level* decisions. Their basic characteristic is that they are made for practical purposes and are, therefore, *task-oriented*. In a number of cases, the objectives set by the decision are no specific tasks, they just set the direction and sometimes the framework of activity; the decision is not made *operative*. The authoritative decisions are cases in point. But even in such cases, the decision takes into consideration the possibility of adaptation for implementation, and the possible implementers of the task. The objectives are set under the influence of the existing trends and organizational forms, the *division of labour pre-planned and predetermined by the character of the task to be performed* within the machinery of the State apparatus (this is a social problem demanding State solution, as well) its *special requirements*, the *ordering of individ-*

ual tasks and duties (based on the division of labour, and the scopes of competence of State organs) *generally qualifying the work to be performed.*

Thus the objectives are integrated in a system which partly separates the individual organs from one another by their scope of competence in organizing relations. (This is recorded by the law as the hierarchy of the *scope of duties and competences*). Under these conditions, it is obvious that the decisions of the central State organs concerning the direction of society establish, in a large number of cases, not principles but task-types, sets of tasks, terms of implementation and responsibility; these decisions are made *operative*. The above decisions are, in the majority of cases — either *operative or normative, in a technical sense*, and the making of such decisions is encouraged. As to the decisions on the direction of society made by the State, it is technically not irrelevant, either, what is the inner structure of the deciding organ like. The active component (agent) that gives new dimensions to a task is not only the factor acting upon the task, nor the person charged with performing it, but also the person who sets the task. By the latter the position of the person who makes the decision is meant. From this point of view, what is characteristic, in the first place, is not the fact, whether an individual or corporate decision is involved, but rather what kind of opportunities the person who decides within the hierarchical organisation has to discern the problem, to survey the facts, and in what depth, in what detail, broken down by what criteria.

Under the present conditions of direction and taking the standard division of labour as frame of reference, a person or corporation can no longer get a detailed, in depth picture of the situation, all one can have is a general, broad overview. This problem is not as simple as e.g. how to get and how to keep oneself informed; an equally important factor is organization, how to organize the work. The point is that the *preparation of the decision* is a strictly organized task. The alternatives to the decision may be chosen on the basis of the data and information provided by the machinery preparing the decision, summed up and evaluated methodically. Thus the hierarchical decision, a "quasi decision" contains the common, joint opinion of the experts each one checked against the others and all together, reconciled. In this case these experts perform an activity which from a certain point of view is just the opposite of when some partial tasks originating from a single decision are set. Here they have to find an adequate solution to generalize a decision from a great variety of details and partial solutions. The smaller scale is converted to a larger scale, where precision and omissibility are necessarily correlated between the two scales. Decision-making undergoes, therefore, a considerable change in scale: thus serious mistakes can slip into the mechanics of this operation. The decision-preparing machinery has, therefore, an important part in the technique of the decision: the question is, what kind of an organization, in the position of the organ making the hierarchical decision this machinery is able to activate and with how much efficiency. The one-sidedness of the decision, the possibilities of its being converted to a smaller scale, the obstacles to breaking it down technically may partly be the results of such a problem.

The hierarchical position of the deciding organ (its competence and weight in internal politics) in the State organization and the character of the apparatus preparing the decision for immediate disposal, as well as its ability to function form a functional unit. From the point of view of alternative

decisions and their elaboration, the relevant data, phenomena taken into consideration on the appropriate scale are points of assumption, which often can not be made completely homogeneous without a certain simplification, without having to give up some of the abundant partial tasks of the actual implementation.

Homogenization is an operation performed to prepare the decision. The actual opportunities of adopting this operation are generally technical, because the political, economic, and ideological aspects and conditions are in the necessary configuration with one another and within the general situation — the decision concerning the direction of society is simply the mechanical synthesis of these aspects — and not only is reinterpretation possible, at any time, but it is also very often advisable. The scope of State duties and competences forms, however, a less coherent sphere than the totality of the political, economic and ideological spheres. In these forms of activity, within this scope of activity, within the actual division of State activity there is no chance to interchange competences, no chance to being given priority, — unless a structural change takes place.

The situation is, however, different in respect of the scope of duties where reinterpretation is always possible, viz. starting from the general rule. This operation may also have a certain effect on the competence. In certain cases, this effect appears as improvement, but it may also have a disorganizing effect. Of this technique, possible and actual transposition, adaptation to a different level of decision-making is an essential part.

The essence of the transposition is that it is performed partly by *draining the competence away from one level and over to another*, partly by *transmitting* the actual decision, with no change in the actual order of competences. In some contexts, this connection develops symmetrically, on one side possibilities and opportunities of decision-making are concentrated, accumulated, while on the other evasion of responsibility, keeping out of harm's way, indecision, shifting decisions upon higher authorities can be observed. In such cases, it is a delicate problem, from the technical point of view, to assess rightly the *dimensions of decision-making*. As the organs placed in different positions of the hierarchy of decision-making do — right from the start — not function as equals, the ways as they see and understand the problems resulting from the division of labour are also not alike, and their alternatives are not uniform, either; but they may replace — or may be substituted for — one another, and thus complete technical breakdown is avoided. Conception, plan, failure of tasks on both sides may interpenetrate without sharp contours. Ignorance of exact dimensions keeps the technical advantages of being part of an organization from developing. This formal limitation, the lack of technicality may also react upon the meaning of competence, resulting in a loss of meaning, and thereby disturbing the functioning of the whole apparatus.

