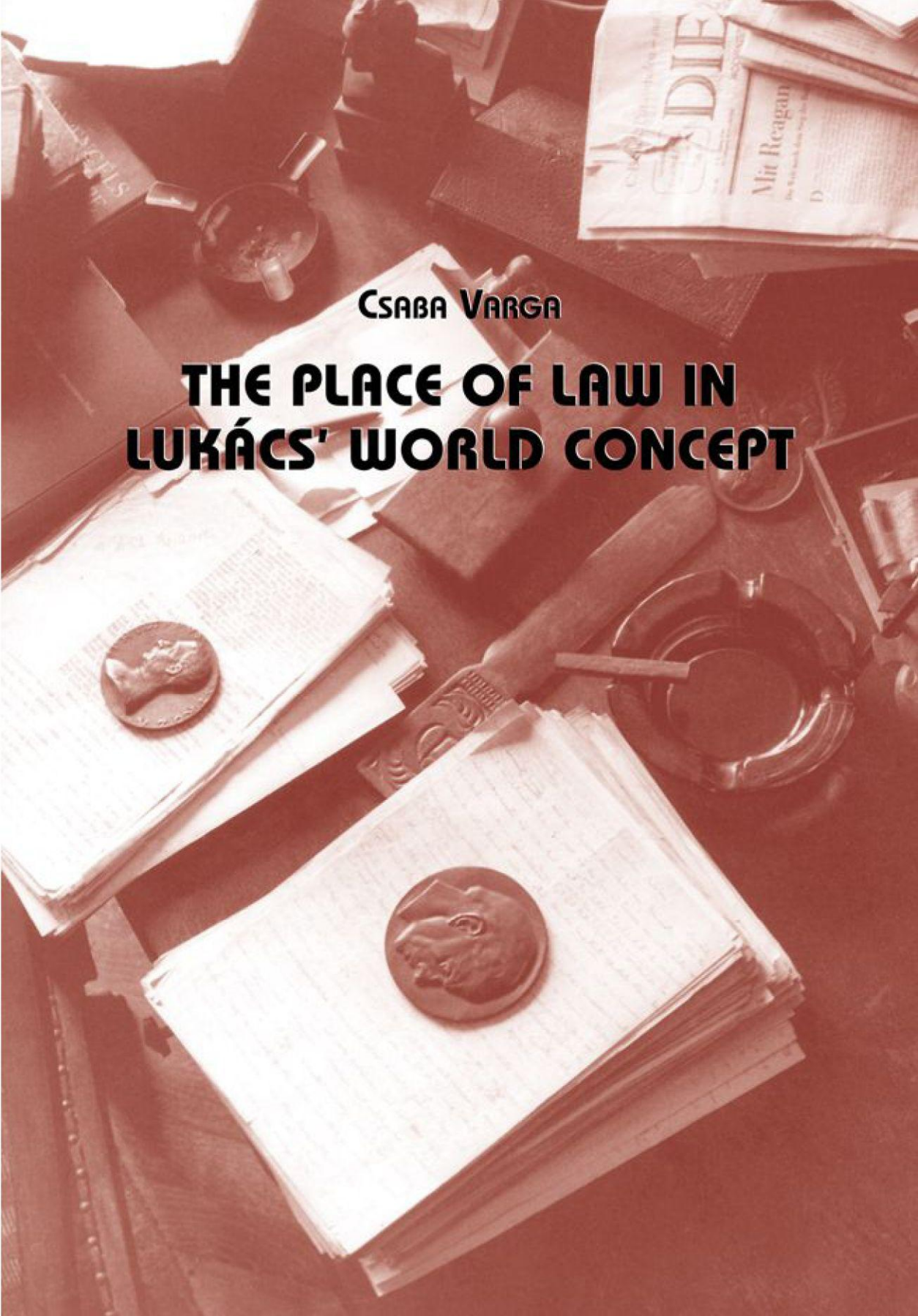


A red-tinted photograph of a cluttered desk. In the foreground, there are two stacks of papers. The top paper of the larger stack in the lower center features a circular portrait of a man. To its left, another stack of papers has a similar circular portrait. A magnifying glass is positioned in the upper left, and a pen lies horizontally across the middle. In the upper right, a newspaper is partially visible with the headline "Mitt Reagan" and the word "DIE" in large letters. The overall scene suggests a workspace of research or investigation.

CSABA VARGA

THE PLACE OF LAW IN LUKÁCS' WORLD CONCEPT

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by

CSABA VARGA

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Budapest 2012

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PREFACE

The question of the organization of society has preoccupied thinkers for thousands of years. Every system of philosophy with a claim to observe social reality must inevitably form an opinion concerning the foundations and methods of organizing society. The questions of *what* social order should be implemented and *in what way*, emerged as two distinct questions at a relatively early stage of evolution. As an issue of content, the question of what the social order should be like requires a meaningful reply that depends on the social situation, world outlook and value judgement of the thinkers in question. As a question of form, the issue of how this social order should be implemented may also be answered in several ways. However, these responses can be easily reconciled. Their common feature is that in one way or another, they all lead to the problem of the institutionalization of the exercise of power.

The answer to the question of how power should be exercised cannot evade the question of law either. Institutionalization is especially striking in law, since even the most primitive legal forms suppose an institutional system operating with certain independence. The specific phenomenon of law and its implementation in specific forms engaged the attention of thinkers long ago. Of course, politics was also of great importance for the early thinkers who only allotted (or denied) law a place and a significance within politics. What I have in mind here is naturally not the utopian ideas that have always accompanied the history of human thinking, but rather those philosophies which suggested to utilize or reject the possibilities offered by the methods of the law, taking the given state structure for granted. Thus, possible replies will take two different directions as we come to the institutionalization of the law. The earliest and perhaps the clearest example to illustrate how thinking on law centers around questions of institutionalization shifting between the two poles of thought, might be the dispute between Plato and Aristotle. Plato outlines the image of an ideal state with perfect planning and organization, one that exists only in the world of dreams. His state is ruled by philosophers

who, in the possession of knowledge, are always able to tell what is the best and the most equitable for both the community and each of its members. So the question of what is good and what is equitable falls into the realm of cognition. According to Plato, however, this can lead only to the rule of man and not that of the law. For if written law with its general principles is unable to define what is the best and most equitable for everyone, how could it do so in concrete cases concerning individuals? For Aristotle it is highly doubtful whether a statement of facts leads to a statement of values, in other words, whether the choice of values belongs to the sphere of cognition. Therefore he is setting the rule of the law against the rule of man. Admittedly, he considers the possibility of an occasional irreconcilable gap between the general and the individual, cases in which our measurement is no longer the law, but rather the yardstick invented by the masters in Lesbos that follows the object of measurement as softly as molten lead. But Aristotle is of the view that most of the state affairs are not like this and therefore require judgement on a general level. In other words, the philosopher may be wise, but his wisdom must become general through the Constitution of the State before everyone can benefit equally from it. And the idea includes the recognition that an order of a given content is in itself no longer sufficient for social well-being: the well-being of society also requires the organization of this order in a given form.

The road leading from the rejection to the acceptance of the law has been covered by almost every original major philosophy. Marxist thinking is no exception either. Marxism found itself confronted with this question when it faced the task of assessing the present that it wanted to exceed and of creating a new reality from its own teaching as the theory of a victorious revolution. This was the road covered by Marxism and also by Lukács.

Lukács became a Marxist when the socialist revolutions in Russia and then in Hungary were to lay the foundations of a new society without recognizing in their theory the fact that the new society could only surpass the old law in content: to fulfil its *own* organizational tasks, it needs a system of institutions drawn from the *old* form. And he wrote his posthumous work, terminating and at the same time synthesizing his lifework, at a time when socialist society had done away with several expectations that turned out to be mere illusions in the field of law. At the same time, he made considerable efforts to work out a genuinely Marxist theory of law on a comparative basis clarifying the question of the relationship with other legal arrangements, a task that could also satisfy specific technical requirements one can expect of the study of law.

The present book discusses Lukács and the law from three aspects.

First, it attempts to bring to the surface biographical and theoretical motives that point to Lukács' early encounter with problems of law, and also to define the sources of Lukács' legal erudition. Secondly, tracing the activity of Lukács as a thinker, it presents and analyzes within the context of his oeuvre, and especially from a methodological point of view those trends that amounted to the nihilization of the law, as well as those that subsequently led to the acceptance and approval of the system of institutions of modern formal law. Third, it discusses with the greatest emphasis and in the kind of detail the theoretical importance of the problems raised by the philosophical exposition of modern formal law.

The sphere of problems involved here is not limited to classical ones, such as the duality of *morality* that only pays attention to inner content, and *legality* that relies on nothing but external criteria, or that of *natural law* that tries to find criteria outside the law and *positive law* that accepts these only inside the law, but also covers some questions of legal theory that in their current form have perhaps only been expressed in philosophical terms in Lukács' *Ontology*. These questions include, for instance, the understanding of the legal phenomenon as a complex of mediation and, within it, the place of legal objectification; the way in which the dialectics of the use of coercion appears in the law; the role of the qualities of the logical, the formal and the systematical in the processes of law, and how manipulation shapes them in actual practice; how to interpret the relationship between the law and reality; what to regard as the characteristic feature of the formation of concepts in the law; how all these are embroidered by the ideology of the everyday practice of the legal profession, with its contradictory content and function; and finally, as both a precondition and an outcome of all these, the question of what the relative autonomy of law consists of, together with the manifestations, consequences, and manifold limitations of that autonomy.

As for the legal-philosophical interpretation of Lukács' *oeuvre*, I was greatly helped by discussions with Professor Vilmos Peschka, although the differences arising from our clash of views were seldom resolved. Discussions with Mária Lónyai assisted me in the work of improving my manuscript and in reconsidering some of its assertions. I am also indebted to the Lukács Archives and Library (under the auspices of the Institute for Philosophy of the Hungarian Academy of Sciences in Budapest) for making available several documents and other sources I have used in this work, and to Professor Ferenc Jánossy, the holder of all

Lukács copyright, for granting me permission to quote the so far unpublished material bearing the mark LAK. I am also grateful to my wife, Ágnes Liptai who was among the first to read this book and who instructed me in linguistic simplicity and clarity of style.

The present work synthesizes and not infrequently goes beyond my several earlier attempts at interpreting Lukács. Among these, a study originally written in 1974 ["Rationalitet och rättens objektifiering", in: *Rationalitet i rättssystemet*, ed. U. Bondeson, Stockholm, LiberFörlag, 1979, pp. 84–113 and pp. 221–223; in its original language "Rationality and the Objectification of Law", *Rivista Internazionale di Filosofia del Diritto* LVI (1979) 4, pp. 676–701; and in its original context, *Codification as a Social-Historical Phenomenon*, Budapest, Akadémiai Kiadó, forthcoming, ch. X, §§ 1–2] sought to analyze and use within a codification theory the rationality concept developed in Lukács' *History and Class Consciousness*. The problems related to codification were confronted with the lessons drawn from Lukács' *Ontology* by the paper on a theme marked out in Paris ["La question de la rationalité formelle en droit: Essai d'interprétation de l'*Ontologie de l'être social* de Lukács", in *Archives de Philosophie du Droit* 23 Paris, Sirey, 1978, pp. 213–236]. Attempts to interpret Lukács' *Ontology* from the point of view of philosophy of law were made in lecture [*Formal Rationality of Law in the Light of Lukács' Ontology*, presented on May 26, 1977, at the international seminar on "Rationalitet och rationalisering i lagstiftning och rättstillämpning" organized by the Lund University Department of Sociology, rotaprint, pp. 1–22; in a revised version "The Concept of Law in Lukács' *Ontology*", *Rechtstheorie* X (1979) 3, pp. 321–337]. A short survey that tried to use some considerations offered by the *Ontology* for firmly separating the sphere of validity and actual functioning of the law came in the form of an improvised contribution to a debate ["Geltung des Rechts – Wirksamkeit des Rechts", in: *Die gesellschaftliche Wirksamkeit des sozialistischen Rechts: Probleme ihrer Begriffsbestimmung und Messung*, Internationales rechtstheoretisches Symposium des Instituts für Theorie des Staates und des Rechts der Akademie der Wissenschaften der DDR von 29. 11. bis 1. 12. 1977 in Berlin, Berlin, 1978, pp. 138–145]. A paper presented at a seminar of the *Centre de Philosophie du Droit* on December 13, 1977, was written on a commission from Paris ["Chose juridique et réification en droit: Contribution à la théorie marxiste sur la base de l'*Ontologie* de Lukács", in: *Archives de Philosophie du Droit* 25 Paris, Sirey, 1980, pp. 385–411] which, due to its quite independent subject matter, has also been included in this volume in an amended form

as an Appendix. Finally, in 1979, at the time of writing the book, I wrote a brief but comprehensive study aiming a kind of temporary summary [“Towards a Sociological Concept of Law: An Analysis of Lukács’ *Ontology*”, *International Journal of the Sociology of Law* IX (1981) 2, pp. 157–176] which, in its original form, was to be discussed by students of law and philosophy in Hungary.

The Author

ABBREVIATIONS

<i>Ajurid.</i>	<i>Acta Juridica Academiae Scientiarum Hungaricae</i>
<i>Apitzsch</i>	U. Apitzsch, <i>Gesellschaftstheorie und Ästhetik bei Georg Lukács bis 1933</i> , Stuttgart-Bad, Frommann-Holzboog, 1977.
' <i>Arbeit</i> '	G. Lukács, <i>Zur Ontologie des gesellschaftlichen Seins: Die Arbeit</i> , Neuwied and Darmstadt, Luchterhand, 1973.
<i>C</i>	H. H. Holz-L. Kofler-W. Abendroth, <i>Conversations with Lukács</i> , ed. T. Pinkus, trans. D. Fernbach, London, Merlin, 1974.
<i>EA</i>	G. Lukács, <i>Die Eigenart des Ästhetischen</i> , 2. Halbband, Neuwied am Rhein and Berlin-Spanndau, Luchterhand, 1963.
<i>Engels</i>	F. Engels to K. Schmidt in Berlin (October 27, 1890), In: <i>MESW</i> III.
<i>Eörsi</i>	Gy. Eörsi, <i>Comparative Civil (Private) Law</i> , Budapest, Akadémiai Kiadó, 1979.
<i>Eörsi 'Lukács'</i>	I. Eörsi, "György Lukács, fanatic of reality" <i>NHQ</i> XII (Winter 1971), No. 44.
<i>Feher et al.</i>	F. Feher-A. Heller-Gy. Markus-M. Vajda, "Notes on Lukács' <i>Ontology</i> ", <i>Telos</i> (Fall 1976), No. 29.
<i>H</i>	G. Lukács, <i>Der junge Hegel</i> , Neuwied, Luchterhand, 1948.
<i>HCC</i>	G. Lukács, <i>History and Class Consciousness: Studies in Marxist Dialectics</i> , trans. R. Livingstone, London, Merlin, 1971.
<i>Hermann</i>	I. Hermann, <i>Die Gedankenwelt von Georg Lukács</i> , Budapest, Akadémiai Kiadó, 1978.
<i>Israel</i>	J. Israel, <i>L'aliénation de Marx à la sociologie contemporaine</i> , Paris, Anthropos, 1972.

- Kulcsár* K. Kulcsár, *A jogszociológia problémái* (Problems of the Sociology of Law), Budapest, Közgazdasági és Jogi Könyvkiadó, 1960.
- 'Labour'* G. Lukács, "*Labour as a Model of Social Practice*", *NHQ* XIII (Autumn 1972), No. 47.
- L* Gy. Lukács, *Lenin*, ed. M. Vajda, Budapest, Magvető, 1970.
- LAK* MTA Filozófiai Intézete Lukács-Archívum és Könyvtár (Lukács Archives and Library), H-1056 Budapest, Belgrád rakpart 2.
- 'Lenin'* Gy. Lukács, "Lenin és az átmeneti korszak kérdése" (Lenin and the Problem of the Transitional Era), a fragment from *Demokratisierung heute und morgen* (MS 1968) published only in parts and available only in Hungarian translation in *L*.
- Marx* K. Marx, *Capital* I, Moscow, Progress, 1977.
- 'Marx'* G. Lukács, *The Ontology of Social Being: Marx's Basic Ontological Principles*, trans. D. Fernbach, London, Merlin, 1978.
- MECW* K. Marx and F. Engels, *Collected Works*, Moscow, Progress, 1975.
- MESW* K. Marx and F. Engels, *Selected Works* I-III, Moscow, Progress, 1969-1970.
- Mészáros* I. Mészáros, *Marx's Theory of Alienation*, 3rd ed., London, Merlin, 1972.
- NHQ* *The New Hungarian Quarterly*
- P* Gy. Lukács, *A társadalmi lét ontológiájáról* (Zur Ontologie des gesellschaftlichen Seins) III: *Prolegomena* (Prinzipienfragen einer heute möglich gewordenen Ontologie), Budapest, Magvető, 1976. For the German original, see the last MS typed with autograph corrections, *LAK* M/153.
- Peschka* V. Peschka, *Grundprobleme der modernen Rechtsphilosophie*, Budapest, Akadémiai Kiadó, 1974.
- Popperné Lukács* M. Popperné Lukács, "Emlékeim Bartókról, Lukács Györgyről és a régi Budapestről" (Recollections on Bartók, George Lukács and the Old Budapest), In: *Magyar zenetörténeti tanulmányok Kodály Zoltán emlékére* (Studies in the History of Hungarian Music—to the Memory of Zoltán Kodály), Budapest, Zeneműkiadó, 1977.

- 'Postscriptum'* G. Lukács, „Postscriptum 1957 zu: Mein Weg zu Marx”, in his *Schriften zur Ideologie und Politik*, ed. H. Maus and F. Fürstenberg, Neuwied and Berlin, Luchterhand, 1967.
- 'Preface'* G. Lukács, “*Preface to the new edition*” (1967), In: *HCC*.
- S* G. Lukács, “Solzhenitsyn’s novels”, in his *Solzhenitsyn*, trans. W. D. Graf, London, Merlin, 1969.
- Sz* Gy. Lukács, *A társadalmi lét ontológiájáról* (Zur Ontologie des gesellschaftlichen Seins) II: *Szisztematikus fejezetek* (Die wichtigsten Problemkomplexe), Budapest, Magvető, 1976. For the German original, see the last MS typed with autograph corrections, *LAK M/120* (ch. II, pp. 135–333), *LAK M/124* (ch. III, pp. 335–562), and *LAK M/127* (ch. IV, pp. 563–824).
- Szabó* I. Szabó, *Les fondements de la théorie du droit*, Budapest, Akadémiai Kiadó, 1973.
- T* Gy. Lukács, *A társadalmi lét ontológiájáról* (Zur Ontologie des gesellschaftlichen Seins) I: *Történeti fejezetek* (Die gegenwärtige Problemlage). Budapest, Magvető, 1976. For the German original, see the last MS typed with autograph corrections, *LAK M/105*.
- TE* G. Lukács, *Tactics and Ethics: Political Writings 1919–1929*, ed. R. Livingstone, trans. M. McCollgan, London, NLB, 1972.
- UM* Gy. Lukács, *Utam Marxhoz* (My Road to Marx) I, ed. Gy. Márkus, Budapest, Magvető, 1971.
- Varga 'Codification'* Cs. Varga, *Codification as a Social-Historical Phenomenon*, Budapest, Akadémiai Kiadó, forthcoming.
- Varga 'Law'* Cs. Varga, “Law and Its Approach as a System”, *Ajurid.* XXI (1979) 3–4, reprinted in *Informatica e Diritto* VII (1981) 2–3.
- Varga 'MTK'* Cs. Varga, „Az elméleti jogi gondolkodás alakulása a Magyar Tanácsköztársaságban” (The Development of Theoretical Legal Thinking in the Hungarian Soviet Republic), *Allam- és Jogtudomány* XII (1969) 2.

- Varga 'Rationality'* Cs. Varga, "Rationality and the Objectification of Law", *Rivista Internazionale di Filosofia del Diritto* LVI (1979) 4.
- Varga 'Reasoning'* Cs. Varga, "On the Socially Determined Nature of Legal Reasoning", *Logique et Analyse* (1973) Nos. 61–62, reprinted in *Études de logique juridique* V, ed. Ch. Perelman, Brussels, Bruylant, 1973.
- Varga 'Utopias'* Cs. Varga, "Utopias of Rationality in the Development of the Idea of Codification", In: *Archiv für Rechts- und Sozialphilosophie*, Beiheft Nr. 11, Law and the Future of Society, Wiesbaden, Steiner, 1979, reprinted in *Rivista Internazionale di Filosofia del Diritto* LV (1978) 1.
- Vyshinsky I* A. Y. Vyshinsky, *Voprosi prava i gosudarstva u Marksa* (Questions of the Law and State in Marx's Oeuvre), Moscow, 1938.
- Vyshinsky II* A. Y. Vyshinsky, "The Fundamental Tasks of the Science of Soviet Socialist Law" (1938), In: *Soviet Legal Philosophy*, trans. H. W. Babb, Cambridge, Harvard University Press, 1951.
- Vyshinsky III* A. Y. Vyshinsky, *Voprosi teorii gosudarstva i prava* (Questions of the Theory of State and of the Law), Moscow, Gossizdat. Yuriditsheskoi Literatury, 1949.
- ZV* G. Lukács, *Die Zerstörung der Vernunft*, Neuwied am Rhein and Berlin–Spandau, Luchterhand, 1962.

INTRODUCTION: LUKÁCS AND THE PROBLEMS OF LAW

At first glance, the title "Lukács and the Problems of Law" appears to be so strange and even so bizarre that one might be tempted to say with a little irony that only a jurist could come up with such an idea. And indeed, the facts also seem to testify the absurdity of this thought. When Lukács was seriously ill at the end of his life and was no longer capable of independent creative work, his pupils, relatives and younger colleagues taped several hours of conversation a day with him, attempting to save his recollections for posterity and at the same time to comfort Lukács with the reassuring feeling of meaningful human activity. The topics of these conversations included the master's childhood memories, fascinating details of his ties with the working class movement and the difficulties present-day society had to face. In the process of recalling the most important lessons of a lifetime, neither Lukács nor his interlocutors (including István Eörsi, Erzsébet Vezér, Ferenc Jánossy, László Szamuely and others) thought of channelling the conversation toward legal problems with the purpose of confirming the accuracy of biographical details or supplementing theoretical ideas. The huge material lacks any such question or reply. Only a few remarks made in connection with other problems offer the jurist a kind of spring-board to reveal some sort of relationship with law, fragmentary though they may be. Law is not mentioned either in the fifty-five manuscript pages of Lukács' last work, the fragmentary *Gelebtes Denken*, an intellectual biography which Lukács intended as a kind of summary of his lifetime experience.

If one followed the methodological guidance of the *Ontology* according to which nothing gains social existence but what appears and exercises an influence as such and if, on that basis, one would try to analyse Lukács' oeuvre with a view to discover how much Lukács was conscious of, then one should admit that there was no genuine relationship with law in Lukács' life.

This suspicion finds support in several other circumstances.

As far as personal contacts are concerned, we know that two distinguished Hungarian legal thinkers of the age, Károly Szladits and Ruzssem Vámbéry frequently enjoyed the hospitality of Lukács' father, József Lukács, as friends of the family.¹ We do not know whether György Lukács himself was involved in any way in that relationship. Although the Lukács correspondence that has come down to us, includes a few letters from Szladits, the letter writer only congratulates Lukács on winning awards and does not refer to more than an occasional expression of respect. As far as the most outstanding legal thinkers of present-day Hungary are concerned, Lukács' correspondence reveals that he was in touch with Imre Szabó and Gyula Eörsi, but these contacts were of a rather official nature and were not directed towards an exchange of thought between the philosopher and the legal thinker.

This picture (or absence of it) is not altered by the examination of Lukács' personal library, either. Although one is taken aback by the richness and the breadth of Lukács' interests, the collection does not bring anyone closer to the answer of the basic question. It is only natural that works of the classics of philosophy on philosophy of law are there on his bookshelves and it is equally natural that there are also a few works of legal concern by 20th century representatives of Western thinking with an almost universal interest, such as Max Weber or Hans Kelsen. But apart from a few works on legal theory, which Lukács had come across through his early friendships, his library is extremely poor in books on jurisprudence. After his return to Hungary, he not only failed to reacquire works he had once studied or encouraged, but he did not even keep most of the books he was bound to receive as an academician.

So, the most one can say is that Lukács' meeting with law is incidental and coincidental and does not reflect an interest in the specific, inner world of the law. But the author does not want to discourage the reader, for in the following he wishes to show that Lukács, one of the most significant 20th century representatives of Marxism, albeit unconsciously and without premeditation, produced many valuable ideas relevant to law.

An examination of these points of interest may add to the existing body of knowledge about Lukács and even to the philosophical evaluation of his oeuvre and, one hopes, may be of direct relevance to a renewal of Marxist legal thinking. The seemingly paradoxical need to stitch together a

¹ *Popperné Lukács*, p. 401, and also A. Gyergyai, "Egy barátságos ház története" (The History of a Friendly House), in: *Magyar zenetörténeti tanulmányok Kodály Zoltán emlékére* (Studies in the History of Hungarian Music—to the Memory of Zoltán Kodály), Budapest, Zeneműkiadó, 1977, p. 414.

more or less coherent concept of law from morsels, fragmentary references of a complex and wide-ranging oeuvre does not detract from the value of research. On the contrary, it makes it theoretically more exciting and topical. One should not forget that not even Marx's and Engels' works offered a coherent legal theory; they give only a methodological framework, embedded in discussions of economic and philosophical problems. Their occasional remarks on law had to be reconsidered in the context of their systems of ideas before they could be developed into a legal theory of Marxism.

In this study, I shall try to trace Lukács' occasional encounters with law and the emergence of a definite legal concept in the *Ontology*, the summary of his lifework, holding out the promise of a new Marxist legal theory.

These explications will be mosaic-like. No biography of adequate depth has emerged so far amongst the numerous existing detailed studies concerning but the various aspects of Lukács' life. Many vague points will be subjected to close scrutiny. The main point is, however, that Lukács' views on law have a fragmentary nature. This is explained by the fact that Lukács did not have a genuine interest in law as such, as it has already been indicated.

As a literary critic, Lukács is often criticized for his priorities do not lie with literary creation itself, but with the political and social context (or rather the context as he sees it) of the work in question. Avoiding to analyze the legitimacy of this criticism of Lukács or the scholar's attitude from which it grows out, however, one undoubtedly finds an analogous phenomenon in the case of law. Law usually has the role of illustrating something else in most of Lukács' ideas. What determines Lukács' attitude to the problems of law is that the decisive question for him is always the whole as given at any time, the totality, which, when translated into the context of social and political events, amounts to the issue of power, the prime regulator of social and political conditions. Law serves him with good examples and he is quite willing to go into legal issues when talking about the tactic or strategy to be adopted, but his interest is hardly more than incidental. In his train of thought, law is merely a component of more comprehensive units, an instrument of politics. And Lukács is interested in the relationships between these major units and not in the inner world of the law.