The factors determining and influencing State decisions on the direction of society are, of course, of a large variety, even in addition to those hitherto mentioned (e.g. political system, economic conditions, historical situation, legal traditions, level of civilization, democratism, conservatism, and risk-taking, political courage etc.). But what is here involved is much more important than technique.

The general ability of the State to direct has considerably been increased in the period of the advanced socialist society, because society has an interest

in making use of the full system of means at its disposal. The State organization first makes the processes more subject to its direction, and also extends the scope of its competence. And thereby the part of the organizational factor is made more important in the life of society.

The socio-economic, scientific-technical, demographical and other processes of our days show a high degree of dynamism and, consequently, the time factor has a particular importance. The objects of direction are integrated and the individual levels of direction, as well as the connections of implementation are becoming more complex. On the basis of the above, the evaluation of the machinery for realizing these functions should be approached from a new angle. The content of the earlier functions of the State (economic, political, ideological functions) is changing, the function of guaranteeing the proper living standard of the population has an increasing importance.

A major trait of performing the functions of the State embracing the whole population is the setting and solving of complex tasks. In this, the increased co-operation of the individual members of society are reflected, as well as the increased opportunities of the State for directing the social processes. It becomes equally clear that the solving of tasks is more and more simultaneous, and not successive. The elaboration of complex programmes aiming at solving the most important scientific-, technical, socio-cultural problems is a timely ideological and practical task. Such programmes allow the centralization of the energy resources in order to solve the problems given high priority in the national economic plan. In the light of this, we should examine the tasks of planning and directing the economic machinery of society. Between those who organize society and those subjected to their direction a close connection should be formed. The interdependence of the objects and subjects of direction and leading is increasing and the opportunities of the system for economic stimulation are multiplying. The State uses several kinds of means of influencing; the traditional methods of State activity are being supplemented. In State activity the part of economic methods, the importance of the new economic motivators are increasing and, consequently, the scope of State activity is becoming more extensive and State influence intensifies. Complex application of State methods finally promotes the better understanding of socio-economic processes, and the elaboration of methods which are the most appropriate for encouraging these processes.

The State plays the part of an organization embracing the entire population in the advanced phase of the development of socialism, and organizing social activity by employing the results of science and technology. The State directs the processes promoting the interest of society in its capacity of the political and administrative organization of the people. In this connection, to separate and distinguish between the processes of recognizing and reflecting the objective laws by State and non-State methods and the problem of effective State influence seem to be timely tasks. In the last analysis, the increasing efficiency of State activity expresses itself by the fact that the social processes are getting more and more under State control.

The interdependence of *deciding* and *implementation* is a major problem from the technical point of view, as well. *Decision determines implementation in a general way — and the possibility of implementation reacts upon decision.* Thus, the machinery for making decisions cannot be improved without doing the same to the implementing apparatus and without ensuring a corresponding level between the two. Decision is, therefore, not an absolute

priority in itself, though it is one of the basic, pivotal questions of direction. Implementation is a comparatively independent machinery, partly as an organized functioning of the executive apparatus, partly as an organized functioning of the entire society.

In the process of decision and, later, of the functioning of the executive apparatus an important consideration is *to augment the readiness of society for accepting the decision*. The difficult point, seen from a certain aspect, is to have the decision accepted by the entire society. The decision is right when it is rational, expresses a kind of abstract rational quality. Its acceptance, however, does not happen unambiguously, on the basis of rationality; it has also emotional, passionate, traditional etc. elements. The level and character of discerning the problem, the integration of interests appear in another way, i.e. *the decision and its acceptance is not the same thing, they are not on an identical level*, and cannot be brought to the same level; all these make a difference for the technique of implementation. The importance of ideology, in addition to politics and law, is increased by the fact that it has a prominent part in ensuring social balance and co-ordinated functioning.

Making the decision accepted, executed or implemented by society can be seen, from the technical point of view, as the functioning of a separate unit and this may generally also be taken as motivation. All the means or incentives which promote the implementation of the decision are comparatively independent motivation techniques used by the apparatus making the decision, or rather executing it, for the most part consciously, in order that it may realize the corresponding tasks.

The mean value of the actual motivating effect can be foretold but the exact sum cannot be calculated. The individual motivation techniques form, in dynamic interconnexion, an extremely compound, *complex motivation system*, acting jointly, not separately. Some forms of behaviour are, however, better motivated than the others. The motivation techniques as basic formulae may be schematized so far as they are ordered in sub-systems. The best-known *sub-systems* are

- enforcement
- material incentive
- influencing
- persuasion.

Within these sub-systems, widely different forms can be found. (E.g. enforcement: as physical, existential, economic, spiritual, political, legal force etc.)

The technique of enforcement does generally not rely on the supposition that the forced person wanted to identify himself with the aims of the person forcing him or that, for this person's sake, he would be ready to co-operate with him; the forcing person, therefore, extorts the behaviour corresponding to his aims from the forced person. On the other hand, the *technique of material incentive* buys co-operation; it ensures material advantage to the person showing the required conduct. This conduct depends on whether it is worth to this person or not to adjust the materially incentive aims to his or her own. The *technique of influencing* wins over the person under its influence to its own aims and objectives up to passive obedience; the person accepts the aims set for him by others and squares these with his own interests and intentions. The required conduct is the result of the possibility of bringing into harmony the assigned aims with his own, of accepting both. The *technique of persuasion*

also wins the person convinced, who identifies himself with its intentions, considering these as his own and adjusts his own aims and demands to them.

The functioning of these systems of motivation is built, from a certain point of view, on the fact that the motivated person, the object of motivation gauges *rationally* the alternatives presented (e.g. when facing enforcement, he rather acts as required than to suffer violence). This consideration, however, is not only rational, it contains *other elements* as well, e.g. it has irrational, emotional, passionate sides as well, influencing the depth and direction of motivation. Thus e.g. the technique of enforcement may be intensified by fear, the material incentive by greed, avidity, envy, the technique of influencing and, particularly of convincing, by courage, self-respect, self-satisfaction, thirst for power, hate. The case in point here is not only a number of individual characteristics and qualities, but also the social atmosphere. The application of one or the other motivation technique through force or preferential treatment may particularly *stimulate*, stir up these qualities or sentiments in the individual and in the social context, to a certain extent (e.g. the technique of enforcement may stimulate fear, passivity or bullying simultaneously, the technique of material incentive avarice, selfishness etc.). The stimulative connections mentioned above have a certain importance from the point of view of which motivation technique to select, which technique is appropriate for which person, and what ratio to establish between the different techniques, in case of joint application.

If we take the most current types of decisions on the direction of society as a basis, it will be obvious that, in principle, the executive power has, in every sphere, the *best motivation technique* at its disposal; and also other less successful techniques. In first approximation, thus, e.g. in the economic sphere, material incentive may seem to be the best method; in the ideological sphere, influencing and persuasion; in the political sphere, convincing, influencing and forcing. But it is worth noting, even in the first approximation, that a grouping of this kind may not serve other purpose than immediate correction. As e.g. if the successful implementation of a decision of an economic kind supposes considerable creativity, an active adaptation of the objectives will be needed, i.e. the motivation technique of conviction may be confirmed by the technique of material incentive, but cannot be supplanted by it. For making an economic form popular, material incentive may be an adequate means, but the best motivation technique for the radical liquidation of an economic form is not this, but economic coercion.

Not much chance is left for the mechanical schematization, because decisions may also appear in a disguised form, e.g. an economic decision as a political one, a political decision as an economic one. In such cases, the selection of the appropriate motivation technique is a question deserving increased attention. The *possibility of motivation*, the frame of reference, the successful application of the motivation techniques over a fixed period of time are given in social and historical terms. The alteration, the change in the nature of decisions is considerable, on the ground that in the process of implementation improvement is to be expected in the motivation technique and this may multiply the changes during implementation; in other cases, however, it may cause simply damage. In technical terms, it seems equally a mistake if e.g. the implementation of a decision is founded on a single — and not even the best — motivation technique, or if — going to the other extreme — we display as extra provision the arsenal of a large variety of means, all togeth-

er, at the same time, though too much provision tends to stifle successful functioning almost completely.

Another aspect of applying and enforcing the motivation techniques for the implementation of decisions is the character of the decision, in the sense whether the decision is an *authoritative*, *normative* or *operative* one. Technically, the authoritative decision motivates decisions of a normative or operative character; the problem it raises falls directly within the scope of decision-making about the direction of society and not within the scope of implementing decisions of the same kind. The interconnexion of normative and operative decisions is characteristic from the technical point of view, it is part of the issues concerning the structure of legal technique.

4. The structure of legal technique

The *operative* direction generally applies to particular persons and situations; the *normative* direction, however, does not apply to single persons but to persons and situation-types in general. The basic unit of the operative direction is the case, that of the normative direction is the case-type, and both are, within their own frame of reference, real decisions.

The most important form of normative direction *in operative terms*, — i.e. direction through norms and rules — is the law. The essential difference between the normative and the operative forms is that on the operative decision the normative decision (in its character of rule) is generally binding; consequently, operativity is generally subordinated to normativity. The sub- and superordination, rule and subjection, are thus present, separately as well, in subjectivizations. E.g. in the fact that the normative directing organ cannot, under any circumstances, be the immediate directing organ superior to the organ authorized to operative direction (it is superior to it, nevertheless the other organ is subordinated to it because of its directing position *in normative terms*; because it must accept normative direction as general direction). This is the power of the normative direction over other State organs, the actual objectifying system within the State apparatus.

The law as progress in the forms of activity is the creation, application and implementation of the law. Of the forms of motion, the law is a peculiar form of social leadership and direction. In this sense, the law operates on a higher plane than the operative direction of society, it is on a higher level. *Law is, therefore, the dialectical negation of the operative direction of society*: in this sense, it is *no direction* and, at the same time, it is a kind of peculiar *concentrate* of direction. It is generally superordinated to the operative direction, which is subjected to its direction in general terms, because of the superordinated organ's normative authority over it; but it is, equally, only a means to this end. In this connection, it is also an operatively relevant function, within a fixed scope, where it replaces, makes superfluous the operative decisions, as far as rules may be substituted for the body of operative decisions.

The law as direction and non-direction is a system of norms or a system of forms. It is a generally binding and functioning, comparatively stable system of rules, provided with special authority and power, the efficiency of which is ensured not only by its authority, rational content, convincing force, traditional elements or by the trust placed in its professional expert applier or

official maker, but also by the enforcing and prompting power of the social machinery — and, within this, the authority of certain State organs in particular — created for ensuring the observance of the law and for having it observed.