His fragmentary discussion in *Towards the Ontology of Social Being* does not go beyond this level of interest, either. But I have been encouraged to write the present study by the radically different way in which Lukács outlined the problems of law in that work. For in the

Ontology, the extremely complex nature of social mediations, that among other things also infers specific functioning of relatively autonomous complexes of being, is of decisive importance. And to illustrate this, Lukács could not have found a better example than law which is a formally autonomous formation, still it is organically built into the system of social activities. So law no longer appears here as a simple functional subordination to the whole as given at any time (politics, economy, etc.), but appears, on the one hand, in its specific motion influenced by the formal enactment of a system of norms and, on the other, in the dialectical contradiction (apprehensible only ontologically) that breaks through the logic of this specific motion in its everyday actualization and, by various manipulations, channels it towards practical compromise solutions.

PART ONE

**PRELIMINARY SKIRMISHES WITH
THE QUESTIONS OF LAW**

CHAPTER 1

ENCOUNTERS OF THE YOUNG LUKÁCS WITH LAW

Viewing Lukács' oeuvre as a whole, one will come across a paradox that indicates a few question marks. The treatment of the subject of law in the posthumous *Ontology* bears witness of extraordinary sensitivity towards legal issues. The subtle rules of the inner working of the law will in general remain hidden to the outside viewer. Consequently, when the latter attempts to apply to the sphere of law the experiences and knowledge he has gained in other fields, he may expose himself to a fallacy. Lukács' case is completely different. His *Ontology* reflects a level of expertise and sensitivity high enough to give the scholar of legal theory food for thought, not only with respect to many of his philosophical and methodological messages but also to the truth of what he was to say about law.

What makes this rather strange is that neither Lukács' work nor his career reveals the trace of such an intimate and understanding relationship to the problems of law.

As far as Lukács' oeuvre is concerned, as mentioned in the introductory chapter, the few places where law is mentioned lack emphasis and come in contexts that do not infer an exploration of the inner world of the law: for instance, the repeated assertion of the theoretical untenability of rigidly opposing, as Kant had done, *morality* (that studies behaviour as a whole, with a view to all its aspects) and *legality* (that judges behaviour on the basis of predetermined formal criteria and its external features); or the acceptance or rejection of the existing legal order as a component of the given state structure, a decision related to the political assessment of a strategy or tactics to be adopted in the most different situations. The papers collected in his *History and Class Consciousness* may be the only exception, where *Reification and the Consciousness of the Proletariat* sets forth its central message largely on the basis of the legal structure. However, as we shall see, this is due to a rather misunderstood and ideologically overdramatized interpretation of Max Weber's view, which engenders an incorrect adaptation of Marxism.

There are similar gaps in Lukács' life. Indicative of the many-sidedness of his interests, his enthrallingly rich library founded upon the collection of László Cs. Szabó, a Hungarian essayist in exile who lived in London since 1951, reveals no legal interest of any depth or width. Similarly, there are no jurists among his friends and pupils who might have played the kind of fermentative role Bence Szabolcsi had in explaining the musical aspects of Lukács' *Aesthetics*.

Our attention turns obviously to Lukács' early years, when chance led him to legal studies and encounters with people who were not only preoccupied with problems of the philosophy of law, but were also going through a period in which they were growing into independent thinkers, while this process helped to outline their first major works.

At the same time, these components of Lukács' career are not without certain contradictions.

On the one hand, we can reconstruct from stray indications events which are of interest to us and we can ascertain the role they might have played in shaping Lukács' intellectual make-up. For, in the absence of any other, more appropriate evidence, we must attach importance to these events concerning Lukács' knowledge of and sensitivity towards legal problems.

On the other hand, all we can give account of are things that merely happened to him, without leaving any lasting imprint. As a result of this ambiguity the events in question were simply forgotten both by Lukács and his contemporaries and pupils who have studied his intellectual biography. So all one can reconstruct in this chapter by way of a sketch is a contribution to Lukács' intellectual biography, spanning a period of more than half a century and perhaps offering some information on the sources of the analyses of law in his *Ontology*. As biographical episodes, they certainly bear the marks of Lukács' development as a person and a thinker and therefore may contribute to a fuller picture of Lukács' career and to successive Lukács studies. At the same time, they are also messengers of a sunken world: contacts, impressions and influences that only came to light in the twenties, but were not organized into organic components of a whole until half a century later in Lukács' posthumously published, final work, the *Ontology*.

1.1 LEGAL STUDIES

György Lukács entered the Faculty of Law and Political Sciences of the Royal Hungarian Péter Pázmány University of Sciences around 1902, but passed his examinations at the same faculty at the Royal Hungarian Franz

Joseph University of Sciences at Kolozsvár (now Cluj-Napoca, in Romania) where he received his doctorate in political sciences on October 6, 1906.

These were all extrinsic events hardly worth mentioning. The faculty to which he had enrolled and the studies he decided to specialize in do not feature in his recollections at all. Nevertheless it may be of interest to piece together disparate family recollections.

For instance, his father's only reference to that period is from the Heidelberg years: 'Your two doctor's diplomas are at home. . . Tell me whether you want them both be sent to you, or only your doctorate in philosophy.'² This is how his sister recollects her memories about that period: 'After matriculation, Gyuri entered Budapest University. I imagine he did not know what he wanted—perhaps everything'.³ Finally, Lukács himself, when giving account of his major intellectual experiences ten years later, uses the term 'university years' to describe a period that, regardless of his official studies, found him in independent, deep studies that led to a 'widening of his reading'. This confirms the probability that the fact that he was a student became clear to him only when his official studies turned into real ones.⁴ Amongst the first books read during the university years, Lukács mentions Schlegel and Novalis, whose names first appeared in an article by him and which appeared in the periodical, *Huszadik Század* (Twentieth Century), in August 1906, i. e. at the time of his university examinations.

What has been said so far might suggest that Lukács was not too preoccupied with his legal studies.

It is well known that in this period (in 1902, 1903 and 1906), he published exclusively on theatrical questions.

Why did he choose to study law at all?

The motives might include pressure by his father or the need for a financially safe future. The first assumption seems to be refuted by the liberal atmosphere of the Lukács family, where everyone was allowed to proceed on the course of his choice and where the exertion of parental influence never went beyond loving care.⁵ And, contradicting the second

² J. Lukács to Gy. Lukács in Budapest (May 19, 1913). *LAK M/26*.

³ *Popperné Lukács*, p. 401.

⁴ In: *Könyvek könyve* (Book of Books), ed. B. Kőhalmi, Budapest, Lantos, 1918, pp. 166–168; reprinted in: Gy. Lukács, *Ifjúkori Művek* (Early Works), ed. Á. Timár, Budapest, Magvető, 1977, p. 766.

⁵ It was in this sense that e.g. his sister reproached him over his first marriage that 'the first time when he [the father] asked you not to marry yet, but to wait for a few months (I think that was the first thing he had ever asked), you flatly refused.' M. Lukács to Gy. Lukács in Roisschach (?), *LAK M/237/1*.

assumption we have some information according to which, from the 1910s on, his father took firm steps to create for his son the financial conditions in which he could concentrate on his intellectual endeavours.⁶ But these observations are blunted, if not completely refuted, by the uncertainty of drawing conclusions from the relationship between the father and his 26-29-year-old son to relationship ten years earlier. For instance, the sister, Mici Lukács mentions several times that with his second degree in his pocket (the one corresponding to his real interests), Lukács 'himself tried to work for a living' and she presents this attempt as a decision prompted by inner urge.⁷

Extremely vague as they are, all these still seem to point in a definite direction when combined with the attendance figures of the Budapest Faculty of Law:

	number of students		Jewish by faith	
1860s	around	500	around	10%
1870s	around	1,200	around	20%
1880s	around	1,500	around	25%
1900s	around	3,500	around	30%
at the time Lukács graduated	around	4,000	around	35%

The averaging out and rounding up of data given in the official biannual tables⁸ clearly reveal a rising and improving level of the academic study of law in Hungary at the turn of the century. Legal studies become a common way of getting a degree and with the speeding-up of assimilation and professions attracting more and more Jews, the latter increasingly

⁶ 'A consideration of the various conditions led to the recognition that if not earlier, then withi a year at the latest, I shall be in a position to be able to provide you with an [allowance of] minimum 5,000 crowns. I did not want to fail to inform you instantly of this "discovery", because in fact this is more important for you than many of the things I could write of.' J. Lukács to Gy. Lukács in Wiesbaden (June 1, 1911).—A few days later he assures him that his son's own income would not reduce the provision he would make for his son but would serve some form of capital accumulation. 'I have been happy about the publication of your book . . . It is also good news that you received 500 marks, but I ask you to regard that sum *as your own* and don't spend it buying things that are to be financed by me. You must get used to the idea of accumulating capital and for that you should use mainly the money you receive as fees'. J. Lukács to Gy. Lukács in Budapest (November 17, 1911).—Dated 25th May 1914, the father's letter assures Lukács of a credit limit of 10,000 marks for free use for household purposes, holding out the prospect of further assistance in case unexpected expenses might come up. LAK VIII/75.

⁷ *Popperné Lukács*, pp. 383 and 391 f.

⁸ F. Eckhart, *A jog- és államtudományi kar története 1667–1935* (History of the Faculty of Law and Political Sciences 1667–1935), Budapest, Királyi Magyar Egyetemi Nyomda, 1936, p. 683.

contributed to the strengthening of that trend. Lukács might have allowed himself to be swept along by the tide of that general fashion which was especially perceptible in the circles he moved in. Such an assumption seems to be borne out by several facts. First that his interest was rather general in those days. Second, that he accomplished the studies he had set himself, while also meeting the expectations concerning his formal studies and taking a degree. And third, that he could secure a livelihood for himself for the future.

Considering the scholarly and human greatness of Felix Somló, or the role he played in promoting progress (a role that was also known widely, after the scandal at the Academy of Law at Nagyvárad [now Oradea, in Romania], in which also the greatest Hungarian poet of the time, Endre Ady, fully supported Somló's views), the assumption appears to be logical that there must have been some sort of contact between Lukács and Somló or at least sympathy on the part of Lukács that attracted him to Kolozsvár to take his doctor's degree under a professor who was only twelve years his senior. I know of no fact that might refute such an assumption. Yet, in the absence of factual proof, I see the reason why Lukács decided to take his doctorate at Kolozsvár not in some philosophical consideration, but rather in what appears to be an extremely prosaic circumstance. And that is the following: an excessive rise in the number of students in Budapest in those days brought about the adverse phenomenon reported in the press as 'the migration of students to Kolozsvár to take their exams'. In the Budapest of those years there were 20 professors for 4,000 students, only 1,000 of whom wished to take their exams in Budapest, while at Kolozsvár, 12 professor had no more than 1,000 students to teach, but 3,000 students to examine. This situation prompts the Rector of the University of Kolozsvár to state, without any pride, in his opening address in 1901: 'More doctorates have been distributed at this university than at any other universities in Europe.' Those pouring into Kolozsvár were primarily the would-be 'vicinal doctors' (absentee law-students) who cared about one thing, namely, to spend a few years at the Budapest University after a regular enrollment but without attending lectures or showing any diligence in their studies, only to pass their exams at Kolozsvár and collect their doctorates a few days later.⁹ Well, such a situation could have been most advantageous for Lukács, providing him with years of freedom to pursue the studies of his own choice.

⁹ *Ibid.*, pp. 636 and 637.

Therefore it is equally conceivable that Lukács had quite simply no memories of his studies in Budapest since perhaps there had never been any such relics or memories apart from the formal documents of enrollment, etc. Be that as it may, I found but a single remark among Lukács' numerous biographical notes perhaps serving as an *à propos* to a conversation on another subject, to an event taking place at the Budapest Faculty of Law: 'I had been held in deep contempt ideologically by Hungarian writers, not so much because of Marx, but rather because of Hegel. In public opinion before the dictatorship in Hungary—and again, I do not refer to any writer, except may be to Polányi—once I attended a seminar by [Julius] Pikler where Polányi read out from the *Phenomenologie des Geistes* as if it were some kind of humorous writing, saying how can anyone write philosophy like that and he read out a long sentence which was followed by roaring laughter and then he read another long sentence which was again followed by roaring laughter.'¹⁰

The exam-oriented atmosphere of the examination period in which the only measure of value was, to use Eckhart's pejorative expression, 'to blunder through with ease', is well characterized by a letter written in those days by László Bánóczy, a friend of Lukács and his companion in *Thália* (a theatre they founded together): 'Dear Gyuri, This postponement because of the vacation is unpleasant, but you may perhaps call on Mór Kiss at his home and he might inform you privately how the affair should be settled. Then you will know everything for sure and will be able to learn without any worries. If you need assistance or information from a reliable jurist, turn to Pál Juszth, Szentegyház Street 6 (Status Palace). I am sure he will help you.' And, concerning Bánóczy's own method of preparation that could not have been too far removed from that of Lukács: 'I feel fine and that is why I cannot work now. I mark out in the calendar every day how much time the various subjects ought to take. . . I leave four days for the law of procedure I am quite unfamiliar with and one day for Austrian law. Next time, I think I shall switch over to hours as units. Today—it is a quarter to eleven [p.m.]—I still have 170 pages of commercial law to work on. From a compendium. It is an aggravating circumstance. But it doesn't matter. Szladits' will make an extra effort.'¹¹

High though the number of degrees distributed at Kolozsvár was, surely, a performance of some kind had to be produced in return. I have

¹⁰ An Interview by I. Eörsi and E. Vezér with Gy. Lukács, MS 1971, *LAK* V/38, pp. 22–23.

¹¹ To the Honourable Mr. Georg Lukács, Kolozsvár, Hotel New York, April 30, 1906, *LAK* VII/68. Incidentally, the Mór Kis mentioned in the letter was a retired professor of pandectist law at Kolozsvár.

in mind the dissertation that also features in the text of Lukács' diploma that was discovered in the Central Archives of the Babeş–Bolyai University in early 1979, bearing the serial number 675: '*in Dissertatione quoque inaugurali elaboranda eruditum se*'.

Somló's widely known fairness, the moral seriousness of József Lukács, a man who would never support anything but a good cause, and his son's almost graphomaniac prolificacy prompt me to point out: it is highly improbable that Lukács might have received a degree without a dissertation.

Knowing Lukács, one can be certain that if he wrote, his standards were very high. In other words, there must exist or there must have existed a so far unknown work by Lukács, a work on problems related to political science, legal philosophy or maybe international law, which is presumably still lying somewhere in the Archives of the Babeş–Bolyai University. In response to my written request, János Demeter, the heir to Somló's chair over the past decades, promised to make efforts to uncover the Archives' so far unarranged stock of material. His untiring efforts and support from deputy rector Mr. József Kovács led to the discovery of a few unknown documents. Various registers and exam diaries, which I could only study from photocopies on the spot, reveal that Lukács first wanted to take his first exam in political sciences by January 27, 1906, and finally took the exam on May 7, while he took his second exam in political sciences on October 5. On the same day, the Faculty of Law submitted a request (No. 89/1906/7), proposing that Lukács and two of his colleagues obtain the doctorate degree of political sciences the following day. On October 6, Lukács asked and was given a certificate to the effect that the degree had been conferred on him and at the same time the following entry was added to the list of *Doctores Scientiarum Politicarum* on page 123 of the leather-bound register entitled 'Register of the Council and Doctors of the Royal Hungarian Franz Joseph University of Sciences at Kolozsvár. Volume III. 1906/7–1909/10': 'Dominus Georgius Lukács de Szeged annorum 21. religionis mosaicae, locus natalis Budapest, in Doctorem Scientiarum Politicarum promotus die 6. mensis octobris anni 1906.' Unfortunately, the dissertation has not been found so far. In fact, I am equally in the dark concerning the rules for discarding old documents, either in those days or in the more troubled years to come.

1.2 FRIENDSHIP WITH FELIX SOMLÓ

Although we do not know how the relationship between Lukács and Somló began, it is a fact that a cordial friendship between the two emerged after Lukács had taken his doctor's degree. Once again, my sources are rather sketchy, but there are a few indications that may lead to conclusions.

The first known letter which Lukács addresses to Somló foreshadows practically everything:

'Dr. Felix Somló Esq.,
Univ. Prof.,
Kolozsvár, Monostori Street 72.

February 14, 1909.

Dear Professor,

Please do not take it as importunity on my part that I feel such great inner joy over your appointment and please do not regard it as arrogance if I feel that this is not merely your victory, but the triumph of a cause that, although without a clear-cut slogan, many of us are fighting for. And as is the case with all genuine joy, our joy goes beyond a personal feeling of satisfaction. Let me also take the opportunity to thank you for your kind attention and the most valuable parcel which I consider as a great honour. My opinion cannot be of any great importance to you, therefore I can only express my gratitude for this and for your attention. Once again let me send my heartiest congratulations.

Yours faithfully,
Georg Lukács'

This letter¹² clearly points to the theoretical basis of their relationship. Lukács sees Somló as the representative of a good cause, the advancement of social-scientific thought. In those years, Somló did not publish any books or papers (some of the latter had come out earlier), so the parcel in question must have contained some offprints. Be that as it may, as always in his personal contacts with philosophers of law, Lukács refrains from spelling out his views apart from a formal expression of gratitude.

In the following years, Somló's name occurs in Lukács' letters to Leo Popper in contexts that indicate an intimate, friendly and at the same time intellectual relationship. Lukács writes in a post-script to his letter of May 1910: 'True! At the congress on philosophy of law (which I attended

¹² LAK M/260/1.

for Somló's sake), I met a Dutch lawyer. . .'. And in a letter dated June 15, 1910, he writes that 'while this paper was being written, the Somlós, Böske Jakobi, etc. were in Berlin and the author was running around with them during the days and writing through the nights or the other way round.'¹³

His next exchange of letters with Somló concerns the publication in Germany of the *Juristische Grundlehre*, the book that turned Somló into an international authority on legal philosophy. The background is unknown, but some of it can be put together from Somló's lines. In these, he wrote to Lukács:

'Kolozsvár, August 5, 1916.

My Dear Friend,

Thank you very much for your kind lines and the good advice that I have been following and, with reference to you, I shall write to Bertalan Schwarz. I had thought of the Meiner Publishers myself too, and therefore it would be most satisfactory if Bertalan Schwarz put me in touch with them. I would have preferred Mohr as a publisher, whom I rather unwittingly contacted, because I asked him without any introduction or advance information; especially, since I thought at the time that I would bring out my book as the first volume of a *Rechtsphilosophie*, while its second volume (under the title *Juristische Wertlehre*) would have to be printed 3–4 years later, which of course did not particularly win over Mohr to the idea of publishing it. . .'

Lukács answered these lines¹⁴ two months later. He wrote from Heidelberg, in a letter dated October 8, 1916, that as far as the publisher, Mohr is concerned 'it is not altogether hopeless but it is absolutely necessary that the book be recommended by an expert Mohr trusts, for instance, someone, whose works he publishes. That is why Max Weber, whom I have contacted, has refused to mediate, because he believes that Mohr would be really impressed only by an expert in the strict sense of the word.

There are two possibilities. One is Kelsen, an acquaintance of mine I met during his visit here and whom you may also know or with whom you may have acquaintances in common perhaps closer to him than I am. If not, I am quite willing to forward the manuscript to him and ask him to

¹³ LAK M/194/1.

¹⁴ LAK M/216/2.

contact you and Mohr subsequently. The other possibility is through Kantorowicz. I do not know him personally; if you don't know him either, Max Weber is willing to act as go-between.

Radbruch, the person I know best, is now in the battlefield. If he calls on me one day, I will talk to him and ask whether there are any chances with his publisher (Quelle und Meyer).'

Strangely enough, Felix Somló's four volumes of diary notes, unsystematical but often very detailed accounts of his travels, conversations, impressions and even his correspondence during the years that are of particular interest for us now (from 1896 to the months preceding his suicide),¹⁵ do not include a single mention of his relationship with Lukács. Even though the work, *Juristische Grundlehre*, giving him immortality was eventually published by the Meyner Publishers in Leipzig¹⁶, it is quite obvious that the publication is to some extent the merit of Lukács, or more precisely, of Bertalan Schwarz whom he acquired as a go-between by way of Lukács. On the other hand, a decisive role in the book being published was played by the man who is beyond doubt one of the most outstanding personalities in 20th-century Western legal thinking, Hans Kelsen, who assured Meyner of the professional value of the work (and whose interest after all was secured not by Lukács, but by a former pupil of Somló, Bertalan Schwarz, working at the Imperial and Royal Court Library in Vienna).

Their relationship is also characterized by another letter by Lukács, one that follows in the footsteps of the first:

'Heidelberg, Keplerstrasse 28.
8th April, 1917.

My Dear Friend,

I have received your book with gratitude and before having had a chance to become immersed in it, let me immediately thank you for your kind and complimentary attention. I hope I shall soon find the time to read it through; by merely skimming through I see that it is full of issues I also find of utmost interest. I believe in a few months' time, when I complete a major work that now takes up most of my time, I shall be able to tackle it. Since I shall be staying in Pest during the winter, perhaps we shall be able to meet and discuss it.

Until then, accept my best thanks,

Yours faithfully,
Georg Lukács'

¹⁵ Országos Széchényi Könyvtár (National Széchényi Library), Kézirattár (Department of Manuscripts), Quart. Hung. 3038/I-IV.

¹⁶ 1st ed. 1917; 2nd ed. 1924.

The work in question could probably be *A nemzetközi jog mibenléte* (The Nature of International Law) (Kolozsvár, 1917). Without any special interest in law, Lukács must have considered it worth studying, since, as we shall see, he was also deeply preoccupied with the problem of war from a moral point of view and, having glanced over this book, he had good reason to hope that Somló would offer him some additional material for the theoretical elaboration of the issue.

1.3 RELATIONSHIP WITH GUSTAV RADBRUCH

Lukács' relationship with Gustav Radbruch was even more pronounced and, if possible, even more contradictory in its consequences.

Radbruch was a thinker brought up in a Lutheran environment. His attraction towards social democracy and relativist philosophy of law is well known. After the Nazi take-over, he was among the first professors to lose university chair, yet he regarded it as a personal task to seek and accept theoretical responsibility for the smooth transition as the legal circles surrendered to the new regime. (Incidentally, he found the theoretical roots of this surrender in the predominant doctrine of legal positivism, which teaches as an ultimate wisdom that the law is the law, and therefore, in order to forge for himself a theoretical weapon to counter any possible further advance of barbarism, as an old man he supported the doctrine of natural law that seeks the criteria of positive law outside the very scope of the law.)

The circle that brought Lukács together with Radbruch and that also had a decisive influence on the development of both was a circle of scholars of similar persuasion, the kind of circle which emerges but rarely but which existed in Heidelberg at the time: 'Windelband (later Rickert), Jellinek, Max Weber, Gothein, Troeltsch, Lask.'¹⁷

One can read about their relationship in the preface of Radbruch's first truly original work on legal philosophy, entitled *Grundzüge der Rechtsphilosophie*, where he acknowledges: 'The decision of the author to set forth his ideas, sketchy as they are at the moment, is primarily due to the reassuring and stimulating encouragement of Dr. Georg v. Lukács from Heidelberg.'¹⁸

A few, recently discovered pieces of their correspondence illustrate this influence even more closely.

¹⁷ G. Radbruch, "Lebensbeschreibung. . ." (1945), in: *Gedächtnisschrift für Gustav Radbruch*, ed. A. Kaufmann, Göttingen, Vandenhoeck und Ruprecht, 1968, p. 22.

¹⁸ G. Radbruch, *Grundzüge der Rechtsphilosophie*, Leipzig, Quelle und Mayer, 1914, p. V.

A letter from Bellaria, dated around September 10–12, 1913, implies a well-established relationship of some standing:

‘Dear Mr. Radbruch,

. . . Thank you so much for your letter. It is good to know that your summer began well. Hopefully, the continuation will be just as good for both you and your book, about which I feel an almost personal emotional involvement. . .

Cordially yours,
G. v. Lukács’

The next letter, from April 1914 according to the postmark, explains this ‘almost personal emotional involvement’ as an aspect of Lukács’ own development as a thinker and since it also involves philosophical relativism certainly deserves further examination:

‘Dear Mr. Radbruch,

Please do not interpret my long silence as a lack of interest. I wanted to read your book first, but all sorts of obstacles arose. . .

I found your book most enjoyable and instructive. I think your worries over its publication were totally unfounded. All its main ideas come out clearly and unambiguously. . . What I have always been most interested in, as far as the method is concerned, are, as you might recall from the time of the lectures, the various equal systems of legal-philosophical orientation and law-making; they are perhaps even more to my liking than they were at the time of the lectures. I have a personal wish (which is not related to the book as it would upset its delicate balance), namely, that you may perhaps sometime discuss in an essay these various systems at even greater depth, in order to clarify in a more definitive way the similarity and equality of value of the ultimate bases of the various axioms, maxims and their companions of the most different kinds and values and thus demonstrate plainly the absolute necessity for your relativism and its consequences for metaphoristic decision. Of course, this is there in the book convincingly enough; so it is a private wish for my own benefit and to encourage my methodological investigations. During the lectures we discussed sufficiently all the other issues concerning the book. I liked very much the conclusion that was new to me and was not raised at the lectures. . .

Cordially,
your devoted friend,
Georg von Lukács’

Apart from these letters¹⁹, the lines Radbruch wrote to Karl Jaspers from Königsberg on June 7, 1914, also indicate indirectly the stimulating role Lukács played in Radbruch's intellectual development: 'I would love to hear from you, if only a word, about my philosophy of law. I am afraid your silence may be unexpressed criticism. . . Max Weber's silence is also disquieting. And Lukács has also kept silent, Mrs. Staudinger and Windelband have kept silent. . .'²⁰ It cannot be my task to decide whether this only was silence expressing criticism and whether the criticism was founded.

In any case, it is worth mentioning that Somló's tone is outspokenly critical (mainly of Radbruch) in the only place he mentions Lukács at all, namely in volume III of his diary notes. This entry was made on 'Nov. 8, 1914: The latest work of German legal philosophy has arrived: Radbruch, *Grundzüge der Rechtsphilosophie*. . . Radbruch in the evening. Strange that according to his preface he would not have published his thoughts in such a draft form, had he not received the encouragement particularly of Mr. György Lukács. It is impossible to shift the responsibility of publication on whoever encourages you. Have I not been convinced that my book is ready for publication, I would never have it brought out, neither urged on by Gyuri Lukács or anyone else. And in fact, the book is incomplete. First of all, it is too narrow in its problems. And their elaboration is not comprehensive enough. Then there are too many attempts to be witty. Trying to solve problems by being witty. Leaves contradictions carelessly unresolved. Several good ideas. But it is not a philosophy of law German legal science is parturient with. This is but a miscarriage of a mother who expected to give life to a Messiah.'²¹

As far as Radbruch's influence on Lukács is concerned, it was temporary, but must not be underestimated. Lukács got acquainted with several works of the Marxist classics in the last years of his secondary school studies, as revealed in his autobiographical notes.²² This acquaintance was renewed and deepened several times. However, until he recognized the philosophical significance of Hegel, Marx primarily affected him as an economist and sociologist, through the eyes of Simmel and Max Weber. So Marx's influence was still minimal and it involved thoughts on social science that could only provide background material for Lukács. And that is why it is especially remarkable that Lukács' first

¹⁹ LAK M/307.

²⁰ G. Radbruch, *Briefe*, ed. E. Wolf, Göttingen, Vandenhoeck und Ruprecht, 1968, p. 53.

²¹ S. Bódog *Naplója* (F. Somló's Diary), 1914–1917, pp. 34–35 (cf. note 15).