Law is a general and compulsory *pattern of conduct* and also a general *standard of behaviour* for each member, each organization of society. The pattern makes the compulsory requirement general, and the standard makes the compulsory evaluation general: for technique of the functioning of the law new prospects are opened up by these circumstances.

Some structural respects of the law *as a pattern of conduct* are of no interest either to making, or to applying the law. The law as a pattern of conduct is, on the one hand inherently stable, though only in a relative sense — the time factor has turned out to be different, from the outset, from what it seems to be in the various forms of direction — on the other hand, it is characteristic in its form and cannot be itemized, formalized except in this form; and this relative stability is mostly based upon its characteristic form. Through the hierarchical nature of this form survives the hierarchical relationship between directing and directed, viz. the relation between the maker and the subject of the law, the maker and applier, those having authority and those subjected to authority. In this connection, the law is a *complex, hierarchical structure*, and as a complex form ordered by a design, it shows very great stability. In this respect, the fundamental form of the structure can but slightly change, the content of motivation, on the other hand, can do so to a considerable degree, and this, together with the changing motivation technique, reacts upon the function of the whole structure.

These statements in technical terms need obviously some explanation. The interpretation starts from the fact, *how law functions*, what structural connections it has. To a certain degree, these may provide a basis for the technical requirements the norm has to satisfy in order to be really applicable. It seems to be an entirely absurd starting point, lacking all objectivity that e.g. the citizens read the official Gazette, they find out this way what the prevailing law is, then, when opportunity arises, they decide accordingly about their own legal or illegal behaviour. It is nevertheless a fact that most citizens and organizations proceed according to the law. Consequently, there is, all the same, an other way how to recognize and apply the law. This way may be found in the peculiar motivation influencing the motion and progress of activity forms. In this respect, the levels of motivation as structural forms and functional units may be taken into consideration.

In this approach, law is *first the established, valid rule of the law*, i.e. the standard norm issued by the law-making organs, establishing what the members and organizations of society should or should not do in particular case-types or how the authorities should make the rules of law respected. The valid rules of law have authentic recorded texts.

Secondly, law is *the regulation to be enforced*, partly the valid rule of the law, partly the ensemble of the techniques for interpretation, ordered to it by social experience — and by creating and bringing the law into operation, in particular. — The legal axioms and all the principles, and fundamental rules of legal policy and law-applying fall within this scope, as well, and though not expressly formulated as a thesis grounded in valid rules of law, without these axioms the valid, established law could not actually be brought into operation.

Thirdly, law is the rule of law in operation, i.e. the tendency of the valid law to present itself in the law-administering activity, the decisions of the authorities functioning to maintain law and order.

Fourthly, law is the *generally accepted law*, i.e. the tendency how the valid law becomes manifest in the legally relevant behaviour of the subjects of law.

The enumerated types of phenomena are distinct *technical motivational levels* of the law, forming the *currently prevailing law* jointly, integrated in a functional whole.

In technical terms, the *prevailing law* is not a loose heap of motivation levels, but a system of structurally and functionally connected interrelationships.

From the point of view of optimizing law-making and bringing the law into operation, the nature of this structure and function is obviously a fundamental question. The starting point is that the above-mentioned hierarchical structure is a highly stable element.

That is to say that law-making takes generally place on a higher plane, above the level of the authorities administering the law and of the subjects subordinated to law. The application of law is determined by law-making and subordinated to it; it is, authoratively, at a lower level than law-making. The members of society and their organizations are also subordinated to the authorities administering the law within the framework of relations regulated by the law. Law-administering is, authoratively, on a higher plane compared to those to whom law is administered in an authoritative process. And not only are the members of society classified by their legal subjection into a lower grade than that of law-making and application, but they are also *participants* of and *obligors* to this regulating system. As participants of and obligors to law, they are the subjects of legal relations, and so they take lower or higher positions within their own relationships and in relation to one another; from there they can assert their conflicting interests and wills, forming a fixed hierarchy.

Thus, being a legal subject is, partly, a manifold system of *subjection* within the structure of legal normativity, and partly, just in this way, a *functional scope of action* for enforcing actually ensured and hierarchically ordered interests. The subject of law is not only an obligor to but also a participant in the *order*, actual as well as supposed. The law is, in this sense, a *well-ordered balance of rights and obligations*. This is the pivotal issue of legal motivation; a necessary, supposed and actual symmetry between rights and obligations.

Owing to the existence of the rules of law, people are virtually pre-supposed to be ready to co-operate within the frame of society and, in this connection, to have a *sense of duty*. In legal rules, the law turns into *authority* (autoritas), the sense of duty into *legal responsibility* or *liability*. Through their interaction, the premiss from which the law starts is that illegal behaviour is *antisocial*, and for being antisocial each member of society is responsible, and liable to be called into account.

Broken down by the levels of motivation, the following are *illegal*, i.e. contrary to the law: firstly, the conduct not corresponding (opposed) — to the universally accepted law; then — to the law applied and to the regulation to be applied; and finally — to the valid, prevailing law. The enumeration began, obviously, with the lowest level of motivation, and not without

cause. It is at this level that the subject of law happens to be the best-informed about the law, as well as about the ordered and well-known equilibrium of rights and duties. What the individual as subject of the law is the least informed about is the valid (positive) law, despite the fact that this alone has an authentic text. But this is to be expected. We have, right from the outset, excluded from our analysis the hypothetical model whereby the citizen would read the official Gazette regularly, from day to day and then strictly conform his whole conduct to what he had read.

We are just mentioning in passing that familiarity with the legal material and with its application to organizations is fundamentally different from being acquainted with the material providing for the citizens alone. The motivation system adjusted to organizations is built, principally, on work and task requirements; here familiarity with the rule is part of the required knowledge necessary for performing the tasks falling within the sphere of one's work. Familiarity with the rule of law, as well as with its motivating mechanism is expedient in the particular organization. In a major organization, there is, as a general rule, a unit which actually reads through the official Gazette from day to day, as a regular task, in order that the organization may function smoothly and regularly, and this unit keeps the employees concerned informed about the rules. The organization is here not only an informant but also a peculiar motivating factor.

It follows from the above that, as concerns illegality at the different levels of motivation, no adequate congruence is possible; at best essential identity or identity of orientation can be established. It is common knowledge that even this identity is lacking in several cases (in terms of the motivation of the currently prevailing law, the behaviour is illegal but from the aspect of the motivation of the tendency governing the actual conduct of the subjects of law, the same behaviour may seem legal (i.e. non-illegal). At the technical levels of motivation these categories may, therefore, be, according to their content, the negation of each other — they need, however, to be non-identities. — These are circumstances which do not affect directly the form of law, but they change its *content*. At any rate, it is a paradox in the sociological sense of the word that the essential point in the functioning of law will be exactly the point where the information of the subject of law is poorest — i.e. positive law — and it will be the least essential point where the information of the subject of law can be considered full, i.e. the generally accepted law. From a technical aspect, however, there is nothing particular about this, it is only the regularity of the structure, becoming manifest. And this is the axiom of law, whereby responsibility is a normative concept, in the first place and, therefore, its content is expressed by the form — i.e. by positive law; pro secundo, it is not identical with its form. Legal responsibility is, therefore, the peculiar situation of the subject of law, a sort of consequence, where the rule and the conduct or result not complying with it are distinct, individual elements vested with or subject to the authority of legal restraint. This constraint is partly of internal origin (sense of duty, sense of legal responsibility), and partly of external origin (possibility of calling to account, apparatus for enforcing the law) and, in fact, is made up of both.

Law is a complex pattern of behaviour from the point of view of the *development of responsibility*. The motivation-technical levels of the law play an important part in the extremely complicated process of one's becoming

aware of and asserting his or her responsibility. These technical levels may also be characterized — if simplified a little — by abstract requirements because they give a general character

— to *positive law* and the regulation "you should behave as prescribed by the law;"

— to the applied law "you should behave as required or tolerated by the authorities;"

— and to the *generally accepted law* "you should behave as everybody else behaves."

The *difference in degree* indicated here may also be interpreted, in principle, as an *interactive* relationship between the positive legal norms, where the content of the norm appears as a change in the relations, which change, in its turn, results in putting an end to the predominance of the norm. In this way, the generally accepted law deviates most from the norm, becoming finally a convention, and is known generally in this quality. At the same time, it is *no* legal expression *any more*. As a law, accepted not from law codes but by virtue of interpersonal conduct, it may be the strongest promoter of or impediment to the effectivity of positive law. Because of this, it is a criterion of formulating and bringing into operation the positive law.

In the indicated fields the motivating technique of the law is obviously different from the technique of being familiar with and understanding the law. Positive law is part of each of these fields, but differently for each, and these different units become in a way *criteria for one another* in their motion and progress. However, the valid positive law is determined only in form, and if e.g. the law created in the process of the legal practice of the authority as "applied law" or the generally accepted adoption (or non-adoption) of the law developed in the process of conforming to the law is compared with it, it becomes clear that these — unlike positive law — are no definite forms, only tendencies and, in this sense, patterns of behaviour originating primarily from the operation of positive law. As patterns of behaviour, they form a motivating technique of conforming to the law and a criterion of creating and administering the law.

5. Functional dimensions of legal technique

To distinguish the law as a *pattern of conduct* from the law as *standard of conduct* is an essential technical consideration from the point of view of elaborating legal technique, and bringing it into operation. Both fundamental aspects affect structural and functional problems, but not with equal impact. Law as the standard of conduct is particularly important in functional connections.

Law as the standard of conduct is determined by positive law formulated in the process of law-making (legislature) and was given a concrete expression in the process of administering the law. The dynamics of transition from law-making into law-applying unfolds owing to the autonomy and integrity of these two legal functions. The generally determining regularity — and the starting point — is the differing nature of the operations, in functional terms. I. e. *the law-giver establishes authentically what the law is and those applying the law establish authentically, what the rights of particular persons are.*

By the dynamic unity of law-making and law-applying, responsibility

and sanction are combined, they are integrated into a whole, not simply joined together; they form an organic relationship. Legal responsibility is the possibility of calling a person to legal account, by reference; using several kinds of motivating techniques. This possibility is realized when a person is really called to account. Calling to account as establishment of responsibility and imposition of sanctions is, on the one hand, the almost exclusive duty and authority of those applying the law. On the other hand, the imposition and implementation of sanctions are only a kind of motivating enforcing technique, in the process of which the possibility of constraint turns into actual fact. Thus, different things are made to approach one another in scale and motivation techniques and, at the same time, they are also closely connected as different phases of a single work process. From this functional point of view — as interpreted by this kind of process — what we are emphasizing in the first place is not that the issue in question is the form reflecting the functionally separated functioning of different organs (law-making and law-applying organs at different levels) but that these *different organs function jointly, as a system*.