²² G. Lukács, "Mein Weg zu Marx", *Internationale Literatur* III (1933) 2, pp. 178 f; 'Preface', p. IX.

writing to mention Marx favourably is a criticism of Croce's philosophy of history. In his criticism Lukács outlined a simplified and sociologically oriented programme of Marxism by presenting Radbruch's method as an example.

Struggling with the neo-Kantian presupposition of the immanence of mind, Lukács wanted to prove that 'in a genuinely deep, unbiased and careful analysis, the content of the axiomatic assumption of historical science will show an interesting parallel and relationship with conditions of social stratification, their shifts as well as external and internal social changes . . . Historical materialism, the most significant sociological method so far, has almost always been distorted into a metaphysics of the philosophy of history, a fact that must not overshadow the epoch-making value of the method, not yet worked out with appropriate clarity, on which it has been based. In historical materialism, the path to a solution of the problem I have indicated here is to be found in what Marx called the problem of ideology, only, of course, if the creation is freed from its metaphysical formation of concepts and is clarified methodologically: namely, one must realize what fills with an inevitably concrete content the assumptions of the sciences of the objective spirit, defined formally by their own axioms. At this point, let me refer to Radbruch's most interesting expositions. Radbruch related a possible typology of the structure of values and the fundamentals of the systems of philosophy of law with the typology of different stands in party politics and in this way, while preserving the legal immanence and general validity of legal categories, he deduces the possibility of filling them with concrete content not only from metajuridical sources, but also shows us a vantage point from which this process of becoming filled with content will be understandable (*Grundzüge der Rechtsphilosophie*, 1914, pp. 96 et seq). I must emphasize that Radbruch raises the problem only from the point of view of philosophy of law and offers no detailed discussion of its sociological aspects. His own way of raising the question gives him every right to do so; yet, I believe, he is the philosopher to have pointed most clearly to what is methodologically the cardinal point of the problem.'²³

As transpires from the analysis, the same typology by Radbruch that in the letter of 1914 was designed to prove 'the absolute necessity for your relativism', has now turned into a presentiment of the social determination of the concrete contents of consciousness it contained.

²³ G. v. Lukács, "Croce, Benedetto: Zur Theorie und Geschichte der Historiographie, Tübingen, J.C.B. Mohr 1914", *Archiv für Sozialwissenschaft und Sozialpolitik* XXXIX (1915), p. 884.

The change in attitude following from the recognition of the *social character* also radiated to other fields, at least as far as the raising of problems was concerned. Recalling that period, Lukács writes that in the footsteps of Kant, '... a mere formal apposition of legality and morality ... had for a long time a strong influence on me without ever satisfying me...' Quite clearly, the point is again how to conceive of the social character of certain "immanences" of consciousness. And this means that Kant's methodology, inasmuch as it is based on purely logical distinctions, is broken up by a consideration of the social point of view. 'The inseparable connection between the purely formal morality of duties and the practical requirements following from prevailing social conditions and development, and especially the legal system in force at any time, was all too clear to me.'²⁴ That is why he heeds Solowjeff's concept of the relationship and mutual interdependence of law and morals, as well as Jellinek's ethical minimum.²⁵ This is why in his survey of Emil Lask's philosophical accomplishment he attributes all-embracing theoretical significance to the fact that Lask 'worked out the specific nature of the validity of the legal sphere and described its relationship with other spheres.'²⁶

There is another remarkable aspect of the Heidelberg years. While throwing light on the theoretical and moral proximity of Lukács and Radbruch in those days, this aspect also gives a weight to Lukács' unambiguous moral condemnation of war that must have contributed to the process in which later events oriented Lukács towards the communist party. What I have in mind is that Radbruch was a militant pacifist, directed in his deeds by his 'basic social conscience'. A 'voluntary red-cross medical attendant, later soldier and finally an officer on the western front',²⁷ he was committed whole-heartedly to his antiwar convictions as a thinker and discussed the philosophy of war in a study that was met with wide response.²⁸

Having read this, Lukács replied instantly, expressing a complete identity of views:

²⁴Gy. Lukács, "Előszó" (Preface 1969), to his *UM*, p. 14.

²⁵G. Lukács, "Solowjeff, Wladimir: Die Rechtfertigung des Guten. Ausgewählte Werke, Bd. II, Jena, 1916", *Archiv für Sozialwissenschaft und Sozialpolitik* XLII (1916-1917), p. 979.

²⁶G. Lukács, "Emil Lask", *Kant-Studien* XXII (February 5, 1918) 4, pp. 349 ff.

²⁷G. Radbruch, *Der innere Weg: Abriß meines Lebens*. Göttingen, Vandenhoeck und Ruprecht, 1961, pp. 107 ff; G. Spengel, *Gustav Radbruch: Lebensbild eines Juristen*, Hamburg, Monatsschrift für Deutsches Recht Verlagsgesellschaft, 1967, p. 8.

²⁸G. Radbruch, "Zur Philosophie dieses Krieges", *Archiv für Sozialwissenschaft und Sozialpolitik* XLIV (1917) 1, pp. 139 ff.

'Heidelberg, Keplerstrasse 28.
11th March, 1917.

Dear Professor,

. . . I have been most interested in your article. It is by no means easy to write to you, and especially about it, as I fully agree with you on most of your train of thoughts. I wanted to write about some of these things before I was called up in the summer of 1915, in my never completed study, *Intellectuals and the War*. The thought I believe is of great importance is that the whole problem of "power" is a hypostatized methodological precondition of the political science of history. . . I regard your view of the issue of "culpability" of great importance, and also the symptomatic significance of the mutual rejection of responsibility for war (well prepared in your analysis of the relationships between war and diplomacy). This is indeed something typical of this war alone.

But I realize: I am writing abstracts, not remarks. This will tell you how much I liked your study. After such long and tough reading, that was so much to my liking, I find it difficult to point to differences of views. But if you could still come to Heidelberg, it could perhaps be different in a chat. . .

Yours,
G. v. Lukács'

Radbruch's reply is equally warm and grateful. He is writing on an army postcard on April 3, 1917:

'Dear Mr. v. Lukács,

Many thanks for your kind letter. I am very happy about your remarks on my article. It is difficult to find someone to agree with such views. I wish the times were over, when people are forced into dilemmas that deflate the soul, into half-hearted stands, into constant *reservatio mentalis* and *protestatio facto contrario*. . .

With kind regards to all you at Heidelberg and especially to you,

Yours,
Gustav Radbruch'

Against this background and exchange of letters²⁹ (despite knowing the personalities of the two people involved and how their paths were to diverge) it is surprising that the former friends then simply ceased to exist

²⁹ LAK M/246/1.

in one another's eyes. Lukács' name was never to crop up again either in Radbruch's numerous works or in his extensive autobiographical writings. And the same is valid with Lukács. Not only did he not mention Radbruch's name any more but he preserved so little interest in his former colleague that he never resumed contact with Radbruch who was a scholar of an encyclopedical knowledge, and who brought up whole generations of philosophers of law and who (living and working until 1949) came to be celebrated as a martyr of Fascism, staying and fighting in his homeland. He equally failed to refurnish himself with any work by Somló or Radbruch when (with the aid of exceptional relations with second-hand book dealers) he was engaged on a conscious effort to build up a considerable personal library after his final return to Hungary.

So, by tracing his personal acquaintances, we have the list of philosophers of law who (like Somló) may have provided Lukács with the sensitivity of a specifically legal approach, or those (like Jellinek, Kelsen, Lask, Radbruch or Weber) who represented for him such philosophical accomplishments that they were and remained in his eyes the embodiment of philosophy of law. So it is not by accident that he examined through almost the same glasses, although not the same eyes, the key issues of philosophy of law and the extremes of theoretical responses to these issues in the period of his *History and Class Consciousness*³⁰ and at the time he worked on his *Ontology*. As I shall try to show through his individual works, what changed was not primarily the theoretical sources and points of conflicts of his position on legal philosophy, but the world concept and the philosophy which determined this concept ideologically and politically, methodologically and theoretically, and in which they moved like pieces on a chessboard.

³⁰ For more detail, cf. *Apitzsch*.

CHAPTER 2

GLORIFICATION OF CONSCIOUSNESS IN *HISTORY AND CLASS CONSCIOUSNESS*

Nearly a decade after taking his doctorate in political sciences and making contact with Felix Somló, Lukács returned to Budapest after the Heidelberg years where he had made friendships and acquaintances, and had been exposed to the intellectual stimulation, debates and erudition which were to determine the direction and points of reference of his thinking on law as reflected both in the overzealous writings of the next decade and in the *Ontology* written towards the end of his life.

2.1 THE SEARCH FOR A WAY OPPOSED TO INSTITUTIONS: LAW AS FORCE AND AS CONSCIOUSNESS

At Heidelberg Lukács not only became acquainted with the great works that laid the neo-Kantian foundations of modern formal law, such as those of Max Weber, Gustav Radbruch, Emil Lask, Georg Jellinek, and Hans Kelsen, but, particularly in the course of his relationship with Ernst Bloch, his messianic ardour and eschatological expectations were also developed. These moulded his thought for nearly ten years, even after he had joined the communist party and adopted Marxist theory.

For Lukács, the “religiosity without God”, which was then an almost universal symptom of the time for European intellectuals,³¹ too took on a variety of forms parallel to his progression as a thinker. The imprints they left on his personality influenced his later theoretical thinking to a certain extent as well. At the time when Christianity, especially early Christianity and gnosticism, appeared to indicate a solution to his philosophical yearnings, an equally illusory alternative, the figure of Francis of Assisi, opened up to him. Both this and his gnosticism were far

³¹ J. Lukács, “A vallás és az irracionálisizmus problémái Lukács György életművében” (The Problems of Religion and Irrationalism in Georg Lukács’ Oeuvre), *Valóság* XVIII (1975) 8, pp. 1 ff.

from being matters of pure chance. As István Hermann has demonstrated, what was involved here was a restoration of the original substance of Christianity in the face of a church that had become ritualized and bureaucratized, i. e. the affirmation of the living movement against an ossified hierarchy. In the idealized figure of Francis of Assisi he saw the possibility of interiorizing ethics, and in this intimacy the possibility for eliminating all superficiality, formalism, and bureaucracy.³² This opposition to institutions appeared in the utopian reversal of the *status quo* and it was expressed in rather simplistic theoretical conclusions. The writings of the oncoming years concentrated on a nostalgic *idée fixe* in a way, that he ventured to work out the cultural and ethical dimensions that promised a way out, while he disregarded the analysis of the real sociological interconnections: 'he postulated the solution of socio-economic problems as an abstract condition.'³³

As the 'fanatic of reality',³⁴ Lukács later acknowledged with cold and objective indifference towards his earlier ego, that at the time of the Hungarian Soviet Republic and its preparations 'intellectually we were unprepared—and I was perhaps less prepared than anyone—to come to grips with the tasks that confronted us; our enthusiasm was a substitute for knowledge and experience'.³⁵

What does a theory based on enthusiasm consist of?

On the one hand, beside the 'acquisition of Marxism and a political activation' it was characterized by the intensification of 'purely idealistic ethical preoccupations'.³⁶ A peculiar theoretic mixture arose, derogatorily dubbed 'Marxist theology' by Béla Kun (in exile he had learned that during the Commune, only a few rooms away from him, some of the commissars and other radicalized young people debated through nights with the most abstract ethical terms).³⁷

On the other hand, this purist concern with ethics found a natural complement in the messianic expectation that the dictatorship of the proletariat, as the practical embodiment of the last judgement, would, at one stroke, dissolve all contradictions through revolutionary practice.³⁸

Thus revolutionary practice, whose determined theoreticians claimed a Marxist theoretical foundation, was in the last resort and to no small

³² Hermann, pp. 35 ff.

³³ Z. Novák, *A Vasárnap Társaság* (The Sunday Society), Budapest, Kossuth, 1979, p. 268.

³⁴ Eörsi 'Lukács', p. 26.

³⁵ 'Preface', p. XI.

³⁶ *Ibid.*, p. X.

³⁷ Cf. E. Sinkó, *Egy regény regénye* (A Novel's Novel) I, Újvidék, Fórum, 1961, p. 199.

³⁸ See Hermann, pp. 122 and 129.

extent inspired by a merciless revolutionary intention and a missionary consciousness. The potential for this tendency was already unmistakably there in the essays entitled *Tactics and Ethics* and *What is Orthodox Marxism?* written in 1919. Here reality was nothing but the proletariat's missionary zeal in the imminent and inevitable world revolution. Here decisions and resolutions are to be the master and not the slave of the imminent facts; here facts are only so-called facts, only in inverted commas, and if anybody gave credence to them, the revolutionary would answer with the words of Fichte: 'So much the worse for the facts'³⁹. The purism, the longing for immediacy, the general opposition to institutions, which first took shape in the idealization of early Christianity and of the reforming endeavours of Francis of Assisi, were carried over in many ways into active politics during the Commune and even into the ideological conflicts in exile following the overthrow of the dictatorship of the proletariat. 'The sectarianism of the twenties . . . had messianic, utopian aspirations and its methods were evidently opposed to bureaucracy.' The circle within which Lukács himself operated strove to propagate these aspirations 'by working out the most radical methods on every issue, and by proclaiming a total break with every institution and mode of life stemming from the bourgeois world.'⁴⁰

If we now take a look at the works which even one of Lukács' most loyal and committed appreciators has called 'the doctrinaire writings of a revolutionary neophyte,'⁴¹ the theoretical consequences of the intellectual attitude I have tried to sketch above become very clear.

In his contribution to the *Debate on Conservative and Progressive Idealism* in 1918, Lukács attributed the 'usually conservative nature' of the churches to their institutionalization. In his early works, as we have seen, he was still struggling with the search for a possibility of surpassing the Kantian duality of legality and morality as pure formalism and pure substance. He now formulated this duality problem in the relationship between politics and ethics, trying to eliminate politics as something superfluous and retrograde in favour of the unrestricted dominance of ethics. The burden on politics that impedes the realization of ethics lies in its institutional nature: 'political action aims at the creation, maintenance or changing of institutions, institutions whose essence is that they have a compelling validity, irrespective of actual intentions, and whose existence

³⁹ G. Lukács, "What is Orthodox Marxism?" (1919), in: *TE*, p. 27.

⁴⁰ *HCC*, pp. XIII and XIII–XIV.

⁴¹ N. Tertulian, "L'evoluzione del pensiero di György Lukács", in: *Lukács*, ed. G. Oldrini, Milano, Mondadori, 1979, p. 52.

is relatively independent of man's evolution.⁴² This objection towards institutions became so emphatic in the given context that Hermann generalizes it as a protest against objectivized forms.⁴³

It is questionable whether dating one of the fundamental problems of *History and Class Consciousness* to 1918 can be philologically justified. At the same time it must be remembered that even the idealistic formulation of the duality of politics and ethics refers to genuine problems. The abstract opposition of legality to morality is a play on concepts which only classical German philosophy could permit itself. It is obvious what corollaries are involved here: instruments which differ in their characteristics but point in the same direction and are mutually interdependent. On the other hand, in the relationship between politics and ethics it is the subordination of the means to the ends that is of relevance, notably the impossibility of recognizing the autonomy of a merely means-like structure, i.e. of an institution.

His opposition to institutions, his longing for an absence of institutions obviously came from his utopianism, inspired by ethical idealism. On the other hand, it contained the nucleus of a rational problem; it was a timely admonition, in so far as it was directed against the absolutization of institutions.

Around the period when the Hungarian Soviet Republic was proclaimed, Lukács wrote with increasing frequency about revolutionary violence. These included his university lecture *Terror as a Source of Law*, the text of which has so far remained unidentified,⁴⁴ the pamphlet *Legal Order and Violence* directed against Károlyi's government,⁴⁵ as well as *Tactics and Ethics*, and the lecture on *The Changing Function of Historical Materialism*, written during the Commune.

In response to tactical problems arising from the day-to-day political struggle, Lukács sought answers to two questions connected with problems he had raised earlier: (1) law as an institution has means-like characteristics, i.e. it is always subordinate to the ultimate ends; (2) law is

⁴²Gy. Lukács, "A konzervatív és progresszív idealizmus vitája (Hozzászólás)" (A Contribution to the Debate on Conservative and Progressive Idealism, 1918), in: *UM*, p. 181.

⁴³Hermann, p. 137.

⁴⁴M. Löwy, *Pour une sociologie des intellectuels révolutionnaires: L'évolution politique de Lukács 1909–1929*, Paris, Presses Universitaires de France, 1976, p. 176. According to Löwy, this was one of the Party lectures held at Budapest University between December 1918 and February 1919. According to J. Tarr's (New York) personal opinion, formulated while her stay in Budapest, this reference is quite unfounded and the only paper which can be referred to in this context is "A bolsevizmus mint erkölcsi probléma" (Bolshevism as a Moral Problem), published in the 1918 issue of *Szabadgondolat* (Free Thought).

⁴⁵*Die Internationale*, Supplement to No. 1919/3–4.

based on violence, and by pitting violence against violence it can be overthrown and replaced by a new law and order.

Tactics and Ethics raised the question as follows: is the ultimate objective to be found within the given social reality or beyond it? If the ultimate objective is immanent, then 'the existing legal order as a given principle... necessarily and normatively determines the scope of any action.' If, on the other hand, it is transcendent, 'legal order is seen as pure reality, as real power to be taken into account, at most, for reasons of expediency.'⁴⁶ *The Changing Function of Historical Materialism* explored the same problem in connection with the relationship between economics and violence. Lukács questioned the justification of 'the radical and mechanical separation' between the two, since 'the growth of the fetish of the pure objectivity of economic relations obscures the fact that they are really relations between men and so transforms them into a second nature which envelops man with its fatalistic laws' and also since 'there is the circumstance that the likewise fetishistic legal form of organised violence distracts attention from its potential presence in and behind every economic relation.' It directly follows from the latter that 'distinctions like law and violence, order and insurrection, legal and illegal force cause the common foundation in violence of every institution of class societies to fade into the background.'⁴⁷ This was an early rendering of the great discoveries which were also formulated in the *Ontology*: the recognition that law was itself organized violence and that institutions, order, legality, i. e. all "concepts of order" only possessed relative validity; they were based on violence and its acceptance.

In 1920, in the course of defining political problems in *Legality and Illegality*, Lukács formulated his message much more maturely and subtly. He offered a synthesizing solution to the questions raised earlier, transforming and in the process distorting it in such a way that it becomes a pathetic approach to consciousness, an approach which was going to become a fundamental motive and organizing principle of the studies collected in *History and Class Consciousness*. Lukács set out from the view that the existence of power-enforcement organizations shaped the everyday life to such an extent that people finally considered it a necessary concomitant of their mere existence and submitted themselves to it *quasi* voluntarily. Voluntary acceptance (an idea that was going to recur in the *Ontology*) also points to the two extremities concerning the existence of the power-enforcement organization and hence to the

⁴⁶ G. Lukács, "Tactics and Ethics", in: *TE*, p. 3.

⁴⁷ *HCC*, p. 241.

dialectic of its use. Namely, a given state and legal order can exist as long as it can use force, if necessary, against those who resist, but is not at each instance *compelled* to use force. If force is confronted by force, it is revolution. And revolution necessarily ends with one force overcoming the other, i. e. the restoration of the old order or the institutionalization of a new one.⁴⁸ Consequently, the dialectic of the use of force in law is that it has to be both latent and manifest: It is necessary that it should sometimes be manifest (in the case of individual violations of the law) and also that it should not grow nothing but manifest, because then it could not survive in the long run, but would disintegrate.

However, this in itself correct discovery which bears witness to an instinct for dialectics, gradually became subjectivized as can be seen from the following quotation: 'For every system of state and law. . . exists in the last analysis because its survival and the validity of its statutes are simply accepted as unproblematic.' The next step was already the priority of consciousness. 'The strength, or the weakness of the state is the way in which it is reflected in the consciousness of people.' And if you once accept the priority of consciousness, then the magic formula consists in ensuring correct consciousness: the perception which pulls down walls and opens up new perspectives. 'For the coercive measures taken by society in individual cases are often hard and brutally materialistic but the strength of every society is in the last resort a spiritual strength. And from this we can only be liberated by knowledge.'⁴⁹

It soon becomes clear why mind and consciousness needs this demiurgic role. 'Where the total, communist fearlessness with regard to the state and the law is present, the law and its calculable consequences are of no greater (if also of no smaller) importance than any other external fact of life with which it is necessary to reckon when deciding upon any definite course of action. The risk of breaking the law should not be regarded any differently than the risk of missing a train connection when on an important journey.'⁵⁰ The practical problems of the working class movement which Lukács thought he was serving with these arguments were so vital and immediate that he was still formulating them a year later, in 1924, as problems to be faced by the proletariat.⁵¹ However much he became immersed in the obscurity of the question, he nevertheless invoked the struggles Marxist thinking had to go through in

⁴⁸ HCC, pp. 257 ff.

⁴⁹ HCC, pp. 260, 261, and 262.

⁵⁰ HCC, p. 263.

⁵¹ G. Lukács, *Lenin: A Study on the Unity of his Thoughts*, London, NLB, 1970, p. 62.

order not only to explain and change the bourgeois state and its law but also to win recognition for the system of socialism together with its institutions, the newly established state and law. This task simply consisted in making actual and potential revolutionaries aware that they should not perceive the bourgeois order 'inwardly', as 'the only authentic and legal one'.⁵² This argument offered Lukács an obvious opportunity to picture the law as a mere instrument, an instrument whose essence lies in its calculability, like a railway system relying on the punctual functioning of points and connections, an analogy so dear to Lukács' earlier master, Weber.

2.2 REIFICATION AND THE CONSCIOUSNESS OF THE PROLETARIAT AND ITS DRAMATIZED LEGAL CONCEPTION

Reification and the Consciousness of the Proletariat is born out of the apotheosis of proletarian consciousness, the purifying zeal of turning against every institution, the enhanced chiliastic-messianic expectation which measures the promise of the future against the rottenness of the present and thus polarizes the alternatives faced by the proletariat into contradictions that forced Lukács during his stay at Heidelberg into ever more rigid, ever more pitiless extremes, which are reminiscences of the Manichean duality of the 'final struggle between God and Lucifer'.⁵³ Itself filling a volume, it is the most outstanding study in the collection *History and Class Consciousness*.

Lukács, his contemporaries and also present-day West European leftist intellectuals who stopped short at the ideological level of *History and Class Consciousness*, were justified in considering this work to be one of the first and most important feats of Marxist dialectic thought in the 20th century. At the same time, from the viewpoint of the present investigation (which represents only one aspect of Lukács' total concern), the work exhibits a Hegelian-cum-Marxist line of thought the legal-philosophical basis of which is formed by the analysis of modern formal law as carried out by neo-Kantians. That the references to Max Weber are fewer than a dozen is at the most only a characteristic of Lukács' style, since its keynote is provided by the Weberian explanation of the rationality problem. It is not due to Weber but to Marx, or, to be more precise, to Marx as misinterpreted by Lukács, that rationality gets overdue attention, an excessive significance. The result is that it becomes a sort of universal

⁵² HCC, p. 266.

⁵³ M. Weber, *Max Weber*, Heidelberg, Mohr, 1950, p. 509.

scapegoat and is almost identified with all the dehumanizing negative features of exploitation and institutional set-up capitalism has ever developed.

At the same time, the analysis of rationalization based on the concept of calculability is astonishingly exact, and this exactitude is not merely the reproduction of Weber's thoughts but the unfolding of certain interrelations within the Marxian system. According to it, rationalization is the breaking of originally unitary complexes into their constituent elements. This brings about a hitherto unknown specialization, its result being that processes lose their natural-organic unity and become calculatively produced syntheses of rationalized subsystems.⁵⁴ The social consequence of this process is destructive: man gradually loses his human quality. He no longer appears to be the proper vehicle of these processes but as a mechanical part incorporated into a mechanical system, his only achievement being that he merely fits into the movement of a system, functioning independently of him. The particular attributes of men simply lose relevance and become nothing but sources of error against the rationally pre-calculated functioning of abstract part laws.⁵⁵

The description of the rationality-problem and its legal aspects followed in the Weberian tradition. Nevertheless there is a significant difference: while with Weber it was a question of describing the inner laws of a historically determined concrete development, Lukács overstrained and absolutized Weber's categories. In order to analyze some actual trends of development, Weber created an ideal typology so as to be able to formulate their internal interconnections and regularities free of any external interference. Lukács, who treated the idealized example of Hellenism as a real historic alternative,⁵⁶ also took the ideal type of rationality as being real and was thereby guilty of overburdening its Weberian meaning. First, instead of a typological description of the ideal, he used it in order to condemn it as a reality and to attempt to transcend it (in which he succeeded only in a utopian, verbal way). Secondly, he identified the rational-bureaucratic institutional structure, which in its most developed form happened to be brought into existence by bourgeois evolution with the capitalist order itself. Thirdly and finally, he exposed rationality as one of the roots of alienation, and with this false identification he made it impossible for himself to see rationalization as a genuine social problem. Instead, he could only try to give expression to its inner conflicts, nourished by an almost chiliastic zeal.

⁵⁴ *HCC*, pp. 88 ff.

⁵⁵ *HCC*, p. 83.

⁵⁶ Cf. *Hermann*, pp. 69 f.

It was in such a context that Lukács quoted at length from Weber, who had come to the conclusion that modern law and state administration in essence operate like a modern plant, i. e. were based on calculation.⁵⁷ Therefore both in law and administration the possibility of the process followed being 'tailored subjectively, to the requirements of men in action, and objectively, to those of the concrete matter in hand,' no longer obtains, and is replaced by an arrangement which 'is formally capable of being generalized so as to relate to every possible situation in life and it is susceptible to prediction and calculation.'⁵⁸ As one of its consequences, Lukács referred to the constantly regenerated contradiction between the developing economy and the necessarily rigid law or, in spite of the frequency of legislation, law at least necessarily perceived 'as rigid, static, and fixed'⁵⁹. At the same time he declared that this process was accompanied by 'an increasingly *formal* and standardized treatment in which there is an ever-increasing remoteness from the qualitative and material essence of the "things" to which bureaucratic activity pertains.'⁶⁰

The danger which is latent in bureaucratic organization thus becomes manifest and thereby dramatized. Likewise, Lukács enhances and projects a merely possible dysfunction as an absolute necessity when he establishes the objective 'coincidence' of the sum given by rationalized part laws, the incoherence of the system in fact', as well as the 'relatively great independence' of the parts.⁶¹

The whole at any time, the system which the Lukács of the *Ontology* is going to examine as a social total complex is much more involved, and is going to present the picture of a motion relying on unceasing contradictions which are resolved by the constant dynamics of harmony and dysharmony, tension and compensation. However, the total complex is truly an ontologic category; it is born of a universal, social-historical generalization, and not of a subjective manifestation coloured by political aspirations, as was the case with the Lukács of *History and Class Consciousness*.

Incidentally, if one can believe one of the experts of the question, Lukács took the irrationality of the whole as such from Jellinek, Kelsen and Lask. According to Jellinek and Kelsen, the irrationality of the whole

⁵⁷ HCC, pp. 95 ff.

⁵⁸ HCC, p. 96.

⁵⁹ HCC, p. 97.

⁶⁰ HCC, p. 99.

⁶¹ HCC, p. 101.

originated in the formation of modern formal law being forced not to liquidate the feudal relics but to create a state in a non-revolutionary "Prussian way" as a logically constructed continuity, as a *Rechtsstaat*. And Lask pointed out that the legal form of the organization of modern economy was not based on the genuine abstraction of the individuals' natural living conditions but on a specifically prepared variation, which artificially set out types and typical situations for the purposes of legal regulation.⁶²

The contrast between Lukács' changed views becomes even more striking when one considers that the same features (rationalization, specialization, relative autonomy) whose existence were objectively established by the neo-Kantians, were evidence for the Lukács of *History and Class Consciousness* of the 'highly problematic' nature, i. e. of the irrationality, of the whole 'which diverges qualitatively and *in principle from the laws regulating the parts*', these features being seen as exclusively⁶³ linked to capitalism, while for the Lukács of the *Ontology* they became features of socialization, (*Vergesellschaftlichung*) unequivocally positive, necessary, and thereby bearers and safeguards of the irreversible march of progress.

In the same place Lukács also examined the natural law doctrine of the revolutionary bourgeoisie, that put forward both the demand that the law be formally equal and universal, and determined in its substance. It is easy to understand that it was only in this way that the bourgeoisie could fight against feudalism, especially against its disunity, against the privileges reserved for the few, and generally against the old, feudal legal substance. It is also obvious that natural law can only turn against positive law if it denies that actual enforcement also represents a source of validity. Finally, it is well-known that the roles that can be played by the natural law ideology are innumerable. In the revolutionary struggles in France, ideologies could come into the forefront to such an extent that in a somewhat paradoxical way even counter-revolutionary conservatives had to fight their battle in the terms of natural law, more precisely, under the banner of another natural law.⁶⁴

Victorious revolutions, when they consolidate their achievements and establish their institutions must obviously outgrow this view. According to Lukács' contention: 'of the tenets of natural law the only one to survive

⁶² *Apitzsch*, p. 36.

⁶³ *HCC*, pp. 102–103.

⁶⁴ *HCC*, p. 108.

was the idea of the connection without gaps of the formal system of law.⁶⁵ In the following chapter I shall investigate the validity of this statement more closely. Until then, it is sufficient to lay down that this conclusion served as a spring-board for Lukács to return to his main theme: reifying formalization perceived as the curse of rationalization. Stressing his standpoint he wrote that the connection in question was purely formal: 'What they express. . . is never of a legal character, but always political and economic.' This is why he quoted Bergbohm's expression borrowed from physics: everything not regulated by the law was a 'legal vacuum'. This is why he attributed to Hugo's statement, made at the end of the 18th century, that legal substance could not be justified rationally, a meaning which had probably not even been conceived of by Hugo in this form, namely that law was already a purely formal system of calculations, nothing more. And, finally, he ascribed to this the rejection of the juristic explanation of the formation of the law, i. e. the view upheld by Kelsen and Somló according to which the formation of the law is, from the point of view of the law itself, a mystery.⁶⁶

Well, as far as the mystery is concerned, methodologically the same problem was being formulated here which was to recur in a more developed form in the *Ontology*; I shall therefore be looking at it later in more detail. However, I can already ascertain that Lukács' reasoning is remarkable for its shaky premises. I can confidentially assert that the claim to formal connection does not and did not follow from the ideology of natural law. As I have tried to demonstrate elsewhere, in connection with the logical elaboration of the law through codification,⁶⁷ social and economic evolution has brought about formal rationalization in all areas of social organization: by the changing ways of thinking, by the emphasis on the idea of systems, by asserting the *mathesis universalis* as the universal model of thinking. The only impact natural law had was simply that the same thinkers (Grotius, Hobbes, Spinoza, Leibniz) who strove for axiomatic elucidation in their philosophy formulated their ideas about natural law in the same way (evidence not only of their loyalty to the only method they held to be valid but also easily explicable in that it was simpler to axiomatize a merely notional law than a law which had

⁶⁵*Loc. cit.* In Livingstone's translation there stands 'unbroken continuity' instead of 'connection without gaps'. In the German original, the author spoke of 'lückenloser Zusammenhang', cf. G. Lukács, *Geschichte und Klassenbewußtsein*, Darmstadt and Neuwied, Luchterhand, 1968, p. 205.

⁶⁶*Loc. cit.*

⁶⁷Varga 'Rationality'.

developed through the complex functioning of the state mechanism and had been continuously adulterated by new contradictions).

What is indeed characteristic of the change of functions of the ideology of natural law is that the doubts regarding the formal validity of positive law obviously can not be maintained after the victory of the revolution. On the contrary: formal validity (i. e. the specific quality of legal norms as being enacted by specific organs in the course of a specific procedure in a specific way) must be established institutionally as the criterion of legality, and must be confirmed by legal specialists responsible for both the elaboration of the law and its practical implementation. It is obvious that such a change has consequences for the professional ideology of the legal profession, too. Well, Lukács is right in complaining that the obscurity surrounding the origins of law is not dispelled by sociology, political sciences, etc., when at the same time attempts are being made to smuggle back the idea of eternal values into positive law. However, his critique remains merely an ideological one if he does not take account of the fact that (1) formal validity fulfils an actual function in the operation of modern law, and (2) this must also be reflected in the ideology of those professionally practising the law, even if praxis again and again breaks through formal validity, thereby restoring it from being the role of criterion to being the genuine role of mediation. The practical ambivalence of formal validity by no means alters the fact that law, both in legal praxis and in the ideology that codifies the expectations of this praxis, must appear in a way that suggests this ambivalence only existed as a negligible number of exceptional and eradicable errors.

Only Lukács' messianic fervour can explain his inconsistency and short-sightedness in providing very sensitive analyses of the social context of the appearance of systemic thought,⁶⁸ only to arrive at a formulation of the methodological foundations of rational thinking whose consequences impermissibly absolutized his ideas and reversed them. As he explained with brilliant lucidity, 'rationalist thought by concerning itself with the formal calculability of the content of forms made abstract, *must define* these contents *as immutable*—within the system of relations obtaining at any given time.' The essential thing in this is that '*the method itself* blocks the way to an understanding both of the quality and the concreteness of the contents and also of their evolution, i. e. of history.'⁶⁹ Here Lukács correctly formulated the internal barrier and pitfalls of rationalist thought. However, what is generally qualified as a

⁶⁸ HCC, pp. 116 f. and 129.

⁶⁹ HCC, pp. 143–144.

burden of rationalist approach, was to become in certain specific areas not only an advantage, but also a necessary condition. This is the area of law and of every formal system of calculation, where closedness is a normative requirement.

Any theorizing about law within the boundaries drawn by the postulates of the legal system undoubtedly possesses all the properties which Lukács enumerated as blocks to rational thinking. On the other hand, legal theorizing can only exist provided that it is preserved as theorizing within the boundaries of the law and only partially transcending it, because otherwise, being fully externalized, it would annihilate the law.

Lukács' subtle thought according to which 'in the case of almost every insoluble problem we perceive that the search for a solution leads us to history,'⁷⁰ could serve as a rather general axiom for Marxist analysis. In this case, however, the historical approach does not take us nearer a solution, since the fundamental problem here is that the view of social totality cannot necessarily be applied separately and directly to the individual components. This is especially the case if the particularity from which the components receive their quality exists precisely in their formal seclusion and the relative autonomy ensured by it.

2.3 MESSIANISM AS THE CORE OF LUKÁCS' PRECONCEPTION

Lukács made no bones about his intentions. Referring to the small emphasis put on class characteristics he wrote: 'our aim is to understand reification as a *general* phenomenon, constitutive of the *whole* of bourgeois society.'⁷¹ Well, even if with the cold objectivity of his old age Lukács was able to write, justifiably, that 'in this book alienation, for the first time since Marx, is treated as central to the revolutionary critique of capitalism',⁷² this does not alter the fact that it was done in spite of a fatal misunderstanding of the original Marxian intention and category. In his terminology he followed Hegel, but he could not yet know the *Economic and Philosophic Manuscripts of 1844* by Marx which contained an explicit explanation. Consequently, he marxianized Hegel and distorted the Hegelian teaching in such a way that he interpreted alienation, that

⁷⁰HCC, p. 143.

⁷¹HCC, p. 210.

⁷²HCC, p. XXII.

with Hegel was identical with externalization, as alienation in the Marxian sense, i. e. as a phenomenon threatening human substance.⁷³ The result was the questioning of every achievement and the passionate negation of modern bourgeois society as a catastrophe and hell on earth. All the institutional components of modern society whose existence bourgeois evolution made possible suddenly became the stigmatic marks of capitalism and the carriers of alienation, components which were leading the human condition into an insoluble contradiction with its own substance. Let it be noted that negative utopianism of this kind is a frequent characteristic of leftist radicalism. This is why Lukács, in a reference to the revival of his book in the West, could write, not without irony, that 'this fundamental and crude error has certainly contributed greatly to the success enjoyed by *History and Class Consciousness*.'⁷⁴

Objectification—reification—alienation: all three conditions can, following on each other and depending on the concrete social conditions, be characteristic of law. As I have tried to show in an earlier examination of Lukács' *Ontology*,⁷⁵ objectified law is the normal way for positive law to appear in, while alienated law is one which has turned against its creator, the man, and degenerated into a threatening force. The fact that Lukács was able to obliterate these extreme poles was due not only to lack of terminological clarity but also to his all-pervading messianic commitment.

It is certainly not wrong to claim that *History and Class Consciousness* 'represents the first major irruption of the romantic anti-scientific tradition of bourgeois thought into Marxist theory.'⁷⁶ It is very striking indeed, if we think of the fact that Marx never shared in this tradition. The revolution of the proletariat was far from denying industrialism, yet it wanted to transcend it in new, socially more meaningful and well-balanced ways. As opposed to this, with Lukács 'there is absolutely no vision of an advanced industrial *socialism*.' For him, it appears, 'this domination has virtually no *institutional* apparatus whatever.'⁷⁷

This was not simply the consequence of a shift of emphasis or lack of orientation but a distortion caused by preconceptions. It is evidence that Lukács, the former commissar during the Commune, for years even after its collapse, took no account of the dynamic complex of the law, which he himself had been a contributor to and even a shaper of in his own way.

⁷³ HCC, pp. XIII ff.

⁷⁴ HCC, p. XXIV.

⁷⁵ Cf. *infra*, A. 3.

⁷⁶ G. S. Jones, "The Marxism of the Early Lukács", in: *Western Marxism*, ed. New Left Review, London, Verso, 1977, p. 33.

⁷⁷ *Ibid.*, pp. 36 and 39.

He took no account of the vivid legal debates which, although they called forth a mixture of the most different realistic and utopian views⁷⁸ with unmatched purposefulness and efficiency and in the heat of the events of those 133 days, prepared a number of draft codes, with the intention of creating, as soon as possible, an appropriate institutional order within the framework of a new system of enacted laws.⁷⁹

The aged Lukács, in line with the theories of utopia, wrote that 'every Utopia is in both its content and its direction determined by the society which it rejects, with all of its historical-human counterparts referring to a certain phenomenon of the socio-historical *hic-et-nunc*.'⁸⁰ Accordingly, the dramatized view of law of *History and Class Consciousness* had projected the image of a brilliant future.

If, above, I have dissected Lukács' view of the law he wanted to reject, it is perhaps not uninteresting to glance at the law whose outlines he did not draw up himself but nevertheless had to know, since he wrote a foreword to them on April 1, 1919.⁸¹ First of all, it may be surprising that here the same Utopias were in essence being formulated which had been voiced by Voltaire in the preparatory stage of the French Revolution, and later by so many other radicals during the revolutionary 'honeymoon periods' which were repeated in the hopeful yet naive British and French attempts at codification, and which finally surfaced in the columns of *Proletárjog* (Proletarian Law) under the Hungarian Soviet Republic as well as in Bukharin's great experiment, when in 1920 he undertook a popular explanation of the programme of the Bolshevik Party in *The ABC of Communism*.⁸² The essence of these Utopias consisted in the wish to eliminate the formal ways of administering justice, presuming the cooperation of professional judges and solicitors, in the spirit of a complete laicization of the law and of its practice and on the basis of a legal system which was simplified to the extreme, made lucid, and internationally harmonized so that everybody had an adequate foundation on which to proceed in the furtherance of his own cause and that of others. Well, the authors in question forecast that in the near future 'the solicitors will produce their own livelihood, the same solicitors who until

⁷⁸ Varga 'MTK', pp. 324 ff.

⁷⁹ B. Sarlós, *A Tanácsköztársaság jogrendszerének kialakulása* (The Development of the Hungarian Soviet Republic), Budapest, Közgazdasági és Jogi Könyvkiadó, 1969.

⁸⁰ 'Labour', p. 37.

⁸¹ Podach-Vértes, *A társadalmi fejlődés iránya: A kommunizmus gyakorlati kivitelezésének kérdése* (The Direction of Social Evolution: The Question of the Practical Implementation of Communism), 3rd ed., Budapest, Lantos, 1919.

⁸² Cf. Varga 'Utopias'.

now wrested it from the hands of each other or of third persons'; that 'we no longer waste a lot of material and intellectual energy on having to learn separately the monetary, measuring and legal systems of every country'; that 'administration and jurisdiction will not be carried out by professionals but by the producers themselves at times specially devoted to such purposes'; that 'the Official Gazette would be sent free of charge to everybody and would explain in intelligible terms the aims of society and the measures taken centrally'; the more so since, according to its planners, that system had to prove itself in practice: 'Five or six years will perhaps suffice for our absolutism to ask whether you had enough of the communism imposed on you or whether you wanted to continue with it?'⁸³ The contrast between Lukács and the legal life under the Commune seems to be heightened by the fact that although Podach and Vértés projected the possibility of the complete laicization of jurisdiction and administration, not even their (rather rampant) Utopia foresaw the abolition of institutions or even reducing them to rather primitive structures. They wrote: 'there will continue to be room for the administrative... genius, indeed they will be in even greater demand, because it will be necessary to create a much more comprehensive and complex organization.'⁸⁴

As may be seen, even by contemporary measures, Lukács saw the revolution in such theoretical terms that he more or less blindly skirted the question of an institutional set-up for socialism, although this was an acute problem as exemplified by Lenin's efforts to create a uniform legality and to overcome bureaucracy. Lukács' sensitivity towards these questions developed but slowly. He recognized the real importance of the state apparatus and state administration in his booklet written on *Lenin* in 1924, and he brought the legal problems in line with the proletarian revolution one year later, when reviewing Lassalle's letters. Of course, this was not a substantial change either; it only showed that according to Lukács also there existed a relationship between socialism and law. It was then that he mentioned the law of the dictatorship of the proletariat as also having a class character and being economically determined (in which the legal character of the laws has a significance for the proletarian revolution 'merely from a technical, formal point of view'. 'Right "as such" has precious little to do with the essence of the matter', i. e. 'the proletariat... even though for technical and other reasons creates forms of right as transitional forms—and indeed sometimes deliberately main-

⁸³ Podach-Vértés, *op. cit.*, pp. 12, 13, 15, 23, and 25.

⁸⁴ *Ibid.*, p. 32.

tains the continuity with the old form of right', but this of course never assumes autonomous importance: it only appears 'as nothing more than minor aspect of the revolution.'⁸⁵

The Lukács of *History and Class Consciousness* had not yet fully appropriated Marxism. Neither the temporal proximity of the Council Republic nor the sectarian squabbling in exile had made it possible for him to reconsider revolutionary praxis in adequate theoretical depth. He was still under the influence of his voluntaristic sectarianism; his messianic beliefs weighed more than the facts. Indeed, he had not yet recognized Lenin's true significance either, namely that 'his strength in theory is derived from the fact that however abstract a concept may be he always considers its applications for human praxis.'⁸⁶

The letter which Thomas Mann addressed in cold detachment and at the same time with inner comprehension to Dr. Ignaz Seipel, the Austrian Bundeskanzler, in his attempt to prevent Lukács' extradition in 1929, maybe adds something to understand the kind of commitment and personal qualities which characterized Lukács' intellectual evolution. 'This concerns Dr. Georg Lukács, a man whose intellectual nature, ideology and social confession are far from being my own, in whom however I esteem and morally admire a strong, pure and proud spirit, and whose critical works *The Soul and the Forms*, *Theory of the Novel*, etc. undoubtedly belong to the most important to have been written in this area in the German language during the last decades. You certainly know his personal history, his wealthy bourgeois origin, the prejudices of which he exchanged for the sake of his convictions with an idealism of which you may well say that it deserved a better cause, but which is certainly not the attitude of a petty and comfortable soul. Likewise you know the political role which this thoroughly intellectual man played, believed he had to play in his homeland at a time when catastrophic conditions offered transitorily social zealots the possibility of trying out their ideas experimentally on the living body of the people. This possibility was one which occurred but once, as a consequence of a lost war. The collapse of all order invited these spirits, among whom there were certainly many who were less noble than Lukács, to try out the order in which they believed. I see here no crime, I see only error and failure. Austria and Vienna offered an asylum to the man who was outlawed at home and who, if his doctrinaire and uncircumspect spiritual inclinations had not confronted a historical crisis, could have led the existence of a gentleman's son. Instead

⁸⁵ G. Lukács, "The New Edition of Lassalle's Letters", in: *TE*, p. 166.

⁸⁶ *HCC*, p. XXXII.

he lived there in deep poverty, devoting himself to his intellectual work. . . I know Lukács personally. In Vienna he once expounded his theories to me for an hour. As long as he spoke, he was right. And if afterwards he left an impression of almost uncanny abstractness, he also left an impression of purity and of intellectual courage.⁸⁷

This characterization may also throw some light on the so-called Naphta-debate, which has been going on for so long. There are endeavours in the world of literary scholarship seemingly aimed at simplifying the question of the identity of the diabolic Th. Mann-figure depicted in *The Magic Mountain* and reducing it to a mere question of philological fact, thus settling the debate for once and for all with a definite 'no'.⁸⁸ Yet one can know from an apparently authentic source that the philological origin of Thomas Mann's figure, the inspiration behind it was well known to, although did not especially interest Lukács himself.⁸⁹ On the other hand, I do not see the decisive question to be answered here as the problem of 'the relationship between the creative intellect and power', as the compiler of the so-called Naphta-dossier does, toning down Yvon Bourdet's formulation.⁹⁰ It is rather a methodological and therefore a more universal question, namely whether the type of thinker embodied in Lukács could have been a fanatic of reality or only of a preconceived reality.

The roots of Lukács' preconceptions could be fed from different sources. They range from the terminological constraints and the distortion of sensitivity of apprehending genuine problems of real life, caused by the fetishization of the Kantian and Hegelian concepts; as well as the sectarian underestimation of facts, including the messianic belief in the world revolution and proletarian consciousness as a decisive factor in it; right through to the always high respect for and emphasis on political praxis when, as it has been stated, aesthetic thought also becomes the automatic appendage of the given strategy and ideological requirements.⁹¹

Lukács' ability as the fanatic of reality, to judge himself with cool detached objectivity as a part of this very reality, cannot of course mean that he was able to surmount barriers he had not yet surmounted with his conscious ego. Hermann is therefore probably right in contending that

⁸⁷In: *Thomas Mann und Ungarn: Essays, Dokumente, Bibliographie*, ed. A. Mádl and J. Györi, Budapest, Akadémiai Kiadó, 1977, pp. 339–340.

⁸⁸E. g. N. Tertulian, "Naphta, Lukács, Thomas Mann (dosarul unei polemici)", in: N. Tertulian, *Experienta, arta, gândire*, Bucharest, Cartea Romaneasca, 1977, pp. 321 ff; *Hermann*, pp. 158 ff; etc.

⁸⁹Cf. *Eörsi 'Lukács'* p. 32.

⁹⁰J. A., "Naphta-dossier" (The Naphta Dossier), *Korunk*, XXXVIII (1979) 1–2, p. 8.

⁹¹M. Laczkó, "Politika, kultúra, realizmus: Lukács György a 100% időszakában" (Politics, culture, realism: Georg Lukács in the period of *The 100%*), *Új Írás* XVIII (1978) 2, pp. 87 and 93.

Lenin's critique directed against Lukács, and generally, Lenin's ironic comments on sectarianism and leftism, as well as the statements in Thomas Mann's letter (the Thomas Mann whom Lukács respected so much but who in his letter maintained a definite detachment) may have affected Lukács in a sobering, positive way, and may have induced him to repeatedly test his theoretical work⁹² in the light of practical experience. On the other hand, the understanding of Lukács' evolution at this time can be furthered by means of a fundamental methodological key, namely by the examination of and the revealed discrepancy between his more forcefully idealistic theoretical view and his much more realistic practical action. In this way the real Lukács obviously becomes far more complex than the one who manifested himself merely theoretically.⁹³

Thomas Mann's letter was written in the year when after a decade of practical political work, Lukács finally settled in Moscow, where, as a member of the Marx-Engels-Lenin Institute, he was able to begin to study the still unpublished *Economic and Philosophic Manuscripts of 1844* by Marx and the *Philosophical Notebooks* by Lenin, and, with short interruptions, was able to devote nearly fifteen years to the systematic study of Hegel, Marx and Lenin and thereby put his own philosophic existence a renewed foundation.

From the point of view of his oeuvre it was certainly a very fortunate coincidence that his career took this turn when it did. Relieved of practical responsibilities, he now had the opportunity to devote himself to creative work and the chance to reexamine his theoretical position.

⁹² Hermann, p. 158.

⁹³ B. Köpeczi, "Lukács in 1919", *NHQ* XX (Autumn 1976) No. 75, p. 76.

CHAPTER 3

PROVISIONAL SUMMARIES AND QUESTION MARKS

After a short period of hesitating between returning to Hungary or to Austria, Lukács arrived and settled down in Budapest on August 1, 1945. He had devoted fifteen years primarily to studying the classics of Marxism. In *The Young Hegel*⁹⁴ he clarified the relationship between Hegel and Marxism to his own satisfaction. Together with Lifshitz he began working out the aesthetics of Marxism. He worked extensively as a critic for the *Literaturnii Kritik* (Literary Criticism). Above all, and what is most important for our subject he expressed his agreement in principle with Stalin's draft constitution.⁹⁵ In Hungary, by then the 60-year-old Lukács began to work as a professor of aesthetics and philosophy, and at the same time he acted as a leading ideological authority of the Hungarian Communist Party, and apart from articles on current political issues, he produced works on literary criticism, literary history and aesthetics.

3.1 RUTHLESSNESS AND ITS TRAP IN *THE DESTRUCTION OF REASON*

This was the period that saw the completion of *The Destruction of Reason*, a controversial, provocative and informative work, written in a period that could by no means be described as an easy one and at a time when Lukács wished to settle account with the irrationalist trend in German philosophy that was claimed to have paved the way to fascism. But Lukács' interest was centered on laying down the philosophical foundations to his *Aesthetics* in the prelude entitled *The Particularity*⁹⁶ and then in the wide-scope discussions of *The Specificity of the Aesthetic*.

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⁹⁵G. Lukács, "Zum Verfassungsentwurf der U.S.S.R.: Die neue Verfassung der U.S.S.R. und das Problem der Persönlichkeit", *Internationale Literatur* 1936/9, pp. 50–53.

⁹⁶G. Lukács, "Über die Besonderheit als Kategorie der Ästhetik", in: G. Lukács, *Probleme der Ästhetik*, Neuwied and Berlin, Luchterhand, 1969, pp. 537 ff.

And so questions of law remained outside his scope in the decades after World War II as well. Lukács does not elaborate any legal problems and does not even devote any consistent thought to them.

Yet, he could not avoid raising problems in *The Destruction of Reason*, some of which he had been forced to grapple with in his *History and Class Consciousness*. But that work did not analyse these problems in new contexts, rather referred to them as examples of the kinds of ideological trends that met with his crushing criticism. And it happens that something that was a main chain of reasoning in *History and Class Consciousness* now condemned as an anti-Marxist view; what was regarded as a positive statement is now condemned and (perhaps due to rather careless quoting) lumped together with references of an opposite content. Despite all this, legal problems in *The Destruction of Reason* bring things to the surface which Lukács was certainly not closely preoccupied with at the time, but which later provided him with the basis for more carefully considered views in his *Ontology*.

As far as the problems related to *The Destruction of Reason* are concerned (problems which are of a primarily methodological interest to the present analysis), Lukács finds the specific feature of Weber's sociology in the effort 'to attribute to ideological forms, especially law and religion, a causal role corresponding to or even surpassing in value the role of the economy'.⁹⁷ In Lukács' opinion, Weber achieves this by turning to analogies far too often, replacing an analysis of the very subject with analogical description. For Lukács this amounted to playing down causal relationships and an agnostic-relativist rejection of questions related to causality in history. It must necessarily lead to subjectivism, since, by setting up 'formalistic analogies,' it will 'formalistically equalize' historically unrelated phenomena.⁹⁸

The whole chain of reasoning in *Reification and the Consciousness of the Proletariat* was based on the realization that the bourgeois form of economic management inevitably enforces its own rationalization, then gradually draws all fields related to the economy into this rationalization, finally leading to the emergence of organizational forms promising optimal predictability. To illustrate the emptiness of formalistic analogies Lukács writes that 'Max Weber, e.g., finds a great similarity between the modern state and a capitalist firm.'⁹⁹ There is no doubt that the criticism expresses something that is just as relevant today, i. e. the need to go

⁹⁷ ZV, p. 526.

⁹⁸ ZV, pp. 526 ff.

⁹⁹ ZV, p. 526.

beyond Weber's methodology. It is another question that criticism can hardly be expected to be effective if it does not sufficiently penetrate into the specific nature of the object under scrutiny.

Whether he examines the state or the legal methods of organizing the state, Lukács' interest does not cease to be of a general ideological and methodological character. He restricts himself to expressing the view that those forms are economically and politically determined and play a service, i. e. ancillary, role. Obviously, there is no such historical interpretation in Weber's works. But viewed from another angle, it is equally obvious that as soon as we have such an interpretation, a fundamental condition of taking another step forward is to establish a second level of investigation which keeps an eye on the specific features of the area in question (including the technical aspects and the traditional transfer of means) from a quasi-technological point of view. Attention must be directed to such means which acquire a certain permanence due to their artificial qualities and therefore a relative (always concretely determined socially) freedom of movement. As Lukács has Hegel say in an aesthetic context, a field that Lukács is much more at home in: 'And the *means* is an external intermediate term of the conclusion that is a realization of the objective; therefore it will reveal the rationality of the objective as such in order to ascertain itself in *this external other* and precisely *through* its external nature. In that sense, *the means* is superior to the *finite* objectives of *external* expediency; a *plough* is worthier of respect than the enjoyments and objectives it directly gives us. The *tool* will still be there when direct enjoyments have gone and are forgotten. In his tools, man has power over the outer nature, even though he is subordinated to it in multiple ways according to his objectives.'¹⁰⁰

Assuming (although not acknowledging) that Weber totally failed to get beyond establishing and working out typologies, not even that would be a convincing argument in the assertion that his work was unsuccessful, superfluous, or even harmful.