Within this system, the modern codified law is the *norm accommodated to functioning*. The legal basis of imposing and implementing the sanction must be the valid positive law, made exclusively by the authorized organs in a peculiar form, with the rules *promulgated* in proper form, too.

This latter is an essential means of the technique of law applying. The act of promulgation is a technical device in the technique of applying the law as standard of conduct. This formalizes the law as a generally known and accepted entity. Promulgation is the reflection of law-making upon the generally accepted law. With this device, the valid positive law may present itself in such a light as if it were the only technique of legal motivation, laying thereby the foundations of the technical formula that the valid law may be identified with the prevailing law.

The content of the rule of law becomes, by being promulgated, really accessible to each member of society. The axiom that every person should be familiar with the law may be considered in this connection.

That this is only a technical device which is a prerequisite of law-applying is also shown by the fact that most rules of law come into force on the day of their promulgation. From this day on, they are considered applicable and application is no longer optional, but compulsory. But on the day of promulgation the official Gazette with the text of the rule of law is far from being on the table of every applier and every subject of law, and if it is, they have, all the same, no or little opportunity to study the text closely, for immediate use. This may seem to be a small technical problem, yet it shows that, within the functioning of this system, only the likelihood of being accepted has fundamental importance, and even that is relative; the other qualities matter much less.

It is irrefutably a precondition of law and of its application that no one is exempt from legal consequences, even if they are not acquainted with a particular rule of law. The law becomes through this axiom the current, sanction-type standard of conduct. In this sense, the law is a system of norms, familiarity with which is supposed to be compulsory for those applying it, and not just acquaintance, a general knowledge, it outlines, but an exact, verbatim knowledge recorded in the authentic text of the rule.

The proliferation of rules is also encouraged by the technique of formula-

tion for communication, in the field of valid positive law; this technique allows an increasingly detailed and close interpretation of a peculiarly flexible kind.

The process of centralization which, among other factors, characterizes the present-day development of legal technique, develops a hierarchically structured division of labour between law-making and applying the law. The general, generally accepted law fades into the background as a motivation technique. The connection between law-making and law-applying becomes more and more close, *a major shift ensues in law from conduct-pattern towards conduct standard*. The totality of the prevailing law becomes, formally, more "normative" in the spirit of the sanction model of positive law. With reference to content, an opportunity offers to make it more "operative", or rather that it may show a timelier functional expediency, adapted to the strengthening of the form.

The above-described technical change deserves investigation in two respects.

In the first place, the above change enables also the operative content to appear in normative form. The question at issue is, of course, not a kind of change in principle; a number of rules containing an operative measure are known. In this case, they will be degraded; the form expresses what it had to deny, dialectically. The form, used so, practically reverts from abstract conduct pattern and standard of conduct to a concrete means of direction, a non-norm. In several cases, this in itself may not give any trouble, nevertheless it is a practical problem that such a rule has not the same character, scale and degree of efficiency as the motivation technique of a real law has. It seems to be the obvious advantage of this technical change that legal regulation may also provide for such relations where the interestedness of the subjects of law can be demonstrated, even through multiple mediation, as usual; else, without this interest, a convention could never be reached. The scope of legal regulation can, therefore, not be extended without adding to it another technique, which is different from the norm governing the regulation. In these fields the decreasing efficiency of the norms is compensated by the increasing efficiency of administering the law. Therefore, law-making turns with growing interest towards administering the law. The unequal development of law-making and law-applying is repeated at every level of the whole system of motivations in the prevailing law and this raises new technical problems, in its turn.

Secondly, the above-mentioned technical change led to the creation of new functional expediences. As the problem of making the regulation accepted was, in principle, solved by the technique of promulgation, the creative function of the rule as standard of conduct became possible through the operation of law-applying — though at the expense of narrowing down, restricting in a way the motivation technique; it was also rendered possible that the complexity of direction and its functional expediences might penetrate, find a way into the norm. In this sense, certain constituents of positive law directly become forms of State organization and supervision; partly so that they systematically adjust the norms of positive law to the actual State practice of directing society, partly by expressing the projected objectives of this practice in legal form. This technique is — in a certain sense — alien to the norms; its motivation technique is only partly legal motivation (originating from the legal form), legal retribution has come into consideration from

the start. At the same time, the possibilities of legal constraint are not applied all the time, because the projected results have to be achieved mostly without the co-operation of legal technique.

The above *technical change in the prevailing law* develops mainly in the field under the direct control of the State organization, e.g. economic management, technical development, distribution, price regulation etc. The decision, expressed in legal form — in formal terms a rule of law — is in functional terms substituted for decisions of an operative nature and standardizes these decisions. It is the rational regulation of what should happen in an ordered functional unit. Its fundamental characteristic is its planned character, *adapted in its scale and dimensions to organizational forms*. Its development is assisted not only by the nature of State operation, but also by a peculiar social climate. But the technique of making a regulation of this kind prevail resembles the functioning of an operative decision rather than that of a norm. Following this line, certain elements of the prevailing law may also be so classified that one group of rules relates primarily to the citizens, while the other to juristic persons and organizations in general. But the first group of rules also applies, according to meaning, to the group mentioned in the second place. However, the two spheres cannot be separated from each other by the present technical apparatus of law-applying.