At the same time, it would be worthwhile examining the kinds and methodological foundations of the typologies Lukács used in his literary theory and criticism. We have seen, for instance, how Lukács idealized Greek culture. We can be satisfied with merely pointing out now that in the field of literature he needed typologies to examine the various literary phenomena. But in Weber's examples he regarded them as superfluous, since bureaucracy, law, etc. (that featured in the examples) were really

¹⁰⁰ G. W. F. Hegel, *Wissenschaft der Logik*, Part 2, ed. L. von Henning, Berlin, Duncker und Humblot, 1841, p. 220, quoted in *EA*, p. 209.

beyond his personal scope of interest. Viewed from such distance, it might have appeared bizarre to mention bureaucracy in ancient Egypt and socialism in one breath. But in the context of a systematic theory of bureaucracy that seeks to place the characteristics of various historical occurrences in a network of various typologies, it does not sound absurd at all, as perceived by Lukács.¹⁰¹

But this is the point where Lukács appears to further radicalize the, in any case, far from moderate views of his *History and Class Consciousness*. Talking of Weber's typology, he describes how sciences become increasingly formal and, by proclaiming that questions of historical origin and topical content are beyond their competence, leave these questions unanswered. Following the previous pattern,¹⁰² he quotes Kelsen's opinion, and without quoting refers to Jellinek; but wantonly he also links them to Preuss' thesis,¹⁰³ although he had quoted it in support of his own views thirty years earlier. I shall try to prove in the ensuing chapters that as for methodological choice, neither Kelsen's nor Jellinek's was a completely distorted position. The point is rather that among the contradictory ontological characteristics of law some elements have been given unfounded prominence.

Among the questions raised in *The Destruction of Reason* there is one that will be of interest from the point of view of drawing the lessons of the *Ontology* for legal theory, but is also typical of Lukács' way of reasoning and its habit of lending everything a topical character. The occasion is provided by Carl Schmitt, a theoretician on law, whose work is used by Lukács to provide a telling example to show how German sociology was attracted to fascism. In the works written after the Nazi take-over,¹⁰⁴ Schmitt sharply attacked what he called a neo-Kantian concept of law, denying that the state and law are but empty networks of formal relations, or, in other words, a mere point of reference for adjudication (*Zurechnungspunkt*). It is a simple legal truth, he writes, that norms apply only to normal situations whose presence is the positive legal precondition of their validity.

In awareness of the conditions it is obvious that we are faced with an occasional combination of two stimuli in Schmitt's position. On the one hand, a scientific urge drives him to justify sociologically, to substantiate, and, also to define the concept of validity in positive law. But at the same

¹⁰¹ ZV, p. 530.

¹⁰² HCC, p. 108.

¹⁰³ ZV, p. 530.

¹⁰⁴ C. Schmitt, *Politische Theologie*, 2nd ed., Munich and Leipzig, 1934, pp. 11 ff; and C. Schmitt, *Positionen und Begriffe*, Hamburg, 1940, pp. 124 ff.

time, there is also a political will at work trying to adjust the foundation of the law to Hitler's way of exerting power, mainly by abolishing the obligations inherent in the formal systems of state and law and, particularly, abolishing formal validity.

Lukács seems to isolate these two trends from each other.

At least, that is what one is led to believe from the way he 'completely' identifies himself with Carl Schmitt's polemics against neo-Kantian views. He approves of 'the fully unjustifiable nature . . . of dogmatism appearing in the robes of exact epistemology . . . that neo-Kantianism uses to turn law into an autonomous sphere of values, with rules of its own.' No doubt, he is right in saying that 'the validity of legal enactments . . . is always a real, socially determined validity' and therefore 'neo-Kantians . . . can at best offer an immanent interpretation of the enactments valid at any time, but can never give us a scientific explanation of their contents, emergence and their loss of effect.' From all this Lukács draws the conclusion (an idea that is to return as a *leitmotif* in his *Ontology*) that Schmitt's 'main emphasis is on the real continuity of social and state life, and he treats formal law as a mere component of this.'¹⁰⁵

From a methodological aspect, it is here that the priority of the ontical (*seinhaftig*) functioning of the law is formulated (i. e. that the law fulfils the economic and other requirements that are called to life basically to play a decisive role in life) and only when this is taken into account can one ask whether the law is functioning according to its own assumptions.

For Schmitt it follows logically from the above that in situations other than normal, i. e. in a state of emergency, the functioning of the state remains unchanged while the law, with its own system of formal requirements, will be pushed to the background. The outcome will be 'a kind of order in the legal sense', even if it is not 'legal order'.¹⁰⁶ At this point, Lukács begins to feel that Schmitt's interest in the state of emergency and the methodological approach reflecting this interest is related to his political conviction, namely, his opposition to the Weimar Republic. Yet, Lukács does not question Schmitt's propositions, as the latter is at odds with neo-Kantian philosophy and his assertions can be supported sociologically.

At the same time, I must note that Schmitt's view of normality as a condition of validity in 'positive law' is an ideological type of argument. After all, it is a rare occurrence in systems of law to have a legal provision making the validity of norms dependent in a formal way on the normality

¹⁰⁵ ZV, p. 569.

¹⁰⁶ ZV, pp. 569–570.

of the social life in question. And I may also add: even if that were so, it would not entail the above consequence. After all, the legal ordering of a state of emergency would not result in the abolition of all law and order, but only in the replacement of one kind of law and order (established according to a given situation) by another, adapted to differing conditions. On the other hand, Schmitt's statements are affirmed by the double primacy of the continuity of social and state life. Double, because it is this continuity that determines both the whole of the legal complex as a subordinate phenomenon and the validity of its norms in the long run. All things being considered, the actual functioning of the law never flows merely from its formal validity. In whatever way this functioning is *being qualified by the formally fixed criteria of validity of a given system of law*, it will always be its actual functioning and effectiveness that will qualify itself as a valid legal functioning.

Now, once Lukács adopts the position that the concept of formal validity is a neo-Kantian distortion, he must also accept its consequences. And his stand is unambiguous: 'The neo-Kantian separation of "formations of meanings" from the process of their emergence is fully untenable, both theoretically and aesthetically. This is true even more of the dogmatic analogy of the validity of legal enactments with this field, because this validity is always a realistic, socially determined validity.'¹⁰⁷

As it is, it is inconsistent to say the least in his favour if, on the one hand, he offers a helping hand to Schmitt to crush the concept of legal validity in a spirit of a showdown with neo-Kantianism, but on the other, when Schmitt uses the same line of thought to justify the brutal liquidation of the S. A. (*Sturmabteilung*) and its leaders by Hitler (1934), Lukács reduces it to the rank of 'a so-called theory of "philosophy of law"' in quotation marks. For in 1934, in his *Der Führer schützt das Recht*, Schmitt, from a purely theoretical point of view, adapts to a specific historical situation all he had outlined along more general lines. If the absence of normality suspends validity and establishes a state of emergency (a statement with which Lukács, as I have shown, fully agreed), it is simply synonymous with Schmitt saying now that 'In the moment of danger, the *Führer*. . . by the mere fact of being a *Führer* and as supreme judge, administers justice directly.'¹⁰⁸

(It should be noted that in emphasis, shades of meaning and final tone, Lukács expressed the question of form and validity of the law in quite a different way when he spoke of the reconstruction programme of the

¹⁰⁷ ZV, p. 569.

¹⁰⁸ Schmitt, *Positionen und Begriffe*, pp. 200–203; cf. ZV, p. 575.

Hungarian Communist Party in the coalition struggle after 1945. 'Nothing', he said, 'that a democracy can formally give is valuable *in itself*. . . This means that actually and practically the political and social content is prior at any time to the legal form. . . This priority of content should not deteriorate into an abolition of all forms. The most striking example for that,' he continued in an ideological tone as suggested by the tactics of the day, 'was produced by German fascism where the validity of every legal form was completely wiped out, a situation which led to arbitrary tyranny. Emphasis on the priority of content as opposed to form in the new democracy seeks a new legal status and security of the law, precisely in order to overcome chaos and anarchy.'¹⁰⁹ Well, at the time it must have been politically justified to remind people of the destructive effects of fascism. But it is also a fact that the atrocious inhumanity of German fascism basically did not follow from unharnessed arbitrariness doing away with *all* legal forms. Instead, it followed from the increasingly ruthless brutality of the content of a *definite part* of legal enactments and the fact that this was deliberately put into the service of wars of aggression and mass murder organized with bureaucratic care. That is why the victory of the allies led to the rebirth of the idea of natural law in Germany, because there law itself — completed with its network of institutions and specialists — came to serve National-Socialism and all those in power almost without reservation, provided that it was propped up by appropriate legal forms.)

The above conclusion may appear to be a surprising one, since I am talking about organized murder by German fascism that caused a shock even in Germany. But that does not at all alter the theoretical formulation of the question. There are two possibilities: the measure for action is either provided by norms of a formally confirmed validity, or the fact of the action itself will be the measure (or, to be more exact, not even the fact of the action, but its political and goal-oriented assessment). In other words, you will either need norms that can be formally identified in their validity before you can say what murder is, or someone else will do the assessment, namely, those in power (based on a naked political and goal-oriented assessment that is more flexible and especially more unpredictable than the lead yardstick of Lesbos) and afterwards by history (that, in its turn, will hardly have any influence on contemporary events).

¹⁰⁹ Gy. Lukács, *A marxista filozófia feladatai az új demokráciában* (Tasks of Marxist Philosophy in the New Democracy), Budapest, Székesfővárosi Irodalmi Intézet, 1948, pp. 9–10.

The formal determination of the limits of legal validity, and owing to that, the formal delimitation of the system of legal enactments are an indispensable feature of the legal complex and the most important means of its particularity. Although an approach from an incorrect basis may conceal its real role in a mysterious fog, the fact remains that the formal system of relationships is a real feature of law. Schmitt approached this particularity of law from the total complex of society and examined the limitations of its materialization in formulating his criticism.

In the chapters that follow, I shall try to show that as far as the formal character of law is concerned, one should not necessarily reject the polarization of contrasting approaches: to some extent, this also results from the very nature and inner contradictions of law. Formality involves a problem related to the particularity of legal functioning that was by far not solved by Lukács' until the completion of his *Ontology*.

3.2 ALLUSIONS TO A SYNTHESIS IN THE SPECIFICITY OF THE AESTHETIC

The subject of law reemerges with Lukács ten years later in *The Specificity of the Aesthetic*. Once again, the context in which he discusses law is not a legal one; law serves only as an example.

An opportunity for it is provided by the terminological clarification of the notions of particularity, mediation and the intermediary; they lead Lukács to the problem of the duality of *legality* and *morality*. Ever since his early works one can trace how an initially almost metaphysically rigid opposition of the two (an approach rooted in neo-Kantian philosophy) softened into a dialectical interpretation of the relationship between legality and morality which, in this interpretation, are mutually conditional upon each other. Lukács has no doubt now that the emergence of both 'merely objective law' and 'merely subjective morality' is a social necessity and their distortion into antinomies is the consequence of a mistaken theoretical premise.¹¹⁰ As far as law is concerned, 'relentlessly enforced abstract legality results in a complete separation of the law from human intention. In this way, the inevitable independence of each legal provision from the consciousness or will of the individual (which expresses the justifiedly general nature of this sphere) will gain an existence that appears to be totally unbound and will become fetishized into a "Leviathan" mastering human being arbitrarily'. Lukács also emphasises the inevitability of the simultaneity of law and morality and also the fact that

¹¹⁰ EA, p. 213.

their distortion into an antinomy follows from false premises: '... both forms of social practice are deeply justified as elements of the social life people lead. . . Only when abstract and isolated and therefore unilaterally forced to rely on themselves will the two relatively correct positions degenerate into unrestrained antinomies.'¹¹¹

This dialectical formulation of the problem appears to foreshadow a Marxist solution to the question, and thus anticipates the *Ethics* Lukács planned but never completed.

Ethics, Lukács now claims, mediates between legality and morality. And he formulates the significance of their interaction in a most sensitive way. 'After all, the abstraction that a legal system can lastingly function with complete disregard to the moral views of a nation is wrong both theoretically and historically. The inevitable independence of all legal provisions from the consciousness and free will of the individual at any time never loses its validity if viewed merely from the aspect of the direct functioning of the system of positive law of the age. The living interaction maintained through the moral views of the nation will play a major, sometimes decisive role in the birth, transformation and actual disappearance of individual legal provisions, institutions and indeed, whole systems of law. But at the same time one must remember that ethics will express only a few of those convictions of a practical effect that can be considered from the point of view of such mutual interactions.'¹¹²

Since I do not wish to go into the problems of ethics in depth, from my viewpoint the most important conclusion is the one emphasizing the lack of independence of law as a means in determining social processes. One should recall that Lukács' early works reflected his efforts to acquire the knowledge of Marxism and were inspired by a messianic belief in revolutionary immediacy pointing to consciousness as the decisive factor behind the law. In contrast, the statement above reveals what is one of the basic messages of the *Ontology*. Namely, in a historical perspective, the law can assert itself only inasmuch as it is being supported by the ideological and non-ideological media, as its enactments and/or actual operation correspond with the direction in which the social total process is moving.

Proof supporting the existence of such interaction is seen by Lukács in the fact that legal systems acknowledge certain distinction, namely that both legislation and legal casuistic take motives of intention increasingly into consideration.¹¹³

¹¹¹ EA, p. 214.

¹¹² EA, pp. 214–215.

¹¹³ EA, pp. 216 f.

Of course, one can hardly exclude the soundness of such an explanation. Yet, I believe that the interaction between legality and morality asserts itself through channels much more complex than that. And as far as the legal identification of facts that constitute a case (and, as one of their elements, the taking into consideration of the deliberateness of an action) is concerned, I suspect that the decisive feature is rather what Lukács will call in his *Ontology* the growing socialization (*Vergesellschaftlichung*) of society. In brief, the point is that the process in which social relationships become increasingly complex leads to an increasing complexity of legal regulation itself. In the technique of legal regulation the only feasible, one might say inevitable, method is often to differentiate according to the fact and degree of deliberateness. But one may add that in this way differentiation becomes an issue of mere regulatory technique which will lose the ethical aspect it has gained elsewhere.

Finally, Lukács also touches on the problem of the generality of the law. This is occasioned by the assertion of Hegel's terminology, namely that 'the individual' is decisive from the point of view of morality, 'the general' is decisive from the point of view of the law, and 'the particular' is decisive in ethics which is an intermediary between both.¹¹⁴

Mention of 'the general' will gain theoretical significance by the fact that the explanation of the relationship between the general and the individual leads Lukács to a few formulations, non-conventional and therefore revealing, in traditional Marxism. For instance, he writes about one of the factors of administration of justice in the following way: 'independent legal institutions, such as common juries, emerge, one of the main intentions of which is to adapt to what is specific in the individual case.' In other words, while the general enjoys a categorical priority, the particular and the individual are not the final outcomes in a logically clear-cut and unambiguously predictable deductive train of thought; they are more than just legally dependent components. For 'the particular and the individual are partly objects of this predominance of the general and partly means serving its realization.'¹¹⁵

In other words, as Lukács is suggesting, the individual is an independent factor that has an influence of its own in legally influencing society. And this anticipates a later conclusion that the functioning of the legal complex cannot be described exhaustively within the framework drawn up by legal enactments, i. e. on the sole basis of the formal requirement of the principle of legality. This requires an ontological reconstruction of the practical operation of 'adaptation' and its possible conflicts with legality.

¹¹⁴ EA, p. 216.

¹¹⁵ Loc. cit. (my italics).

PART TWO

**THE *ONTOLOGY*:
A COPERNICAN REVOLUTION**

CHAPTER 4

THE ONTOLOGICAL APPROACH AS A METHODOLOGICAL POSSIBILITY OF TRANSCENDING SOCIALIST NORMATIVISM

4.1 THE GENESIS AND METHODOLOGICAL SIGNIFICANCE OF THE *ONTOLOGY*

The Lukácsian *Ontology* is a seemingly paradoxical phenomenon: 'the beginning of a new philosophical school of thought, even though it came into being as the end of a vast, matchless oeuvre.'¹¹⁶ It is the summation of the polemics which preoccupied Lukács practically throughout his life (waged mainly against himself within Marxism), the culmination of a philosophical achievement that wishes to reconstruct and redraft the classical teachings of Marx in a way in keeping with the scientific standards of our century. Although it bears the marks of being unfinished¹¹⁷ and Lukács was forced by the advance of his illness to leave the revision of the corrected manuscript to posterity,¹¹⁸ he still had the opportunity to discuss the first version of the manuscript with some of his disciples.¹¹⁹ The assessment of posterity is, however, no easy task. The book is polemical, it constantly questions itself, repeatedly thinks over the connections of its theses and its methodological consequentiality. Its sole purpose is to promote the assertion of 'Marxism in the 20th century, and the 20th century in Marxism.'¹²⁰

It is also intended by the author as a polemic. It is meant to link up with the historical process of the renaissance of Marxism, as a phenomenon of increasing significance in our age. As Gyertyán's appropriate remark reflects, the renaissance of Marxism feeds on the need to provide the same properly elaborated, comprehensive and convincing interpretation of the 20th century reality as it provided of the 19th century. In

¹¹⁶ M. Almási, "Nyolcvan deka dinamit" (Eighthundred Grammes of Dynamite), *Élet és Irodalom*. XX (1976) 31, p. 11.

¹¹⁷ Cf. I. Eörsi, "The Story of a Posthumous Work (Lukács's *Ontology*)", *NHQ* XVI (Summer 1957) No. 58, pp. 106 ff.

¹¹⁸ Cf. the fine short story by I. Eörsi, "To the End of Logic", *NHQ* XVII (Spring 1976) No. 61, pp. 92 ff.

¹¹⁹ *Fehér et al.*, pp. 160 ff.

¹²⁰ E. Gyertyán, "Lukács György szellemi Odüsszeiája" (The Intellectual Odyssey of György Lukács), in: E. Gyertyán, *Párbeszéd sokszemközt* (Public Dialogue), Budapest, Szépirodalmi Könyvkiadó, 1973, p. 143.

other words, it must provide adequate answers to the fundamental questions of the present age, including problems which relate to the institutional set-up of socialism, its advance into a world system, the heritage of the practice of the decades since the death of Lenin, and not least the many-sided questions of international development.

Marxism can comply with this historic task only by self-renewal. It is not simply that it has to expand its conceptual framework, and reconstruct the connections of its theses in order to widen the absorption capacity of the theory in order to make its problem-sensitivity more refined and more reflective of the reality of our age. The decisive feature of Lukács' book is precisely that it wants to touch upon everything in Marxism and the more it returns to Marxian methods themselves the more substantial it becomes.

It may suffice to recall that the criterion of whether a theory is or is not Marxist lies, when all is said and done, in the 'new scientific outlook as its basis.'¹²¹ This is nothing but an affirmation of the basic thesis of *What is Orthodox Marxism?* outlined by Lukács between 1919 and 1923,¹²² which he still considered in 1968 as 'capable of exerting a considerable influence even today',¹²³ precisely for the renaissance of Marxism. It is needless to emphasize that when the self-identity of Marxism is defined, the matter is not the questioning of such or such theses of the classics, but precisely the logical application of the historicity to Marxism, that constitutes the essence of Marxism. In other words, the matter is the historicism of the cognitive process: 'that which is recognised now as true has also its latent false side which will later manifest itself, just as that which is now regarded as false has also its true side by virtue of which it could previously be regarded as true.'¹²⁴

Perhaps the conclusion appears needless and quite trivial, yet, even risking the odium of being meaningless, I feel it necessary to emphasize that the root of the novelty what the Lukácsian *Ontology* brings into the fore of Marxism is to be found above all in its ontological approach. In the introductory *Historical Chapters* Lukács proves convincingly that the

¹²¹ F. Engels—K. Marx, "A Contribution to the Critique of Political Economy" (1859), in: *MESW* I, p. 510; quoted in a context asserting this thesis by V. Peschka, "Marxistische und sozialistische Rechtstheorie", in: *Aktuelle Probleme der marxistisch-leninistischen Staats- und Rechtstheorie*, Budapest, Magyar Tudományos Akadémia Állam- és Jogtudományi Intézete, 1968, p. 272.

¹²² *HCC*, pp. 1 ff.

¹²³ *HCC*, p. XXV.

¹²⁴ F. Engels, "Ludwig Feuerbach and the End of Classical German Philosophy" (1886), in: *MESW* III, p. 363.

ontological approach has always been the fundamental characteristic of the truly Marxian thought. Of course, it would be of only philological or ideological interest to demonstrate that Lukács did not attempt to smuggle in any new element into Marxist thinking (compared to the original Marxian thought) but “merely” developed methodologically what was inherent within the framework of a well-considered conceptual system. This could only have significance for someone wanting to reconstruct Marx’s ideas with philological methods or to support his reservations regarding the Lukácsian way of thinking with a finding that the scientific outlook developed in the *Ontology* amounts to deviation from Marx.

Lukács incessantly warns us that in the assesment of speculative achievements it is not the abstract, the *per se* reconstructible nature of the idea in question which is important, but its actual, historical effect. Well, if I project this thesis onto the various historical products of Marxian teaching, I can say this: no matter how inherently ontological Marx’s outlook was, the fact remains that all of the interpretations of Marx (including those of Engels and Lenin) have so far increasingly emphasized the epistemological outlook.

In view of this shift of emphasis, which almost forebodes the danger of conceptual distortion, the exploration of Marx’s ontological premises may itself open up new roads and perspectives for the philosophical-historical reconstruction of Marxian thought. This reconstruction makes possible an even more radical departure in the remoulding of the various Marxist sociological theories, since it is a fact that neither Marx, nor Engels or Lenin developed any sociological theories (for instance a theory of law) in independent forms. These theories began to develop only towards the end of the first third of our century, for instance, a Marxist theory of law during the consolidation period of the 1917 Russian revolution as the socialist theory of law; and the *then* dominant Marx interpretations, which have since become traditionally accepted, played a dominant role in laying their foundations.

It is not the task of the present study to assess the development of Marxist philosophy, or to throw light on the philosophical problems of the ontological approach. Similarly, a separate study would be needed to explore the connections between Lukács’ oeuvre including his *Ontology* (born from Lukács’ totality concept) and other philosophical trends of our age.

Only philosophical literature is competent to examine the above questions analytically and to undertake an evaluation of Lukács’ ontological view (to decide, for instance, whether Lukács’ work really

contains 'two ontologies,' contradictory in many essential points as it has been suggested).¹²⁵ Unfortunately, the basic questions of the *Ontology* have not yet permeated our domestic philosophical life to the extent that these questions have been treated in a way worthy of the Lukácsian oeuvre. This absence is due to inadequate preparation and inadequate criteria. But this hopefully will happen at the earliest when Italian, English, German, Polish, etc. editions come out, and the debate that will develop in the international arena will eventually force Hungarian philosophy to take part in the polemics.

In view of the above, I do not propose either to provide a definition of the ontological outlook as such. For the purpose of the present examination the distinction between ontological and epistemological outlook seems sufficient, at least to the extent that while the *epistemological* approach concentrates on processes and their components as the true or false results of reflection during the analysis of social processes and their components, most importance in the *ontological* approach is attached to the actual effect exerted in a given social context. The indispensability of the ontological approach is further indicated by the circumstance that social occurrences invariably take place with the consciousness of the individuals active in society, in the network of social objectivations and in the mediation of their organizing ability, regardless of their epistemological content. Whichever component of social existence one considers, from the individual consciousness to such powerful forces as political and religious ideologies, moral ideals, or the law backed up by coercive measures: the consideration of these factors only as the product of processes of reflection would not lead to their actually fulfilled roles. It would not explain how ideological formations, seen by posterity as being distorted, were able to fulfil functions necessary in their age so successfully, or how their remoteness from reflected reality could sometimes be one of the most particular motives behind the role they played.

The evaluation of social processes and their components is by no means, of course, the exclusive feature of the epistemological outlook. Almost from the beginning, there have been philosophical trends which regarded the categories of *logic* as categories of existence. This trend was most clearly and comprehensively represented by Hegel. But there is peculiar flaw in this dialectic. According to it, philosophy as the image of reality creates concepts about reality. It organizes these concepts into a system and, at the same time, this conceptual system produces a universal system of logic. After this, it also begins to apply these concepts to

¹²⁵ *Feher et al.*, p. 170.

reality. In the process of human cognition, this universal system of logic attributes increasing importance to the system of concepts in question as to *categories of reality* both in the conceptual grasping of reality and in the organization of knowledge into a common body of knowledge.

In his *Ontology*, Lukács attributes overemphasized importance to the logical viewpoint and considers it to be almost synonymous with and complementary to epistemology.

This comes chiefly from his affection towards Hegelian philosophy. It also partly explains why he accepts any epistemological approach as being subordinate compared to the totality approach throughout his career; this had the further consequence that Lukács developed a profound aversion to the epistemological tendencies of the 20th century, and took an extraordinarily rigid stand against them and was sometimes full of the fervour of the purist, showing even a lack of goodwill.

No doubt, several factors contributed to his sensitivity. Perhaps it will suffice to refer to one of these, as the most significant theoretically: to one of the most decisive characteristics of the exact sciences and philosophy after Marx, namely to the growing amount of analyses carried out by mathematical-logical apparatus. This change, required by the development of the sciences, later slowly led to the growing autonomy of the mathematical-logical apparatus, indeed, it seemed that it gradually turned philosophical thinking into a function of this apparatus. Thus philosophy became degraded in its function in order to become a mere interpreter of the current achievements of the exact sciences. Degradation to the role of *ancilla scientiae* must be understood in two senses: partly philosophical thinking becoming ancillary, and partly subordination to and dependence on the mathematical-logical apparatus, which laid the foundation of and made possible this undoubted progress.

In a conscious effort to be traced throughout his whole oeuvre, Lukács linked the ontological position to the *totality approach*. It was an often emphasized ambition of his career. One of the few points on which critics of Lukács agree is precisely that the decisive motive Lukács' philosophical path had was his aspiration to grasp totality ever since the period of *History and Class Consciousness*. Examining it more closely, this is nothing but the determination to search for connections, supplemented by the recognition that the connections in question can be properly interpreted only within the existing whole. In the final analysis, therefore, the primary object of scientific contemplation is the existing whole and not its elementary components, i. e. 'the total interconnection of the complex in question is confronted by its elements in a primary way. These elements can only be understood in their given concrete co-operation with

one another, within this complex existence, though any effort to try to reconstruct theoretically the complex of existence itself out of its elements would be in vain.¹²⁶

It is the totality approach that in Lukács' eyes seems to show the way out of the Scylla of interpretations based on a priori philosophical-logical constructions and the Charybdis of simplistic, mechanical, vulgarizing tendencies, traditional in Marxist thinking. This glimmer of hope held out by Marx, but not properly fulfilled by his followers, and the attempt to realize it, was called by Lukács the *tertium datur*. It is ultimately only the 'historically concrete, dialectical conception of reality.'¹²⁷ It is no accident, therefore, that Lukács often described this possibility as bearing the promise of a way out, as the choice between two evils. Quoting a characteristic example: 'to be rejected is every "logical deduction" of the construction or classification of categories proceeding from their abstractly conceived general concept. For connections and qualities, the specific character of which is in fact ontologically based on their social-historical genesis, would thus appear as a conceptual-systematic hierarchy, which would only pervert their concrete essence, their concrete interaction, as a result of this inconsistency between true existence and what is claimed to be the determining concept. Equally to be rejected is the vulgar materialist ontology which classifies the more complicated categories as no more than mechanical derivatives of the elementary categories, and so excludes all understanding of their particularity on the one hand and on the other creates a false, allegedly ontological hierarchy between them by which only the elementary categories have any existence in the proper sense.'¹²⁸

4.2 SOCIALIST LEGAL THINKING

The decisive point in thinking in the terms of the *Ontology* within a legal context is the recognition of resisting the phenomenon called "socialist normativism" (rather inaccurately and oversimplified, but still accepted by virtue of its descriptiveness) as one of the foremost tasks of present-day jurisprudence.¹²⁹ Even though the term "socialist normativism" seems to indicate a determined and unambiguous position, it concerns a phenomenon to be approached historically, paying regard to political, ideological, and historical factors.

¹²⁶ 'Labour', p. 7.

¹²⁷ Mészáros, p. 63.

¹²⁸ 'Labour', p. 36.

¹²⁹ I. Szabó, "The Notion of Law" *Ajurid.*, XVIII (1976) 3-4, p. 267.

4.2.1 The Revolutionary Period

Socialist revolution, as will easily be understood, did and could not bring with it a ready-made legal theory. Although the possibility of developing a systematic theory of law was by far not excluded in several of the ideas and analyses of Marx and Engels, neither the actual tasks of the workers' movement nor the inner development of legal theory demanded the realization of that possibility. Not even the socialist revolution and the take-over did necessitate such a demand. Lenin's *The State and the Revolution* and his lecture *On the State* are the most telling examples of the fact that the state is the central factor in a directly revolutionary situation; the law is not given a key role either theoretically or ideologically. The topic of law was touched upon by Lenin without direct reference and quite subordinated to the topic of the state in the course of expounding some actual questions of the revolution at the time when these works were written in August-September, 1917 and July, 1919.

Lenin, who had talent for uniting the theoretical and the practical revolutionary in himself, i. e. for seeing theory and practice in their direct interconnection, only dealt with the law to the extent made necessary by the strategy and tactics of the revolution: when such interest was directly of practical importance. And the role of the law was directly politicized during the upsurge of the revolution. It was used as a means of political propaganda; its relative autonomy was annihilated and political considerations were taken into account rather than specifically legal ones.¹³⁰ Indeed, even legislation provided a general framework for the exclusive assertion of policy, influenced only by the interests of the revolution rather than specifying the ways and means of this assertion in the realm of the law.¹³¹

But the law, although shedding almost all of its particularities and adjusting them to the political practice of the day, exists from the first moments. Its existence in socialist transformation was not due to traditional, but other functions, determined by location and time. Thus it was partly overshadowed by the revolutionary victory; the ecstasy of the "honeymoon" widened the revolutionary will and intention to infinity and attributed roles to the law which cast it into the realm of utopias. On

¹³⁰ Cf. K. Kulcsár, "A politika és a jog viszonya Lenin műveiben" (The Relationship of Politics and Law in Lenin's Works), *Állam- és Jogtudomány* XIII (1970) 1, pp. 19 ff.

¹³¹ Cf. Cs. Varga, "Lenin and Revolutionary Law-Making", *International Review of Contemporary Law* 1982/1, pp. 47 ff. or Cs. Varga, "Lénine et la création révolutionnaire du droit", *Revue internationale de droit contemporaine* 1982/1, pp. 53 ff.

the other hand, this utopianism of rationalist intentions but of an unlimited advance was transformed into its own opposite. The law, the instrument of a crystal-clear future, arose as something that was to be laicized in moments and soon withered away as it shed its particularities. Thus the whole process reveals the inner contradiction of utopianism, namely that it endows its object with a demiurgic role and annihilates it at the same time. This dual role stimulated the formation of theories which were mixed with real programme and utopias, built up like mosaics from the progressive elements of the semi-bourgeois past, and were embodied in diverse ideas to suit the dynamics of revolutionary movement and the wide range of views brought to the surface by it. At the same time, these theories were expressions of efforts (particularly in Soviet Russia), whose only essence was precisely the lack of a real programme. They saw the law in the close perspective of a "withering away": they assessed the newly established and wide-spread repressive organization with all of its paraphernalia as the specific product of the Civil War, and hoped that it would pass away with the end of the latter.

Undoubtedly, the legal complex developed in its formal qualities (together with the whole network of institutions and technical machinery) was the product of consolidation. It is also evident that the Russian proletarian revolution could not be consolidated in a short and peaceful transition. It is too well known that the revolution in Russia, from the start, could not be 'classical' in the Marxian sense, since it neither occurred in a developed capitalist country, nor did it trigger off a world revolution. Certainly the consolidation of this non-classical social explosion could not be classical either.

The Soviet revolution was diverted to unusual paths by such intermezzos as war-communism (triggered as it was by the Civil War) and the New Economic Policy that went to the other extreme.

In the extraordinary situation that they lived through, the hope of the soon-to-be-realized withering-away of the law persisted. What should socialist society do with the law? It is in its hands, though it is not really its responsibility, since it is a product of class society, and as such it ought to have withered away long ago. This question has worried theoreticians for many years.

Three characteristic views may be pointed out to demonstrate the theoretical tendencies.

M. Reisner, the Marxist follower of Leon Petrazicky's psychological trend, assured the leaders of the revolution that the core of the law is the intuitive consciousness of class origin. It follows that revolutionary law

has already developed with the victory of the revolution, even if there is no legislation.¹³²

On the other hand, the commissar of justice in Soviet Russia during the revolutionary transition, P. I. Stuchka, defined the law (by short-circuiting the Marxian thesis) as the system of social, mainly economic relations. The result of this stand was a triple chain of relationships, whose concrete expressions were the legal relationships considered identical with economic ones (as components of the economic basis) and abstract expressions were the law and its ideology (as components of the superstructure).¹³³

The best worked out, and also the richest in content from the point of view of later development, was E. Pashukanis' theoretical attempt. He also brought the law into relation with social relationships and saw in it the form of given relationships.¹³⁴

The simplification in Pashukanis' interpretation consisted of his absolutizing generalization of the characterization that Marx had given of a given historical model, and making it a *sine qua non* condition of the legal phenomenon itself. Legally relevant relationships became 'the relationships of the possessor' of commodities with the further consequence that 'the logic of juridic concepts corresponds with the logic of the social relationship of commodity production.'¹³⁵ According to Pashukanis, however, the 'correspondence' which characterizes the interconnection of legal concepts and the social relationships of the commodity production is not the statement of an ontological fact, but the declaration of a view that becomes the source of theoretically disastrous simplifications later on. Being perhaps the first who clearly bent the Marxist theory of law towards epistemology in the Leninist sense, Pashukanis declares *expressis verbis*: the norm is 'directly derived' from existing or emerging relationships.¹³⁶

Yet it is interesting to note the peculiar contradiction concealed in Pashukanis' position. Although compared to other theoreticians, he makes a theoretical advance, this involves a practical step backwards. On the one

¹³² M. A. Reisner, "Law, Our Law, Foreign Law, General Law" (1925), in: *Soviet Legal Philosophy*, trans. H. W. Babb, Cambridge, Harvard University Press, 1951, pp. 83 ff.

¹³³ P. I. Stuchka, *Izbrannie proizvedeniya o marksistsko-leninskoy teorii prava* (Selected Contributions to the Marxist-Leninist Theory of Law), Riga, Studka Latviiskoe Goss. Izdat, 1964, pp. 123 ff.

¹³⁴ E. B. Pashukanis, "The General Theory of Law and Marxism" (1924), in: E. B. Pashukanis, *Selected Writings on Marxism and Law*, ed. P. Bierne and R. Sharlet, trans. P. B. Maggs, London, Academic Press, 1980, pp. 58 ff.

¹³⁵ *Ibid.*, pp. 61 and 69.

¹³⁶ *Ibid.*, p. 63.

hand, and this is the positive side of his theoretical position, he separates the law from the state, attributing to the former radically differing structuring and operating principles. It is not the state that needs the law, he explains, since the state is a mere instrument of oppression, 'where so-called *raison d'état* (the principle of naked expediency) rules'. It is the law that presupposes the state. (For instance, 'the legal superstructure *par excellence*' is nothing but court proceedings occurring within the organizational network of the state.) On the other hand, and this is what may be regarded as a step backwards, the law is seen as a mere transition, since it is linked to commodity relationships, i. e. it is bourgeois law *par excellence*. And when bourgeois law disappears, law itself withers away.¹³⁷

Thus Pashukanis grasps the legal form in its particular existence, yet he also regards it as being alien to socialism, as a handicap inherited from the past.

Yet I still believe we would not only be unjust to Pashukanis, but also critically incorrect, and we would misunderstand the methodological lessons of Lukács' *Ontology*, were we to see only a simplistic and one-sided interpretation of Marx in Pashukanis' position. The picture which proves itself distorted theoretically was the true image of the reality of the era: it gave expression to the hesitating attitudes towards the future of the law. The outlook fed on the radically leftwing revolutionary Utopias, according to which the coexistence of socialism and law is but a forced co-existence and, as such, a mere concomitant of a necessary transition.

Early Soviet tendencies share essentially the same shortcomings which one can observe in the case of Lukács' *History and Class Consciousness*: they did not foresee socialism in its institutional set-up. Lukács' leading essay in *History and Class Consciousness*, entitled *Reification and the Consciousness of the Proletariat*, identified industrial society with capitalism. Consequently, he attributed all of the contradictory social consequences of the structuring principles (formal rationalization, reification, etc.) which generally characterize industrial societies exclusively to capitalism. Early Soviet legal theory similarly failed to take into account the probability and even necessity that the socialist society would also have to set up its own legal superstructure and that it would also grow into a complex, cumbersome and bureaucratically manipulated system.

It seems that the ideology permeating the movements of the New Left nowadays is similarly utopian in several respects (more precisely it is one

¹³⁷ *Ibid.*, pp. 92, 67, and 46.

in which only the negative programme has been worked out, i. e. what it rejects; the positive programme is only roughly delineated without specifying the means for its realization and without regard to possible pitfalls). In our days it is the New Left which regards *History and Class Consciousness* as the only intellectual food fit for consumption from the array of Lukács' Marxist work; the New Left would limit interest in socialist legal theory exclusively to the experiments of the first decade of the Russian revolution. One of the characteristic features of the legal theories of the left in the West is that they see the question of the withering-away of law as the most original contribution of Marxism to theorizing on law and also as one of its most acute theoretical problems.¹³⁸

4.2.2 *The Roots and Manifestations of Socialist Normativism*

As soon as the social and economic consolidation had been completed in the Soviet Union, the views in question were immediately left behind, indeed they become utterly dysfunctional, hindering further development of both society and its theory.

The spread of the wave of Soviet-Russian codification into other republics represented the beginnings of a peculiarly socialist legal set-up even during Lenin's life time as did the building up of the dual subordination of the body of state administration, the claim for uniformity in the application of the law, and the attorney's general supervision in order to ensure legality: all these were developments which clearly made the interdependence of the socialist state and its law and the construction of a legal machinery indispensable. The 1936 Constitution was a milestone in Soviet legal development, its symbolic pinnacle. It was inspired by political considerations, of course, but it was also the logical result of Soviet development.

Theory obviously had to take the new reality into account. The task was a dual one: the critical surpassing of the old position, and the theoretical outlining of a socialist legal set-up proper. Basically, Soviet legal theory fulfilled both tasks.

It should not be forgotten, however, that this aim was historically intertwined with another. Social consolidation coincided with Stalin's coming to power, with the task of implementing Stalinist political theory

¹³⁸ E. g. A. Brimo, "Le dépérissement du droit dans la théorie marxiste du droit et de l'État", in: *Mélanges Burdeau*, Paris, Librairie Générale de Droit et de Jurisprudence, 1977; A. Brimo, *Les grands courants de la philosophie du droit et de l'État*, 3rd ed., Paris, Pedone, 1978, pp. 497 ff.

into practice. In this historical situation this resulted in the preponderance of the Stalinist line. Since this era also caused a distortion in the theoretical treatment of Marxism,¹³⁹ I have to outline Lukács' interpretation of the most characteristic features of the Stalinist theoretical and practical pattern, for it partly determines the theory of law to this very day.

As far as can be ascertained from his writings, Lukács regarded the term "personality cult" as an expressive one, and yet one that concealed the essence. He did not accept it as a scientific term,¹⁴⁰ but neither did he coin a new one to replace it. At the same time, the expression 'Stalinism' which he used instead of it is not an appropriate alternative either theoretically or ideologically.¹⁴¹

As is known, the political confrontation with this problem, in many of its manifold implications, occurred at the 20th Congress of the Communist Party of the Soviet Union. However, despite the minute analyses of the phenomenon, this confrontation failed to keep in step with developments in Marxism as a theory.

The intellectual biographer of Lukács shows convincingly enough that Lukács identified with Stalin 'with an exceptionally profound conviction' during the era before the final defeat of Fascism. For then, he continues, this kind of identification offered as 'a realistic and decisive alternative, without which it was simply impossible to live honestly'. According to Hermann, Lukács' identification was not only an attitude embodying his conscious political choice, but also 'the consequence of his intellectual career.'¹⁴² Hermann represents also the change of this attitude after the 20th Congress, a turnabout not as a result of a merely subjective or purely intellectual choice, but primarily because history itself posed the question that way. As Hermann argues, the time had passed when socialism had to demonstrate its inner reserves in direct confrontation with inimical regimes, and now 'notwithstanding its inner contradictions it had to prove its superiority, mainly human superiority, over modern manipulation'.¹⁴³

¹³⁹ Lukács states with extraordinary acumen that "the political leadership of the post-Lenin era had radically broken away from Lenin's method, and this breach had necessarily led to the point where it frequently had to break away from Marxism itself". In: *'Lenin'*, p. 230.

¹⁴⁰ 'The liquidation of the Stalin era . . . was arrested at the often superficial ideological critic of the so-called "cult of personality"', said Lukács almost fifteen years ago. Cf. B. Schacherl, "La riforma economica in Ungheria e i problemi della democrazia socialista: Intervista di György Lukács", *L'Unità* XLIII (August 28, 1966) No. 192, p. 3.

¹⁴¹ Gy. Aczél, "Peaceful Coexistence and Ideological Struggle", *NHQ* XIV (Autumn 1973) No. 51, p. 42.

¹⁴² Hermann, pp. 209 and 211.

¹⁴³ Hermann, p. 321.

And these years were marked by 'important events' which caused a certain degree of erosion 'in the bourgeois world, and not infrequently also in socialist states.' Since Lukács had always regarded the need for a *tertium datur* concretely, as the methodological possibility of a theoretical solution of historically important alternatives, he outlined the main line of his own struggle as the simultaneous rejection of revisionism and dogmatism, as the only correct alternative. This is why he wrote in the years following the events in Hungary 1956, that 'we are defenceless against this danger if we do not liquidate ruthlessly the legacy of the dogmatism of Stalin and of the era of Stalin, if we do not uncover the systematic interrelation between it and the method that serves as its basis and the behaviour consequent to it.' Needless to say, the matter in question here is not the critique of the history of a given era, but of its theoretical-methodological distortions. It is also obvious that carrying out this criticism (that in point of principle is but the consequential assertion of Marxism) also makes possible a differentiated evaluation of the era in question, together with its contradictions. This is why Lukács could write: 'Historical evaluation of the positive side of Stalin's life-work is possible only on the basis of such a critique . . .'¹⁴⁴

This topic had interested Lukács during the last fifteen years of his life, yet he could not devote time to it while he was working on his great theoretical undertakings, his *Aesthetics*, *Ethics*, and *Ontology*. But his position can be reconstructed on the basis of several of his essays.

Three components of the phenomenon merits attention from the point of view of subsequent analyses and the development of socialist legal theory.

The first is the domination of current political necessities and current tactics over theory. Lukács had this to say: 'The true essence of Stalinism is, I believe, that while the practical character of the workers' movement and Marxism was theoretically maintained, practical action was not regulated by a deeper comprehension of things but this comprehension was constructed to suit tactics.'¹⁴⁵ Lukács emphasized several times that he meant thereby the reversal of Lenin's methods. Lenin gave primacy to the 'concrete analysis of a concrete situation'; this was also the 'indispensable intermediary of the applicability of general principles.' But here the case is that 'the tactical decisions of the highest authority

¹⁴⁴ G. Lukács, *Wider den mißverstandenen Realismus*, Hamburg, Claassen, 1958, p. 6.

¹⁴⁵ An Interview by I. Eörsi with Gy. Lukács (MS, March 18, 1971), LAK V/43, p. 12.

competent at any time are dogmatically absolutized.¹⁴⁶ Obviously, this does not arise from theory itself; it can only be introduced into the theory from outside. Its method is 'the bad habit . . . of "deducing" every strategic or tactical decision as a direct and logically necessary consequence of the teachings of Marx and Lenin'.¹⁴⁷ And its price is that 'even Marxist research became to a considerable extent the mere interpretation, application and dissemination of "ultimate truths"'.¹⁴⁸

In the end, the result is nothing but 'devastating consequences for theory', 'sophism', 'what Marxist terminology calls a complete and completely arbitrary subjectivism'.¹⁴⁹

Such a situation has two consequences. Theory cannot, as far as its inner content is concerned, rise above the mechanically applied practicalism of everyday practice¹⁵⁰ since it contributes to already made decisions 'as a mere tool of propaganda'.¹⁵¹ And its external vehicle will inevitably be a sort of dogmatism excluding all theoretical renewal originating from its own system. The basic theses of Marxism may thus degenerate into illustrative, auxiliary means, since 'Marxist theory, generalized this way into a philosophical system of dogmas, assumes a purely arbitrary, abstract and voluntarist character, while preserving its dogmatic and abstract rigidity'.¹⁵²

Another important characteristic of this practice is its tendency to make declarations. This can be expressed either in the use of means as ends, or in its preference for verbal solutions over concrete, factual achievements.

Lukács wanted to restore Lenin's determination and resolution when he called attention to the strong emphasis Lenin gave to the question of socialist democratism. 'For socialism—and Lenin never lost sight of this fact—is far less concerned with the formal aspects of democracy (universal suffrage, secret ballot, etc.) than with the actual democratization of the whole of everyday human life'.¹⁵³ This view, formulated with almost

¹⁴⁶ P, p. 354. ' "die konkrete Analyse der konkreten Lage" als unentbehrliche Vermittlung der Anwendbarkeit allgemeiner Prinzipien.' 'In der Stalinschen Praxis. . . erhält dagegen die taktische Entscheidung der jeweils kompetenten höchsten Instanz eine dogmatische Verabsolutierung.' MS, p. 528.

¹⁴⁷ 'Marx', p. 167.

¹⁴⁸ 'Postscriptum', p. 654.

¹⁴⁹ 'Marx', pp. 24 and 25.

¹⁵⁰ T, p. 422.

¹⁵¹ Sz, p. 561, 'bloßes Propagandamittel', MS, p. 1082.

¹⁵² P, p. 354. 'die so verallgemeinerte Marxsche Theorie zum gedanklichen Dogmensystem erhält — seine dogmatisch abstraktive Erstarrung bewährend — darüber hinaus noch einen rein willkürlichen, abstrakt voluntaristischen Charakter.' MS, p. 528.

¹⁵³ S, pp. 52–53.

aphoristic conciseness is not new for Lukács. Its roots reach back a long way. But the problem as put in his last essay on principle and policy seems to be expressive enough: 'Not only the ideology, but also and mainly all the material reality of everyday life has to be revolutionized. Socialist democracy must, therefore, really penetrate into the whole material life of people; it has to carry into effect the social nature of man, from everyday life to the decisive social questions, as the product of people's own activity.'¹⁵⁴

In this connection, I must refer to the 1936 Soviet Constitution. As a legal document it was regarded as the most progressive and most democratic constitution of its day. Yet it could not go beyond the mere verbal declaration of its progressive character owing to the whole implementation policy and the breaches of the law characterized as distortions of the "personality cult". Otherwise, the fact that this same charta could also serve, without any serious formal changes, as the basic state charta of socialist social construction decided at the 20th and subsequent congresses of the Communist Party of the Soviet Union, right up to the passing of the new Constitution, well demonstrates the diversity of contents these declarative forms can embrace in their actual historical realization.

Finally, the organizational basis of political practice has to be mentioned as the third feature of Stalinist policy. This is of interest in the present context principally because the functioning principle of the organization in question has definite social-psychological consequences. With an extremely polarized expression, Lukács states: 'The Stalinist principle of bureaucratization to the most minute degree thus determines for better or worse the fate of all who work in the centralized apparatus.'¹⁵⁵ The operation of an apparatus in which democracy in the Leninist sense withers away, and the element of power gains preponderance, may have many serious consequences, which make real social dynamism illusory in its social-psychological manifestation, or even turns it against itself, thereby endangering its own mass basis.¹⁵⁶

The practical distortion of democracy in the Leninist sense may thus make the practice contradictory, a mere illusion as far as human self-realization is concerned. And if the fact that tactics becomes the exclusive determinant is added to this, then the individual, acting in

¹⁵⁴ 'Lenin', pp. 224 and 223.

¹⁵⁵ S, p. 53.

¹⁵⁶ 'This is part of Stalin's interpretation of Lenin,' Lukács said shortly before his death in the course of a recorded discussion, 'where he adopted unlimited power from the whole theory of the Bolshevik Party and nothing else.' Gy. Lukács' talk with L. Szamuely and F. Jánossy (April 8, 1971), LAK F/118/c.

society, will necessarily lose sight of the wider horizons and become a mere function of the tactics of the day. Lukács' sharp words refer to the probability of such a situation: 'Should bureaucracy become the dominant mode of life of those participating in it, should the decisions dictated by it determine their way of life entirely, then inevitably the tactics of the apparatus, dictated by its day-to-day needs, become the ultimate judge of all decisions between good and evil. And since no truly objective social norms of action can arise from this situation, every participating individual is thrown back into a purely particular subjectivity and is fatally ruled by fear and hope, by means of which the truly social activity of man degenerates into an often inhuman passivity in which officiousness takes the place of genuine action.'¹⁵⁷

These were the circumstances under which Vyshinsky undertook the theoretical formulation of practice, and applied the general definition of practice to the specific field of the law.

Regarding the character and theoretical status of Vyshinsky as opposed to earlier theoretical tendencies, Vyshinsky undoubtedly appeared as a sharp and coherent thinker, well-versed in legal culture, able to create intellectual values and to quote the classics of Marxism with ease. The fact that his theoretical work was written in the style of a bill of indictment, due not only to his personality but also to the encounter of the man and his age, was a peculiar paradox. He presented his subject stiffly, tolerated no contradiction, supported his reasoning by reference to authoritative passages from classical and living sources, and threatened sanctions if people held differing opinions.

He saw clearly that the basic question in going beyond the previous status of legal theory was 'the question of the compatibility of law and dictatorship in the proletarian state.'¹⁵⁸ He depicted the harm caused by earlier views to social construction in a dramatic tone: they wanted 'to disarm the proletariat in respect of a part of the law and legality through discrediting Soviet law and the Soviet statute — through cultivating a nihilistic attitude toward Soviet Law, the Soviet State and the Soviet Statute.'¹⁵⁹ He puts against this 'the need for strict discipline both in the field of work and social life.'¹⁶⁰ This is nothing but the transplanting of Stalinist teaching of the exacerbation of the class struggle into the language of the law. 'A strong and powerful dictatorship of the proletariat—that is what we must have now in order to scatter the last

¹⁵⁷ S, p. 55.

¹⁵⁸ *Vyshinsky I*, p. 11.

¹⁵⁹ *Vyshinsky II*, p. 314.

¹⁶⁰ *Vyshinsky I*, p. 44.

remnants of the dying classes to the winds and frustrate their thieving designs."¹⁶¹ These are the words of Stalin, and Vyshinsky gives legal expression to these by setting out the requirement for a legal apparatus that would operate smoothly, yet with faultless and remorseless rigidity. 'The dictatorship of the proletariat is a power unrestrained by any law. The dictatorship of the proletariat establishes its own laws, applies them, demands the observation of the law, penalizes the infringement of the law.'¹⁶²

Vyshinsky fails to recognize the fundamental dialectics of the transitional era, i. e. that the ideology which he wants to surpass as well as the one with which he wants to surpass, can only fulfil its function in a historically concrete way and only in its *own* period. Yet his phraseology gives the impression that he intends to become the Lenin of the development phase in question. And since he puts his theoretical message in the service of direct tactical seeds, his thinking twists into antidialectical polarization which causes conceptual rigidity. It is reminiscent of the struggle of the two original powers in the Manichean world concept, Good and Evil, that knows nothing but a knock-out victory.

It has to be emphasized that the shortcomings of this mode of thinking do not manifest themselves clearly, but are intermingled with positive theoretical insights. Here are some characteristic examples: Vyshinsky's acknowledgement of the normative character of the law reflected the actual needs of Soviet development, as did its elevation into *genus proximum* in the conceptual definition of law and the approach to law as a state activity.¹⁶³ Indeed, he also arrived at conclusions which may even today play forward-looking roles in traditional socialist thinking. He recognized, for instance, the importance of specific distinguishing features in the concept of law,¹⁶⁴ and emphasized the instrumental character of the law,¹⁶⁵ by which he also anticipated its treatment as a merely practical category.

¹⁶¹ J. Stalin, "The Results of the First Five-Year Plan" (1933), in: J. Stalin, *Leninism*, London, Lawrence and Wishart, 1942, p. 437.

¹⁶² *Vyshinsky I*, p. 16.

¹⁶³ *Vyshinsky II*, p. 336.

¹⁶⁴ "To define law as a form of policy is, strictly speaking, to define nothing. If it be recognized that law is a form of policy, the task is to define the special characteristic of law as a form of policy". *Ibid.*, p. 329.

¹⁶⁵ "In a society which is emerging from the innermost parts of capitalism, it is inevitable that law should be present at an administrative level—as a means of regulating social relationships and a method of controlling and calculating the measure of labor and measure of consumption". *Ibid.*, pp. 332 f.; and also *Vyshinsky I*, p. 43.

All in all, it seems impossible to pin-point the roots of this theoretical attitude simply by underlining some statements in Vyshinsky's works as the cause of these consequences. The characteristic and distinctive feature of Vyshinsky's approach is primarily his method. The conception of a centre always making correct decisions demanding unquestioned implementation, thus eventually making theoretical thinking itself unnecessary, can be discerned in every one of his writings on the state and law at that time. This amounts to the apodictic declaration of the economic determinateness of social processes in which autonomy, definition by the defined, and feedback no longer have any place. Furthermore, you face here a determinist concept of social laws (voluntarist in its political tendency) which does not tolerate any spontaneous correction of the existing or desirable state of affairs and consequently precludes any sociological analysis.

Thus the structure of thinking, characteristic of socialist normativism (with its preference for norms and raising them to the rank of sole determinants) is reminiscent of the picture of an absolutist, enlightened society where the decision which clearly determines the sequence of social events down to every detail is based on the objective laws of reality but where, at closer examination, it becomes clear that the decision is preselected and, consequently, the process and method of reaching that decision is in want of any theoretical foundation.

It is worth observing in Vyshinsky's work how the determinant role of the economic sphere turns into a sort of mechanical determinism which eventually degrades even history into a series of happenings without alternatives, a necessary chain of reactions. This mechanical determinism also supports a voluntarist practice, since it is the task of the centre, given at any time to "recognize" the concrete correspondence between the base and its superstructure.

'The law...', writes Vyshinsky, 'has no history of its own, but its development relates organically... to the development of social and, above all, production relations from which and on the basis of which the law and its whole superstructure, and in general also the political superstructure grow. For this very reason, the law cannot exist above the economic standard of the given society, just as it cannot exist below that standard, either. The law *corresponds* to this standard of *necessity*, and it is in inner harmony with it (Engels' letter to Konrad Schmidt, November 27, 1890). This excludes the concept of legal development which sets out from the premise that *it is possible to mechanically transfer legal concepts and legal institutions* from one economic era to the next.'¹⁶⁶ Well, the

¹⁶⁶ Vyshinsky I, pp. 39-40.

whole statement has a simple ideological function: it is the rejection of the earlier standpoint according to which Soviet law was nothing but a variant of bourgeois law.