The role of positive law in stating the individual rights and obligations of citizens is increasing. Owing to this increase, a *shift in ratio* occurs within the body of rules of the positive law. This again leads to structural problems and causes fresh technical problems. *On the one hand*, it becomes a means to specialization and organizing, and a close connection develops between economic planning and law-making. *On the other hand*, the normative motivation mechanism is completely transformed, it concentrates its full attention to the details of law-making and -administering. To apply law in this way, as a technical possibility, may promote the idea (which is an illusion) that there is nothing that can not be directed by the law. But from this conception, fresh technical problems result: regulation superabounds, it turns into a burden of inertia, and the rules weigh heavily upon the applier of the law.

The significance, degree and technique of applying and enforcing the law, and legal regulation are obviously in a state of change, and in certain respects the change is far from being insignificant. The process of change also effects the minor phenomena and details of legal regulation; they are much more comprehensive than before, and more closely connected. It is evident that the law has the character of a social means and as a means, it has a self-development peculiarly its own.

6. The State as maker of the law in the form of decision

The interests of socialist society, with their different levels, dimensions and degrees of intensity, are integrated into its political system, as common general interest established upon a compromise. This interest appears further on in the political system as the starting point of the process of decision-making.

The system of values seems to be connected with the social structure. This relationship is, however, not reflected automatically in the political system; a number of mediating mechanism, (e.g. the legal-organizational

traits of the expression of interests) may give a bias to the expression of social values. Human activity directed towards experience on a social scale is always of a political kind. Correspondingly, the interest-integrating process of socialist society is also of political character, and if it takes an apolitical orientation, it is a function of the lessening differences between interests.

While the socialist political organizations, by virtue of their character, deal generally with the contents of single decisions, the duty of the State organization is to formulate — by using its legally regulated power — in the form of actual rules of conduct the requirements recorded in decisions for its members and organizations.

The process of decision making is of dynamic character in a double sense. Partly, because in the political system with its relations of sub- and superordination functioning formally and non-formally every decision presupposes a decision of a lower degree (made at a lower level; let us think e.g. in connection with the legal system of the practice of the "multistage" legal regulation). But if we take into consideration a single decision alone, by strict definition, it can be observed that even this is made up of several elements developed during the process of implementation. The structure of the decision is analysed in the literature of the subject from several aspects. What seems to be common to these approaches is that the essential part of the decision is the elaboration of alternatives and the choice between them.

In the political system of the socialist society the *process of deciding*, broadly speaking, lasts from the start till the promulgation.

(a) The expression of a social need as an actual demand requires the proper reflection of these needs in the elements of the political system. This takes place mostly within the framework of the socio-political organizations and the Communist Party has an outstanding role in this. With the development of socialist society, both the various social organizations and the initiative of the citizens have an increasingly important part in local and central decisions alike.

(b) A further important political issue is the determination of tasks and objectives. This is in close connection with the establishment of the hierarchy of interests and values affected by the decisions. The integrating function of the political system becomes manifest mainly here.

(c) After setting and formulating the tasks and objectives, decision-making is virtually transferred to the State organs, where an important part is played by a special apparatus. The duty of this apparatus is primarily to get acquainted with and understand the problem in its smallest details and, on this basis, to search for and explore such possibilities which may help to develop social relations in the desired direction, as planned. It is also of great importance that the possible reactions to how the different values and interests are affected by one or the other variation of the decision should be carefully considered.

(d) In the political system of socialist society, the special apparatus of the State organization has a highly important role, in addition to preparing alternative decisions, in — formally — influencing the choice between the alternatives. Thus the prime function of the State political organs is to supervise the draft decisions submitted for approval by the apparatus. As far as this corresponds to the interests given high priority by the political system and to its aims, and is in harmony with the conditions and possibilities determining the content of the decision, these organs confirm the

decision, with the legal authority vested in the State organization and the decision becomes thereby a rule of law.

(e) The technical completion of the process of deciding takes place again on the plane of the special apparatus. When the decisions are formulated, they have to be forwarded to the addressees through adequate communication channels.

Of course, the above-discussed, roughly outlined model describes only in general terms the process of decision-making in the context of the political system of socialism. In real life, this process is much more complex and conflicting. Let us refer to the fact that the socio-political organs may be broken down by their elected, representative parts and by their special apparatuses, and may have a part in the process of initiating the elaborated decisions. On the other hand, the special apparatus not only performs work of a technical, specialist nature, but also political elements appear in it, with their own inner structural interests. Besides, there are political decisions which are not given legal expression, even if they originate with the State organization.

The completion of the process of deciding is also highly comparative by nature; comparing bits and pieces of information received about the realization of the decision with the situation regulated in the decision (i.e. control) is nothing less than the *feedback mechanism* of the process of deciding. This, on the other hand, may serve as a source of information for fresh decisions. The processes of deciding grow out of each other this way.