But all this, broadened into a thesis of general validity, is not proved, indeed it cannot be proved. One is faced with a theoretical position which sees a mechanical correspondence between the current economic basis and the law which 'grows' out of it and 'corresponds' of necessity to it, consequently perceiving legal arrangements in their historical sequence, as mere discontinuous phenomena which exclude the very possibility of legal development. Were we to accept that the superstructure is nothing but the reflection of its given economic base (i.e. the mere function of its base with no connection to other superstructures that historically preceded or co-existed with it), then the relative autonomy and particular heterogeneity of the superstructure would also eventually wither away. It seems that the whole dialectics of history is lost in Vyshinsky when he writes, with firm conviction and without any reference to other determination or intermediation: 'its own law corresponds to all economic eras of class society, and the comprehensive concept of law must not be looked for and found in an analysis of the law. . . , but in an analysis of the social relations of production that produced the given legal form.'¹⁶⁷

I can quote an example of the rigid rejection of any sociological approach a decade later, from the critique of the text-book by a contemporary legal theoretician, Denisov. The author had the courage to state that 'all legal provisions are in force until formally or actually revoked.'¹⁶⁸ Vyshinsky's remark was this: 'The law is in force either for a duration determined by the legislator, or until it is repealed by legislative power. One cannot talk of "actual annulment" of the force of the law, since it must be clear that the very concept of "actual revocation" lacks any content. Who is empowered to actually revoke the law? Under what conditions, when and for what reasons, as a result of what circumstances can the law be actually revoked? The text-book gives no answer to these questions, indeed it cannot, since there cannot be any regulations where all depends on arbitrariness'¹⁶⁹

Vyshinsky's argument is, of course, unassailable, so long as the question is analysed strictly from a formal juristic point of view. From a formal point of view, the *formal* force of a norm declared within the legal system

¹⁶⁷ *Ibid.*, p. 40.

¹⁶⁸ A. I. Denisov, *Teoriya gosudarstva i prava* (Theory of State and Law), Moscow, Jurisdatt. Min. Justitsii SSSR, 1948, p. 195.

¹⁶⁹ A. Y. Vyshinsky, "O nekotorykh voprosakh teorii gosudarstva i prava" (On Some Questions of the Theory of State and of the Law, 1948), in: *Vyshinsky III*, p. 411.

really exists until it is revoked by the law or by the enactment of another norm of opposite content. But the formal force has social significance only if the norm in question is being implemented in practice, i. e. if it gets realized. As a norm of purely formal character and significance, it would be an enactment without a real subject. Therefore, within the science of law, the *de jure* legal reasoning must meet the *de facto* description of the actual legal process. The law-shaping role of actual practice, and the probability that the force of given norms is annulled through practice (*desuetudo*) must therefore be taken into account, even if that may, from a strictly legal point of view, be the breach of legality. The demand for an absolutely strict legality to the exclusion of any conflict between the law as made in books and put into action is in reality a sign of a yielding to the jurist's world view of a pure normativism.

The effect of socialist normativism left its mark on legal thinking over the next decades in two ways. Partly directly, in the depreciation of the relative autonomy, proper development, and traditions of the law, and partly in the treatment of the legal-political requirements of the law as theoretical categories and thus as practically axiomatic premises in the theoretical description of the working of the law.

Undoubtedly, the legal-political requirements formulated by Vyshinsky translated the political needs of the Stalinist line into the language of the law. It is another question, however, whether the normative declaration of the aims to be achieved can subordinate theoretical thinking to those aims. Therefore, in the Marxist sense, this expression of socialist normativism is rather ideology. The root of the methodological distortion is to be found in the ideology being unrestrained in theoretical considerations wherever the interests of the class struggle demanded it. Thus whatever seemed desirable from a political aspect (whether or not it represented necessary or at least possible tendencies then and there) was identified with reality and thus raised to absolute validity, and the description of the actual legal process was subordinated to this.

During the explanation of the legal phenomenon attempts have been made to an oversimplified and rigid application of Lenin's *reflection theory*.

This was by no means an isolated phenomenon in Marxist philosophical trends during the years in question. This theory gained an increasingly universal and exclusive role in the examination of the interconnections of social phenomena and it had the consequence that the margins between the specifically epistemological aspects of the given phenomenon and the non-epistemological ones became fuzzier and the epistemological approach itself was also vulgarized to a considerable extent. The process of

legislation was treated mostly as a specific (transformed) reflection of social reality and the legal norm as the very image of social reality. The requirement of 'adequate reflection' gradually gained such great emphasis that students of law slowly began to treat even the legal norm as an epistemological category.

For the sake of accuracy, I should mention that not a single work on legal theory has ever stated *expressis verbis* that truth or falseness in the epistemological sense are qualities of the legal norm. At the same time, I also have to add that even the basic question itself has never been raised or differentiated, either. But a simplistic ideological view has gained ground, one which has considered even logical approach to law as a negation of and attack against reflection theory, although the (*per se* completely reasonable) need for logical analysis fed mostly on diverging philosophical traditions and was consequently not the outcome of any polemics.

At any rate, these philosophical patterns had so permeated academic opinion that the demonstration of the fact that, even though the norm is based on the achievements of previous cognition, it is in itself only the practical application of the results of cognition, i. e. has to be analysed as one of the elements in the technical armoury developed in the interests of social reproduction and not as a theoretical category, appeared to be an almost impossible and hopeless task even one or two decades ago. On the other hand, it follows from the practical character of the norm that it has its "image-like relationship to reality" basically in common with every objectified form or issue of human practice. Just as one cannot talk of truth, say, in connection with an axe, but only of the interconnection of the means and the desired ends or interest, or of its applicability or appropriateness, similarly one can only talk of the latter in connection of a rule of behaviour.¹⁷⁰ Accordingly, nothing specific arises from the fact that the result of objectification sometimes appears to be enshrouded in language and at other times in other objectifications with more striking characteristics of means.

It is only in the last decade that theory of law in Hungary has arrived at a more refined approach, one that distinguishes within the realm of reflection theory the sphere to which the categories of epistemological truth and falsity are applicable, a sphere from which legal objectification is excluded, and thereby opening the road to an ontological understanding of the law.¹⁷¹ It should also be mentioned that philosophical literature, at

¹⁷⁰ Cs. Varga, *A magatartási szabály és az objektív igazság kérdése* (The Problem of the Rule of Conduct and of Objective Truth), MS, Pécs, 1964, p. 3.

¹⁷¹ *Peschka*, Ch. 1, in particular pp. 61 ff.

least in Hungary, was more reluctant to adopt this distinction. Even these days it seems to attribute greater importance to linguistic relics in an attempt, say, to reconstruct past cultures (since they might supposedly be more image-like and thus provide more direct evidence of past ages) than to other relics, which have survived as evidence of the material culture of the same community.¹⁷²

The continual assertion of the importance of centralized political decision-making led to the stage when theory based even the concept of the law on what the competent organ of the state declared to be the law. It is true, though, that Vyshinsky's definition of the law did bring within its conceptual sphere (apart from 'the aggregate of the rules of conduct. . . established in legal order') the sum of 'customs and rules of community life confirmed by state authority',¹⁷³ but the founders of socialist legal thinking in other socialist countries have not failed to point out that this addition only had historical reasons in the Soviet Union and consequently loses its general validity for the construction of other legal systems.

Thus the criterion of when theory can regard a phenomenon as a legal one became a practical act, namely that of enacting the phenomenon in question as a legal one. This attitude on the one hand accepted that the theoretical criterion of legal phenomenon should be provided by the normative qualification of a legal system and, on the other, placed the emphasis in the definition on the subject of the act of enactment, i. e. the legislator.

The growth of the idea of centralized decision-making to become the dominating element resulted in what, at the beginning of Soviet statehood, only began as a reasonable division of labour, becoming ossified into hierarchically ordered, mutually exclusive functions. I am referring to the unconditional primacy of *law-making* in its relationship to *law-application*, to the fact that for this concept *law-making* is the sole decisive legal factor. Such an arrangement provides the model, which, within the system of the state organs, rigidly separates off the organ whose only function is to enact laws, while the sole function of other organs is to apply enacted laws to the cases brought to them. Owing to its hierarchical functional subordination, law-application becomes secondary in its social import, and is degraded both in its content and in its role to being more or less mere implementation.

¹⁷²T. Földesi, "Über das Problem des Wahrseins der Fragen und Normen", in: *Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös nominatae: Sectio juridica* 17, Budapest, 1975, pp. 3 ff, in particular pp. 15 f.

¹⁷³*Vyshinsky II*, p. 336.

In the interconnection of law-making and law-application the promotion of the former and the demotion of the latter takes place by way of interpreting the principle of legality in a rigid way, as an absolute, unconditioned requirement. It is being absolutized as an axiomatic requirement excluding even the slightest possibility of raising the issue of its concrete reasonableness in legality.

The consequence is that a cleavage occurs within the socialist concept of law. On the one hand law is said to be a phenomenon entirely determined by society, on the other determination (owing to political considerations) is said to be able to assert itself only through legislation. That means that once the phenomenon "law" (determined, as it was in its entirety by society) emerges, *per definitionem* it immediately becomes exclusively determining.

The treatment of legal-political postulates as categories of reality brings its own revenge as it makes the description of legal processes substituted with the ideological expression of the jurist's world concept.

4.2.3 The Need for Progress

As has been seen, Vyshinsky's concept was fed from two roots. It was related partly to Stalinist practice and partly to a considerably simplified and methodologically distorted interpretation of Marx.

The socialist world system and the logic of inner development of legal theory took up the question of its revision. The first attempts in the Soviet Union were linked to the names of Stalgevich (1948), Kechekian (1955), and most of all Piontkovsky (1956). Initially, their work was aimed at demonstrating the normativism of Vyshinsky's concept; later they called attention to the realization of legal norms in legal relationships as this being the practical touch-stone of the social nature of the law.

The real breakthrough occurred in Hungary a few years later in the course of a monographical research which amounted to the emergence of the sociological approach by providing new answers to the traditional questions of Marxist legal theory.¹⁷⁴ As a matter of principle, socialist normativism excluded the sociological point of view from legal thinking. The acknowledgement of the need for a sociological approach presupposed a critique of normativism.

Induced by such motives and in the wake of international debates the first comprehensive attempt was made to reformulate the theory of law as

¹⁷⁴ Kulcsár.

a social theory of law by interpreting the standpoints of the classics of Marxism and reconsidering the early results of the Soviet theory of law rejected by Vyshinsky.¹⁷⁵ This was immediately followed by a survey of current trends in Western legal thinking aimed not simply at criticism, but with the very ambitious goal of answering the questions they posed on the ground of Marxist legal theory and, as the only possible theoretical alternative, by separating the ontological and the epistemological approaches.¹⁷⁶

Lukács' *Ontology* was born at the best possible time for a revival of Marxist theory. It provides the opportunity to critically review and get beyond ossified views whose methodological roots can often be found in the approach Lukács calls epistemological. By its imposing philosophical structure and rigorous analysis (in the course of which Lukács reformulates the totality concept that had already characterized his earlier philosophy in new levels and with great force), the *Ontology* accelerates, fructifies and reestablishes earlier promising tendencies.

At the same time (and I could only guess now whether this is due to the particularly favourable situation of legal theory in Hungary or to the legal sensitivity evident in the *Ontology*) it was possibly legal theory among social sciences which reacted most rapidly and profoundly to the philosophical and methodological challenge of the *Ontology*. Student essays have been written on its possible applications to legal problems, it serves as a philosophical reference and inspiration for theoretical papers, indeed, a whole series of lectures delivered and published at international conferences dealt with basic questions of the *Ontology* from the aspect of law.

Thus the jurisprudential utilization of the *Ontology* springs from the needs of theoretical progress. Drawing its methodological consequences, one arrives time and again at conclusions that vary from traditional ones.

I shall endeavour now to develop some theoretical inferences and lessons from the method, theses and interconnections I can see in and reconstruct from the context of the *Ontology*. This analysis will be limited to certain major features, yet these will, I do hope, exemplify the novelty of Lukács' approach.

¹⁷⁵ Szabó.

¹⁷⁶ Peschka.

4.3 THE MAKING OF AN ONTOLOGICAL APPROACH TO LAW

According to Lukács, law is above all a practical category. Its assessment depends exclusively on whether it proves suitable in the given social environment to meet the functions it is to fulfil. The emphasis thus shifts to the fact and quality of functioning. Consequently, the distinctive feature of legal phenomenon will not be its being enacted as a law, but its practical application. It will be clear that this by no means blurs the conceptual significance of law-making; it merely demonstrates the latter as forming a unity with law-application. In other words, both legal enactment and its result, the legal norm, are examined as a social phenomenon, i. e. in their irreversibly progressing process-like character and in their dialectic nature. Ontology is not satisfied with the simplistic declaration that the legal norm is socially determined through the process of law-making and the same legal norm turns out to be the only determining factor in the process of law-application, but it enquires about the *real* components, factors and regularities of the process that take place in the course of law-application in their entire complexity, together with their inner contradictions.

Law-application seems to take the place of the primacy of *law-making* in the ontological approach. Of course, this has nothing to do at all with any arbitrary trend towards making law-application independent. It only concerns the statement in principle that enactment (*Setzung*) of the law is not absolutely and unconditionally decisive. Like any projection, this is also subjected to the test of social practice. Therefore, law-application is not simply the implementation of laws, but a type of responsible decision-making where *real* interests clash and demand a solution in accordance with the law and in a way that the actual conflict-resolution be really successful and in harmony with social goals.

Law-making and law-application not only presuppose one another, but they are also continuously interlinked. Legal regulation may of course declare the unconditionally decisive role of enacting the laws in legal processes (and thus the subordination of law-application to law-making), but from the ontological point of view this is only the postulation of the (official) principle of the (official) functioning of the law, whose realistic nature is ultimately determined by other factors outside the law.

Thus a flexible, socially relativized interpretation is opposed to the rigid and absolutized interpretation of the *principle of legality*. And it has to be emphasized here again: this does not amount to the suppression, dissolution or subordination of legality but relating the complex definitions arising from the dialectics of social life to the principle of legality

itself. The practical assertion of legality as the principle of legal functioning depends therefore on the interaction of the factors which as a whole determine the law both in its making and in its application.

The totality concept can only be satisfied by the consideration of social relationships in their entire complexity. Returning to the starting point, it should be stated that the jurist's world concept can only be transcended in a specifically legal examination of the law if it places the law within the context of social totality. This makes only to go beyond the limits of socialist normativism.

Before I start the systematic examination of the *Ontology* from the point of view of legal theory, it may be worthwhile demonstrating the novelty of the Lukácsian approach with some concrete examples. This seems to be all the more important, because it throws light on the fact that merely quoting the classics of Marxism is not in itself the mark of getting theoretically satisfying results. At the same time, the examples can throw light on Lukács' method and on the theoretical achievement embodied in his work. One may say that Lukács did not really bring anything new into Marxism. Anyhow, as a matter of fact, he interpreted the Marxian texts with unmatched rigour.

The almost aphoristically concise characterization of law by Marx and Engels will surely sound familiar to any jurist even after the passing of a century: 'But don't wrangle with us so long as you apply, to our intended abolition of bourgeois property, the standard of bourgeois notions of freedom, culture, law, etc. Your very ideas are but the outgrowth of the conditions of your bourgeois production and bourgeois property, just as your jurisprudence (*Recht*) is but the will of your class made into a law for all (*Gesetz*), a will, whose essential character and direction are determined by the economic conditions of existence of your class.'¹⁷⁷

One may often observe the rather philological zeal which regards every word written by the classics as elements of equal theoretical weight in a philosophic system of seamless continuity, almost as axioms. It is superfluous to point out the unhistorical nature and simple stupidity of an approach which sees a mature theory in every word, without regard to whether they were theoretical expositions or just uttered in the heat of a polemic, as tactical or propaganda (etc.) tools. Lukács also regarded this method of interpretation, this unhistorical homogenization as one of the most formidable obstacles to the understanding of the genuine Marxian thoughts.

¹⁷⁷ K. Marx and F. Engels, "The Manifesto of the Communist Party" (1848), in: *MECW* VI, p. 501.

Obviously, Marx himself is not exempt from close examination. And this examination must remember that 'the transmission of his realizations... into revolutionary practice demanded ... that Marx maintain a mode of expression, with the aid of which he could (without vulgarizing distortions) not only be understandable for the revolutionary masses, but also the stimulator of certain activities.'¹⁷⁸

The last bit of the above quotation from *The Manifesto of the Communist Party* is usually cited by Marxist literature as the definition of law, and as being of conceptual character and importance. What merits most attention is that *will* figures here as the closest genus-concept (*genus proximum*) of law. Since the classics talked of law in *The German Ideology* as an expression of will, it seemed appropriate for the Marxist theory to approach to law starting from the concept of will. Later, proceeding along increasingly independent paths (tossed on the waves of debates generated by various dissertations and monographs), this initiative developed into a virtual theory of will within socialist theory of law, seeking its place and *raison d'être* in the theoretical exposition of legal phenomenon and hesitating between the diverse (psychological, etc.) senses and the Rousseauist interpretations ('general will', 'the will of all') of will and using increasingly refined distinctions.

In the beginning, not only was the context of the text disregarded, but also the circumstance that Marx and Engels put it down in a political pamphlet aimed at the revolutionary mobilization of the masses.

Regarding the ideological-historical roots of the category of will, obviously one need not have any legal culture in order to accept the Kantian concept of will in the treatment of legal problems. Nevertheless, his legal training may also have influenced its handy utilization by Marx, since this concept was known at that time (through the writings of Savigny and Puchta) as a basic category explaining the validity of both the law and contracts. In other words, the intellectual climate of the age may simply have suggested the use of the concept of will, and Marx and Engels promptly used it, both theoretically and practically, in harmony with the political actuality and propaganda aims of their work. They used it for demonstrating the class-roots and class-determination of the law versus the seemingly neutral apologetics of the jurist's world view.

The convincing pictorial force and the metaphorical hit made by the will-concept is, however, not unconditional proof that it is also suitable

¹⁷⁸ P, p. 344. 'erforderte... dieser Erkenntnisse... daß ihr eine Ausdrucksweise erhalten bleibe, durch welche sie – ohne vulgarisierende Entstellungen – für die revolutionsfähigen Massen nicht nur verständlich, sondern zum Antrieb für bestimmte, gezielte Aktivitäten werde.' MS, pp. 512–513.

for the explanation of the theoretical aspects of the legal phenomenon. Not only because the will-component is extremely general and by no means specific to law (since all social phenomena are the products of practice, as percolated through the medium of human will), but mainly because the decisions arrived at within organizational frameworks have so many implications in our age, that the will-concept, with its enlightened overtones (conjuring up the idea of a central providence), handicaps rather than assists the exploration of these implications.

The frequent reinterpretation of the other two elements in the quotation from *The Manifesto of the Communist Party* adds nothing essential to the above comments. The expression of "will . . . made into a law" was sometimes understood as an argument for the primacy of law-making and particularly of legislation in legal processes, with no regard to the question whether the distinction between the statutory (*Gesetz*) and other sources of the written law had been made at all, or had any importance in the system of the sources of the law of the first half of the 19th century; the interpretation of the expression 'the will. . . whose essential character and direction are determined by the economic conditions of existence of your class' often seemed to point (however unbelievable it sounds) in the direction of regarding the law as reflection in the epistemological sense.

Let me add in this latter connection that the literature has often overturned even a phrase unmistakably stating that legal "reflection" cannot be interpreted or evaluated epistemologically. It is only Engels' first sentence that has often been quoted and wrenched: 'In a modern state, law must not only correspond to the general economic condition and be its expression, but must also be an *internally coherent* expression which does not, owing to inner contradictions, reduce itself to nought. And in order to achieve this, the faithful reflection of economic conditions suffers increasingly.'¹⁷⁹ Not infrequently only the first sentence of the quotation was cited in order to back the argument for the primacy of the economic sphere and its reflection in the law. It was supplemented by the meak legal-political demand that the incidental contradictions in the inner system of the law must be eliminated in the course of subsequent law-making.

As I mentioned earlier, Lukács' *Ontology* is neither a finished nor a properly edited work. Many quotations and examples from Marx crop up in it in the most diverse variations, not infrequently in divergent contexts. The Marxian statement which Lukács selects as being particularly suited

¹⁷⁹ Engels, p. 492.

to define law is almost a simple sentence. It occurs only once in the nearly two thousand printed pages of the *Ontology*, yet it is still an incomparably concise indicator of Lukács' train of thought: 'Law is only the official recognition of fact.'¹⁸⁰

Lukács draws three conclusions from this statement. First of all, he states 'the existential primacy and self-regulation of the economic processes', more precisely that 'the law. . . is the conscious reproduction of what *de facto* takes place in economic life.' Secondly, 'recognition' as 'the specific property of this reproduction' 'emphasizes not its purely theoretical. . . but its primarily practical character. It is obvious,' Lukács continues, 'that this expression would be simply tautological in the case of purely theoretical connections such as: "I recognize that two times two makes four."' Recognition can have real and reasonable meaning only in a practical connection, i. e. if it declares how one should react to a recognized fact or if it contains instructions about the kind of teleological projections of people who should follow this fact or as to how the fact in question should be regarded as a result of earlier teleological projections.' Thirdly, the 'official' character links 'recognition' to a socially accurately determined subject, i. e. 'to the state, whose power is determined in content by the class structure and represents here in essence the monopoly of how to judge the various results of human practice and to qualify them as permitted or prohibited, punishable, etc. right up to the point where it determines which facts of social life and to what extent are to be regarded as legally relevant.'¹⁸¹

¹⁸⁰ K. Marx, "The Poverty of Philosophy" (1847), in: *MECW* VI, p. 150.

¹⁸¹ Sz, pp. 216–217. 'die seinsmäßige Priorität und Eigengesetzlichkeit der ökonomischen Prozesse' 'das Recht ist . . . der bewußtseinsmäßigen Reproduktion dessen, was sich im wirtschaftlichen Leben *de facto* abspielt.' 'Der Ausdruck Anerkennung differenziert nun weiter die spezifische Eigenart dieser Reproduktion, indem er deren nicht rein theoretischen. . . , sondern primär praktischen Charakter in den Vordergrund rückt. Denn es ist evident, daß bei rein theoretischen Zusammenhängen dieser Ausdruck einfach tautologisch wäre, etwa: "ich erkenne, daß zweimal zwei vier ist". Die Anerkennung kann erst in einem praktischen Zusammenhang einen realen und vernünftigen Sinn erhalten, wenn nämlich darin ausgesprochen wird, wie auf eine anerkannte Tatsache reagiert werden soll, wenn darin eine Anleitung dazu enthalten ist, was für teleologische Setzungen der Menschen daraus erfolgen sollen, bzw. wie die betreffende Tatsache als Ergebnis früherer teleologischer Setzungen eingeschätzt werden soll.' 'Dieses Prinzip erfährt nun die nötige weitere Konkretisierung durch das Adjektiv offiziell. Der Sollencharakter erhält dadurch ein gesellschaftlich genau bestimmtes Subjekt, eben den Staat, dessen inhaltlich von der Klassenstruktur bestimmte Macht hier wesentlich darin besteht, ein Monopol in der Frage zu besitzen, wie die verschiedenen Ergebnisse der menschlichen Praxis beurteilt werden sollen, als erlaubt oder verboten, als strafwürdig etc. bis zu der Bestimmung, welche Tatsache des gesellschaftlichen Lebens und in welcher Weise als eine rechtlich relevante betrachtet werden soll.' MS, pp. 118–119.

I shall attempt to outline some consequences of these theses in the next chapter. For the time being, it may be sufficient to say that Lukács is satisfied with drawing three conclusions which, considered rigorously and thoroughly, point the way forward. Accordingly, law is (1) a particular sphere within the social totality, (2) a practical category by its very nature, and (3) an instrument for an institution which (Lukács quoting Weber) 'commands the monopoly over lawful physical coercion.'¹⁸²

¹⁸² M. Weber, *Gesammelte politische Schriften*, Munich, Drei Masken Verlag, 1921, p. 397.

CHAPTER 5

THE ONTOLOGICAL CONCEPT OF LAW

5.1 LAW AS A COMPLEX OF MEDIATION

Lukács borrowed one of the central, perhaps the most fundamental category of his *Ontology* from Hartmann. Hartmann chose natural structures as the basic units of his natural-philosophical inquiry.¹⁸³ Since he considered these to be the primary forms of existence, they are to be investigated in their own complexity, one should proceed from the complex to its elements and elementary processes, rather than the other way round.

Taking up this idea of Hartmann, Lukács remarks that Hartmann's merit lies merely in its 'modern discussion',¹⁸⁴ and not in the methodological idea, from which Lukács develops the ontology of complexes. According to Lukács, the result of the 'discussion' by Hartmann is that 'also the elements are . . . not primary ontologically, and the whole is not "made up of" them, on the contrary, we derive them from the analysis of the complexes. . . in order to understand. . . the dynamism and structure of the complexes by way of recognizing these interactions, etc.'¹⁸⁵ It is easy to realize that all this is merely the methodological expression of the totality approach, according to which 'the path of ontology proceeds . . . from as yet uncomprehended reality only taken cognizance of in a way that influences as reality, through recognized reality towards its most adequate ontological comprehension.'¹⁸⁶

¹⁸³ N. Hartmann, *Philosophie der Natur*, Berlin, Walter de Gruyter, 1950.

¹⁸⁴ C, p. 17.

¹⁸⁵ T, p. 148. 'die Elemente sind . . . auch nicht das ontologisch Primäre, aus dem das Ganze „aufgebaut“ wäre, sie werden im Gegenteil aus der Analyse der Komplexe mit Hilfe von Abstraktionen gewonnen, um ihre Dynamik und Struktur, die der eigentlichen Wirklichkeit durch Erkenntnis dieser Wechselwirkungen etc. zu begreifen.' MS, pp. 141–142.

¹⁸⁶ *Ibid.* 'Der Weg der Ontologie geht . . . von der unbegriffenen, voraus Wirklichkeit affizieren zur Kenntnis genommenen Wirklichkeit zu ihre möglichst adequaten ontologischen Erfassung.' MS, p. 142.

5.1.1 Complex of Complexes

The ontology of complexes is based on viewing prevailing reality as the total complex. Reality is nothing but a complex made up of complexes. Each complex is also the complex made up of part-complexes, in other words, reality is based on the interaction of complex structures, where the various complexes derive their quality precisely from their relative autonomy, but where the direction and limits of their autonomy are determined by the interactions of the various complexes realized in the total complex.

According to Lukács, 'the social being is a complex of complexes even at its most rudimentary level; a continuous interaction exists between the part-complexes as well as between the total complex and its parts. The reproduction process of the prevailing total complex develops from this, and in such a manner that the part-complexes also reproduce themselves with (only relative) autonomy, but the overriding element in this many-sided system of interactions derives from the reproduction of the whole at any time in all of these processes.'¹⁸⁷

This demonstrates that being as a complex made up of complexes is the property of being itself, and does not presuppose attainment of a complex level of development. At the same time, it is doubtful, whether a separate interaction of the total complex and its parts could exist beyond the continuous interaction of the part-complexes.