Of the social context of decisions, it is imperative to discern, which social group or groups have the opportunity to direct the social relations. Behind every political idea the theoretical generalization of the experience drawn from the actual relations of practical power is to be found, showing which form of sharing in the decision can be considered the most appropriate. The manipulation — even if not in the modern sense of the word — runs through the political and historical development up to the present and its essence may be summarized in how much the subjects of and persons interested in the decisions can succeed — when aware of the objects of decision — in opposing or, at least, changing the relations of interestedness "narrowed down" to the form of "false awareness." The point is the interconnection between democratic conceptions, formulated for the most part by political and legal norms and of the practice of deciding, which expresses and reflects actual power-relations, and within these relations a question formulated under modern conditions, or mostly so: to which extent is the availability or non-availability of (having or not having access to) information a determining factor of the actual participation in decision-making.

After the bourgeois revolutions, the illusion still survived for a time that the ideas of the revolutionary ideology may be translated completely into the political practice of the new social formation. But only a short time had to elapse before the unrealizability of this conception became evident. The modern *capitalist* State kept itself at a distance not only from those lacking economic power but — at least relatively — *from the ruling class, as well*, though not when expressing interests, but when acting in its decision-making capacity. In this way grew the democratic corporative organ into such an authority (being most of the time an opposer of legal regulation) where decisions made elsewhere are upheld and validated. The executive authority is, only, even at best, a mediator between extra-parliamentary forces (and even

forces outside the State). The various representative forms have by now mostly lost their authority as institutions.

Sociology, by throwing light on the contradictions between the norms of the decision and those of the actual situation, made the first step towards revealing the difficulties. On principle, there are three solutions to the contradiction: either, in future, reality be better adjusted to and fall into line with the norms (though these are often provisional and based on statistical estimates), or the normative regulation should take into better consideration the actual situation, or a balance should be established between the two methods. As the norm always means change, something different from the existing situation, the objective character of the change corresponding to the objective, actual possibilities should be guaranteed for the decisions. S. Verba rightly sees the difference between *actual* and *formal* decisions in this very contradiction, the solution to which has to be *to find the real social and value factors of the decision*.

The decision-making mechanism is not free even in the socialist State from a dysfunction viz. that, in most organizations and in their structure — possibly just despite the norm —, decisions are made *in an administrative way*. To eliminate this and keep a check on administration, one of the possible means considered was formulated into the idea of self-administration. According to this conception, self-administration integrates the forms of activity alienated from the employees and workers, restores the unity of physical and intellectual activity, science and production, decision making and execution. Exponents of this conception argue that the real centres of decision making, in certain periods of historical development, fell beyond the scope of the representative organs, but — in the opinion of the partisans of self-administration — it is no longer so, because all those who obtained a right to do so, by virtue of their work, are allowed to participate in decision making.

An analysis from the point of view of practice raises certain problems concerning this conception. The members of a group cannot express adequately their real interests in the course of their instinctive actions if these do not fully correspond to the objective conditions. But the highly complex relations of modern society do not make spontaneity possible or, at least, they restrict it within a very narrow scope; they require a conscious, purposeful, feasible and pre-planned activity. The institutionalized framework of this activity is the organization: a machinery for integrating the interests, which, in its turn, promotes and ensures the formation of *communal interest* springing from various, conflicting individual interests that cannot be represented individually in a mechanical way. On the other hand, the decisions implemented in the form of broad social measures, for want of well-grounded expert information, must in all probability be merely formal.

The analysis of the relations between decision and organization refers to the problem that the system of information is part of the ruling hierarchy (just as well as the the system of decision, and to the same degree). Though these two systems are not identical, they cannot be separated, all the same. So all investigations made within the organization concerning communication inevitably comprises the element and machinery of decision-making, as well. The conditions governing the process of deciding suppose that the subject "should have at his disposal some partial information, an *a priori* probability." Lacking this, no rational pattern of decision can be established.

The opinion that information about the object of decision may be an

indifferent or passive element in the decision is an illusion. *To have access to adequate information* is an advantage to those exerting influence on the decision; the reconcentration of decision-making into few hands can be achieved either by hindering and preventing decentralization, or by keeping back and monopolizing pieces of knowledge needed to making the decision. Equally, the guarantee of democratic rights in itself does not ensure the participation in deciding, because the information need of civic activity is in inverse ratio to that of the conflict situation.

What kind of information types are needed for the process of deciding? *L.F.Ward* stated as early as the turn of the century that "nobody should consider himself able to make laws who is not acquainted, at least, with the history of modern organizations, their different systems of money, tax, public works, education, etc. their military and naval resources, their jurisprudence, constitutional and unrecorded laws."

Organs of direction on the same level may be given pieces of information which are different from or identical with the information obtained by a system of direction at a different level. The reason why this is so is that *the social relationship serving as object of the decision determines the nature of information about which a decision has to be made*. Therefore, only information originating from outside the given system of deciding can be noncommittal to the decision, though, evidently, in another constellation, these factors can also be relevant and act — by mediation — as effective information, even by themselves.

The determinants of the process of deciding have to be sought in the context of the object of decision. The reflection of this context does not appear in the consciousness before the moment of deciding. The quantity of information in itself has no determining role. We have, therefore, to strive to have at our disposal a body of information in adequate quantity and quality about the initial situation, the change in the structure, about the aim of the decision, the context, the objective factors etc. From these, we may come to the conclusion that the scientific elaboration of an information system for the purposes of decision is much needed, because the lack of this system makes the possibility of forming irrational decisions more likely. Despite the formulations of positive law, we should face these facts.