If I wish to remain true to the spirit of Lukács, all I can say is that the total complex is not a separate entity, but the totality of the continuous interaction of the part-complexes organized into a given quality. If, for instance, I understand the cell as the totality of atoms, and living organism as the totality of cells, then the cell and the living organism are obviously a quality of a higher order and are more than the mere quantitative sum of their parts. The analogy with the whole and its parts in respect of the total complex and its parts is misleading, because it suggests a static image like this. But if we examine the components in their dynamism and continuous interaction, then the cell or the living organism is no longer qualitatively new compared to these components

¹⁸⁷Sz, p. 140. 'So daß selbst auf der primitivsten Stufe des gesellschaftlichen Seins dieses einen Komplex aus Komplexen vorstellt, wobei sowohl die Teilkomplexe miteinander wie der Gesamtkomplex mit seinen Teilen in ununterbrochenen Wechselwirkungen stehen. Aus diesem entfaltet sich der Reproduktionsprozeß des jeweiligen Gesamtkomplexes, und zwar so, daß auch die Teilkomplexe als – freilich nur relativ – selbständige sich reproduzieren, daß aber in allen diesen Prozessen die Reproduktion des jeweiligen Ganzen das übergreifende Moment in diesem vielfältigen System von Wechselwirkungen bildet.' MS, p. 6.

viewed in the dynamic totality of their organization and interaction. In other words: total complex, as an abstract generality, does not exist; the concept of "total complex" is itself nothing but a product of conceptual economy. Accordingly, the total complex is the abbreviated expression of the concrete totality as given by the interaction of the part-complexes at any time. Returning again to the above example: when I think about the role of a group of cells (say, an abnormal tumour) in the organism, I have to perceive the organism as an interaction, manifest in the complex motion of variously organized groups of cells, and I can demonstrate the quality of the relationship between the organism and the group of cells in question only within the framework of this dynamism. But I cannot conclude that there is an entity separate from this, one which stands as a "whole" as opposed to the "parts". One must be careful, therefore, that when one is seeking the peculiarity of the various complexes both in their relative autonomy and in the function they fulfil in the prevailing totality, one should not attribute any separate, i. e. fetishized, importance to the total complex. Lukács describes this kind of dynamism of the part-complexes when he writes: 'The whole has. . . priority over the parts, the total complex over the part-complexes, because otherwise, by extrapolation, whether we like it or not, we grant independence to those forces, which in reality merely determine the peculiarity of the part-complex within the totality; thus they become independent and unrestrained forces, and the contradictions and inequalities of development—which originate from the dynamic interactions of the various complexes and, above all, from the position of part-complexes within totality—become incomprehensible.'¹⁸⁸

Before I attempt a description of the position and role of the law, we should look at some further basic propositions of the ontology of complexes.

One of these is the *irreversible process-character of being*, which Lukács defines as follows: 'Being is composed of endless mutual relations of continually progressing complexes which are intrinsically heterogeneous

¹⁸⁸ Sz, p. 286. 'Diese Priorität des Ganzen vor den Teilen, des Gesamtkomplexes vor den ihn bildenden einzelnen Komplexen muß unbedingt festgehalten werden, denn sonst kommt es – gewollt oder ungewollt – zu einem extrapolierenden Selbständigmachen jener Kräfte, die in der Wirklichkeit bloß die Besonderheit eines Teilkomplexes innerhalb der Totalität bestimmen; sie werden zu selbständigen, von nichts gehemmten Eigenkräften, und man macht damit die Widersprüche und Ungleichmäßigkeiten der Entwicklung, die aus den dynamischen Wechselbeziehungen der einzelnen Komplexe miteinander und vor allem aus der Stelle der Teilkomplexe innerhalb der Totalität entspringen, unbegreifbar.' MS, pp. 222–223.

and which result in concrete, irreversible processes in their parts as well as in their (relative) totalities.¹⁸⁹

I have to add to all this that *categories* (as Lukács reconstructs Marx's concept mainly from Marx's introduction to his *Grundrisse*) are 'forms of defined being, definitions of existence.'¹⁹⁰ Thus they can only be understood in their actual historic concreteness,¹⁹¹ i. e. in the irreversible process-character which they themselves embody.¹⁹²

Therefore, being not only shows constant interactions, but is also irreversible. Consequently, any attempt to treat it statically is a venture condemned to failure from the start. Any logical treatment of the categories can only be meaningful within the recognition of the process-character to which it is subordinate. The definition Lukács gives of this relationship is by far not voiced simply, but, at least in the context of his philosophy, seems to be precise: 'the category as the form of defined being is but the element of an existing process-like generality in the continual process-like mutual relation of objectivities which are nonrecurring and singular in their concreteness.'¹⁹³

Since 'being is equivalent to self-reproduction strictly speaking'¹⁹⁴ and this increasingly happens in society not under conditions readily found in nature but created by people themselves in the course of their social practice,¹⁹⁵ Lukács attributes central importance to what he calls *Vergesellschaftlichung* (socialization). As with several other categories of the *Ontology*, Lukács gives no definition of this, either. Nonetheless, it is beyond doubt that the matter in question is an indication of a fundamental and irreversible tendency, where purely social connections, mediations and definitions are increasingly dominant in respect of the material exchange between man and nature and the reproduction of social being in general.

From the point of view of the present enquiry, socialization above all has the consequence that the structure of social existence becomes

¹⁸⁹ P, p. 172. 'Das Sein besteht aus unendlichen Wechselbeziehungen prozessierender Komplexe, die innerlich heterogener Beschaffenheit sind, die sowohl im Detail wie in den – relativen – Totalitäten irreversible konkrete Prozesse ergeben.' MS, p. 253.

¹⁹⁰ P, p. 272. 'Daseinsformen, Existenzbestimmungen', MS, p. 403.

¹⁹¹ T, p. 375.

¹⁹² P, p. 359.

¹⁹³ P, p. 317. 'die Kategorie als bestimmte Seinsform nichts weiter ist als das Moment einer seiend-prozessualen Allgemeinheit in der permanenten, gleichfalls prozeßhaften Wechselbeziehung der in ihrer Konkretheit zugleich einmalig einzelnen Gegenständlichkeiten.' MS, p. 471.

¹⁹⁴ Sz, p. 148. 'Sein bedeutet streng genommen soviel, wie sich selbst zu reproduzieren.' MS, p. 18.

¹⁹⁵ Sz, p. 149.

increasingly complex. This is expressed by the increase of the autonomy of the various part-complexes and in the fact that their interaction also produces increasingly complex relations, in which the frequency of unforeseen results also increases. In Lukács' words: 'The active adjustment of people to their environment increases not so much the number of the relatively independently operating complexes to an extraordinary extent, but their syntheses and their cooperation in syntheses of an increasingly higher standard.'¹⁹⁶ From another angle, 'as far as the forces of mediation that have necessarily arisen historically in society (institutions, ideologies, etc.) are concerned, the more developed these become, and the more they are accordingly perfected in an immanent sense, the more they then acquire an internal independence, which is continuously at work in practice and leads to an increase in the quantity and quality of the chance connections—without prejudice to the ultimate dependence on economic laws.'¹⁹⁷

5.1.2 Complexes or Social Relationships

This is the point where the question of the connection between complexes and social relationships emerges.

By way of a preliminary remark, it must be stated that not only am I concerned with a theoretical question here, but also with an examination of the widespread view that the ontology of complexes is in essence only a stylistic re-orchestration of the analyses which Marx and Engels carried out in *The German Ideology* and elsewhere. What led to this opinion was that the *Ontology* began to exert an effect with the precious publication of some passages (particularly the one about reproduction and the problem of complexes) and for this reason it was taken out of the context of the whole system of Lukácsian ideas. At the same time, no definition of the complexes can be found in this chapter or elsewhere in the work, and none about social relationships as distinct from the former.

I have already mentioned the difficulties which have arisen from the generalizing utilization of categories, such as will or reflection, in connection with the various categories used by the classics. Now I have to consider whether the problem is similar in the interpretation of the category of social relationships.

¹⁹⁶P, p. 207. 'Dadurch, daß sich hier eine aktive Anpassung an die Umwelt vollzieht, erfährt vor allem nicht nur die Anzahl der – relativ – selbständig wirkenden Komplexe eine außerordentliche Steigerung, sondern auch ihre Synthesen und deren Zusammenwirken zu Synthesen immer höherer Art. . . ' MS, pp. 303–304.

¹⁹⁷'Marx', p. 97.

If you examine the establishment of Marxism historically, you clearly cannot overlook the theoretical and political struggles that surrounded its birth and provided positive or negative stimuli. Marxism came into being as the theoretical successor to German philosophy in the 19th century and also as the practical weapon in making the proletariat conscious. Its armoury, therefore, had to be fit for theoretical and practical functions. Whether we talk about the category of will, of reflection or of social relations, we must see their import in their historical functions, in the circumstance that their metaphorical and intellectual power was to provide suitable arguments against *passé* views and to reveal their absurdity. Let us only recall the debates which also relied on rhetoric and which defined the position of *The German Ideology* and even of Lenin's *Materialism and Empiriocriticism* in the skirmishes of their era.

The primary function of these categories was to delimit what was to be superseded, while they also pinpointed the theoretical bases of the supersession. They should therefore be treated mainly as axiomatic concepts, as ones to define the given conceptual system from the outside inwards, in order to delimit it from other conceptual systems. Since their function is fundamentally external, they are not operable within the system: they have no real message other than what is already accepted and evident within the system.

Compared to earlier ideological explanations, demonstrating the class-will character of the law was a decisive feat. Similarly, presenting the functions of consciousness in the category of reflection also seemed an effective means to overcome the subjective idealistic philosophical ideas which re-emerged around the turn of the century. But as soon as one no longer has to struggle against outside theories, as soon as one can base his ideas on a "victorious" system of concepts, further development obviously brings up the need for a detailed interpretation. If one then accepts the "will"-character of the second nature created by man, if one regards being in its motion as "reflection", or if one considers the components of social being as the totality of "social relationships", one does not yet specify these processes in any greater detail and say anything more than that one stands on the conceptual bases of Marxism.

In their present form, these methodological and epistemological considerations are mere questions, research hypotheses, whose refutation or verification is only possible by philosophical deliberation. The fact is that Lukács uses all three concepts as self-evident in the *Ontology*; but he does not attribute any additional, or specific meaning to "will" and to "reflection".

It is also a fact that there is no theoretical exposition of "social relationships" in the *Ontology*. We find merely a basic statement on the question, namely: 'connections and relationships are component parts of social being . . . [and] the unavoidable necessity of experiencing them as part of reality, and reckoning with their facticity in practical life, must often lead to transforming them in thought into thing.'¹⁹⁸

Thus Lukács, without doubt, turns social relationships into an ontological category. By the way, there may not have been the slightest doubt about this. The problem was not so much the admittance of their nature as being, but whether they could provide a basis for an ontological exposition.

Further considerations have to be taken into account, however. One of them is that the concept of relationships from the start indicates several entities; another is that the totality approach, based on the dialectics of constant interactions, is difficult to assert with the help of the concept of social relationships. Furthermore, this concept does little to induce the idea that social phenomena are irreversible. And finally, social objectifications as objects, and the subjects destined to be their practical operators seem to be left outside social relationships.

It is likely, therefore, that a theory of social relationships cannot be a substitute for the ontology of complexes, although it is a suitable means of convincingly developing the social character of social phenomena. Thus it is by no means accidental that both the first Soviet attempts at legal theory (Reisner, Stuchka, Pashukanis) and a recent undertaking aimed at the social-theoretical establishment of the law (Szabó) set out from a theory of social relationships. The task of clarifying the connection between the theory of social relationships and the *Ontology* now falls to the lot of philosophy.

5.1.3 The Interaction of Complexes: Mediation

The connection between the various complexes is obviously one of the pivotal questions posed in the *Ontology*. Lukács expounds this by using the category of mediation (*Vermittlung*).

Some years ago, when I first attempted a jurisprudential interpretation of the *Ontology*, I formed a somewhat simplistic, less dialectic view of the connection between complexes. It seemed as if the complexes formed some sort of hierarchical system that could be depicted on the pattern of

¹⁹⁸ 'Marx', p. 41.

concentric or intersecting circles. Accordingly, mediation seemed to be the privilege of some complexes, while other complexes appeared to be mediated as if determining mediation itself.¹⁹⁹ But the ontology of complexes tolerates no rigid hierarchy. The stability of interactions, and the irreversibly progressing process-character of each phenomenon within it lends a dynamism to social being, which (in spite of all appearances) keeps everything in constant motion.

One can attempt to discover the nature of mediation from some Lukácsian suggestions: 'the types and laws of social practice that have gained independence in the course of history are essentially nothing but mediating forms and originally came into being as such, in order to provide a better regulation for social reproduction; let us think of the sphere of law in the widest sense of the word.'²⁰⁰

The most specific medium of social reproduction is labour. Socialization is accompanied with the effect that the more developed a society is, 'the broader and more ramified are the mediations that link the teleological project of labour with its actual accomplishment.'²⁰¹ As far as the other components based on labour are concerned, 'the forces of mediation that have necessarily arisen historically in society (institutions, ideologies, etc.)' also become increasingly developed and, accordingly, become increasingly 'perfected in an immanent sense' and 'acquire an internal independence.'²⁰²

The progressive complexity of mediation and its autonomy goes in hand with what Lukács in *History and Class Consciousness* attributed merely to formal rationalization. Namely, it conceals actual determinations. But while the Lukács of *History and Class Consciousness* saw in this the reversal of the natural order of things, the contradictory nature of capitalist development that ends in crises, in other words a clearly negative phenomenon, for the Lukács of the *Ontology* the growing complexity and autonomy of mediation is the natural concomitant of social development. As he emphasizes, it may become a source of alienation under some conditions, but it is value-neutral in itself.²⁰³ Therefore he boldly acknowledges that 'the continuous reproduction of labour, division of

¹⁹⁹ Cs. Varga, "La question de la rationalité formelle en droit: essai d'interprétation de l'*Ontologie de l'être social de Lukács*", in: *Archives de Philosophie du Droit* 23, Paris, Sirey, 1978, pp. 226 ff; Cs. Varga, "The Concept of Law in Lukács' Ontology", *Rechtstheorie* X (1979) 3, pp. 326 ff.

²⁰⁰ 'Arbeit', p. 109.

²⁰¹ 'Marx', p. 96.

²⁰² *Ibid.*, p. 97.

²⁰³ Sz, Ch. IV.

labour, etc. makes this medium of mediation increasingly entangled, increasingly denser²⁰⁴ and that 'the momentum of hard facts is naturally more directly tangible at a primitive level than later, when an enormous mass of social mediations wedged themselves in between man and nature.'²⁰⁵

What becomes clear from the above is firstly how indefinite (and indefinable) a concept is mediation. Social practice is realized by way of mediations even in the elementary acts of labour, and this assumes increasingly complex forms in the course of development in every sphere of social reproduction. Taken in the most general way, I could perhaps say that mediation is the process-like medium in which the interaction of complexes takes place.

Socialization, as we have seen, means the increasing domination of purely social determinations in social processes. This can only take place within an entangled mash of interactions, in which the thing that mediates becomes itself mediated. The dialectics of the interaction of complexes knows of no unidirectional determinations. Not only are extreme poles non-existent in mediation, but the most varied intermediary forms also mediate the interactions of the given complexes in such a way that they themselves are mediated in their interactions with other complexes.

I need not add, perhaps, that this universality of mediation in no way means equalization. Even if he sought the question of ontological primacy in the dialectics of possible interactions between being and consciousness, between the basis and the superstructure, labour and the other aspects of social being, etc., i. e. in connections within the totality, Lukács made no secret of the fact that he attributed a decisive (or, in his terminology, overriding [*übergreifend*]) role to the economic sphere and, primarily, to production in the complex system of social relations.²⁰⁶

He did not feel it his duty, however, to precisely determine the role of the spheres of the state, law, morals, religions, etc. within these limits and to elaborate an order of preference. It is doubtful whether an analysis leading to universally valid and, in the Marxian sense reasonable generalizations is at all conceivable. Lukács presents several situations as concrete examples, in which these spheres seem to organize themselves in a hierarchical system. But Lukács did not set himself the aim of defining

²⁰⁴ Sz, p. 183. 'Die ständige Reproduktion von Arbeit, Arbeitsteilung etc. macht dieses Medium der Vermittlung immer verschlungener, immer dichter. . . ' MS, p. 69.

²⁰⁵ P, p. 12. 'Auf primitiven Stufen scheint naturgemäß die wirkende Wucht der seienden Tatsachen unmittelbar stärker zu sein als dort, wo zwischen Mensch und Natur eine Unmenge von gesellschaftlichen Vermittlungen eingeschaltet worden ist.' MS, p. 9.

²⁰⁶ Sz, Ch. I, § 3; T, Ch. IV, § 2.

the scope and relative determining role of the political sphere within the economic one, or of the state, etc. within the political one. Rather he wanted to demonstrate the dialectics of interactions asserting themselves in every direction in a complex total process where the ultimate determination is itself only asserted as an overriding factor.

The law, as a mediator which is itself also mediated in the course of its operation, is located in a thickly woven net of social mediations such as this. Lukács adumbrates this role in its complexity and contradictions: 'the not insignificant problem of the reproduction of social being lies behind the recurrent demand for the specialization of the representatives of the legal sphere. The social division of labour in its quantitative and qualitative dimensions produces special tasks and special forms of mediation between the various social complexes, and the peculiar inner structure of these mediations flows precisely from the circumstance that they fulfil such special functions in the reproduction process of the total complex. The inner necessities of the total process preserve their ontological priority and therefore determine the character, essence, direction, quality, etc. of the functions of the mediating complexes. But precisely because correct functioning imposes specific partial tasks on the mediating part-complex at a higher level of the total complex, a certain independence and autonomy of action and reaction develops in it following from objective necessity which becomes indispensable in its very peculiarity for the reproduction of the totality.'²⁰⁷

²⁰⁷ Sz, p. 227. '... hinter dem immer wieder geforderten Spezialistentum der Repräsentanten der Rechtssphäre ein nicht unwichtiges Problem der Reproduktion des gesellschaftlichen Seins steckt. Die gesellschaftliche Arbeitsteilung schafft in ihrer quantitativen und qualitativen Ausdehnung Spezialaufgaben, spezifische Vermittlungsformen zwischen den einzelnen gesellschaftlichen Komplexen, die eben wegen diesen besonderen Funktionen im Reproduktionsprozeß des Gesamtkomplexes eigenartige innere Strukturen erhalten. Die inneren Notwendigkeiten des Gesamtprozesses bewahren dabei ihre ontologische Priorität und bestimmen deshalb Art, Wesen, Richtung, Qualität etc. in den Funktionen der vermittelnden Seinskomplexe. Jedoch gerade darum, weil das richtige Funktionieren auf höherem Niveau des Gesamtkomplexes dem vermittelnden Teilkomplex besondere Teilfunktionen zuweist, entsteht in diesen – von der objektiven Notwendigkeit ins Leben gerufen – eine gewisse Eigenständigkeit, eine gewisse autonome Eigenart des Reagierens und des Handelns, die gerade in dieser Besonderheit für die Reproduktion der Totalität unentbehrlich wird.' MS, pp. 133–134.

5.2 LAW AS OBJECTIFICATION AND AS ACTUAL FUNCTIONING

5.2.1 *The Genesis of Law and the Dialectics of the Use of Coercion*

In the wake of Engels' conclusions in *The Origin of the Family, Private Property, and the State*, the views that law is the product of the state, organized as a separate machinery of coercion, and the state is the product of irreconcilable class conflicts, seem to become established in Marxism.

Lukács describes the birth of law with subtlety. Talking about the 'complex' which 'has to carry out the legal regulation of social activities,' he declares: 'This need emerges at a relatively low level of the social division of labour. The duties of each of the participants have to be regulated as precisely as possible even in the event of simple cooperation (hunting) based on the concrete process of labour and on the division of labour that evolves from this (beaters and hunters in the hunt).' In other words: 'Some sort of jurisdiction had to evolve in the interests of a socially necessary order,' even though this did not as yet presume an independent machinery, and traditions accumulated as the result of experience were sufficient for its operation.²⁰⁹ It seems that Lukács sees some quasi-law in these early processes, in respect of which it would be more precise to talk of mere regulatory functions lacking any class-content.

Lukács relates the development of law *proper* to the objectification of the law. 'Only when slavery established the first class division in society, only when exchange of commodities, trade, usury, etc. introduced further social conflicts (creditors and debtors, etc.) apart from the relationship of master and slave, only then did the need arise for socially regulating these new kinds of disputed questions and conflicts, and in the course of satisfying this need, consciously shaped jurisdiction emerged step by step which was no longer merely traditionally inherited.'²¹⁰

²⁰⁸ Sz, p. 208. 'die rechtliche Regelung der gesellschaftlichen Aktivitäten' 'Bereits auf einer bestimmten relativ niedrigen Stufe der gesellschaftlichen Arbeitsteilung entsteht dieses Bedürfnis. Schon bei der einfachen Kooperation (Jagd) müssen die Pflichten der beteiligten Einzelmenschen auf Grundlage des konkreten Arbeitsprozesses und der aus ihr herauswachsenden Arbeitsteilung möglichst genau geregelt werden (Treiber und Jäger in der Jagd).' MS, p. 106.

²⁰⁹ Sz, p. 209. 'So mußte eine Art von Rechtsprechung für die gesellschaftlich notwendige Ordnung etwa bei solchen Kooperationen. . .' MS, p. 107.

²¹⁰ Sz, p. 209. 'Erst als die Sklaverei die erste Klassenteilung in die Gesellschaft brachte, erst als Warenverkehr, Handel, Wucher etc. neben dem Verhältnis Herr und Sklave noch andere gesellschaftliche Gegensätze einführten (Gläubiger und Schuldner etc.), mußten die dabei entstehenden Kontroversen gesellschaftlich geregelt werden, und in Erfüllung dieser Bedürfnisse entstand allmählich die bewußt gesetzte, nicht mehr bloß traditionsmäßig überlieferte Rechtsprechung.' MS, p. 107.

This description covers multidirectional and rather problematical points. Among others, it throws light on the importance of written legal objectification, whose emergence was surely a milestone in the development of the law as a means in the service of consciously willed, planned and controlled social influencing. But it does by far not follow from this that customary law could not satisfactorily function even in relatively complex societies. At the same time, Lukács goes further than the standpoint of Engels, inasmuch as he does not simply relate the development of law to irreconcilable class conflicts, but to an inner differentiation of the class division, which reveals other conflicts apart from the fundamental antagonism.

It will be seen that Lukács needed this modification in order to establish a specific dialectic. But this does not dispel the suspicion that his solution is of a purely speculative character and ignores the generalizations of recent researches. Engels' published his work in 1884. It deservedly became a classic, since he based his conclusions on the most pioneering scientific findings of his age. In contrast, Lukács provides ammunition for the often stated, not entirely well-intentioned though by far not baseless criticism, that he high-handedly passed over several insights of 20th century social sciences in much the same way as his scientific apparatus too basically dates from the past century.

Undoubtedly, Engels summed up the achievements of the then nascent scientific disciplines with a clarity which has remained enlightening to this very day. He even anticipated their later development on several issues. It hardly needs mentioning that social differentiation over and above the fundamental social antagonism might play a decisive role in social changes. But it would be irreconcilable with Marxism and thus with Lukács' concept of the ontology of complexes, too, to look for such general determination behind every institutional-structural change. If, for instance, if one looked for the reason for social movements and changes only and exclusively in class differentiation one should not even raise the question of how the emergence of the first written legal forms could be related to the agricultural conditions of the Fertile Crescent in Mesopotamia, to the need for building rain plants requiring state-organized public works, to the emergence of a bureaucracy which organized their construction; or the question how the primitive codes could come into being in the early Middle Ages, codes whose regulations were related exclusively to human life, the inviolability of the human body and sexual relations.

Lukács introduced the above train of thought to prove the dialectic which is nothing but an admission of the fact that the ultimate guarantee

of social unity in a legally organized society is mere force, yet legal organization is also an admission that it is no longer possible to use force exclusively as the basis of social unity.²¹¹

It is likely, as I mentioned, that Lukács came to this conclusion as a result of speculation, yet he established something vital about the class origins of legal development. Notably, that law is simply the expression of the inner contradiction of the use of coercion: naked force would lead to the disintegration of society,²¹² therefore, the 'legal homogenization' of disruptive interests²¹³ and thus the 'voluntary' submission to the domination of the given class²¹⁴ is the only possibility for changing the 'permanent actuality' of coercion into an 'overwhelmingly latent possibility'.²¹⁵ This situation developed historically from a social differentiation extending beyond the fundamental class antagonism, with 'more indirect forms of social antagonism'.²¹⁶

One must still await a Marxist account of all the historic, anthropological and ethnologic knowledge of ancient and primitive societies gained during the last and the present centuries, an account similar to Engels' achievement in his own age. Until then, the Marxist concept of the genesis of law is just as limited and out-of-date as the Marxism which considers as sufficient to illustrate its chain of thought in the name of historicity with quotations borrowed from the classics or from fiction, of little but aphoristic value. Lukács often indicated that the renaissance of Marxism presupposes the analysis of progress since Marx at a genuinely Marxian level.²¹⁷ Obviously, this also means a continual re-interpretation of the pre-Marxian past and of the fields cultivated or neglected by the classics, by comparing them with recent scientific findings. Unfortunately, Lukács only responded to this task at the level of abstract philosophical generalization. His view of the genesis of law is a convincing dialectical extension of Engels' concept but it is not a substitute for further enquiries, even if it may enrich them with the *Ontology's* special view of the workings of society.

Yet its lessons for the understanding of legal development are universal.

Perhaps it is precisely from this universality that Lukács draws his deduction about the causes of legal development. I think of the inner

²¹¹ Sz, p. 224.

²¹² Sz, p. 210.

²¹³ Sz, p. 223, 'ivristisch homogenisiert', MS, p. 129.

²¹⁴ Sz, p. 224, 'freiwillig', MS, p. 130.

²¹⁵ Sz, p. 247. 'die Gewalt... bloß sich aus permanenter Aktualität in eine vorherrschende Latenz verwandeln kann.' MS, p. 163.

²¹⁶ Sz, p. 210. 'die vermittelte Formen der gesellschaftlichen Antagonismen' MS, p. 109.

²¹⁷ P, pp. 217, 211, etc.

contradiction: in the event of non-observance, any kind of formal regulation prescribes sanctions against the whole range of those concerned by the regulation, but any regulation can only be socially maintained as long as the need for the actual application of sanctions comes up only against a small section of society. 'All such regulations presuppose that the average practical mode of action of the members of society "voluntarily" abides by these regulations at least outwardly, i. e. actual use of legal coercion is necessary and possible only in respect of a comparatively small minority.'²¹⁸

Thus a dual contradiction characterizes the use of force.

Firstly, coercion is necessary, but it is impossible to rely exclusively on it, therefore it is not ceaselessly present, but serves as a last resort. Secondly, it can only fulfil the role of a last resort if other institutional and ideological factors also assist the law. It is thus necessary that the majority should abide by the law at least outwardly "voluntarily", and that the last resort should only be *de facto* employed against a relatively insignificant minority.

Highly unconventional conclusions emerge, however, from these findings.

What we are inclined to regard as observance of the law and as the result of legal regulation is, according to the above, only an outwardly conformist pattern in which 'legal correctness can be coupled with the most extreme hypocrisy.'²¹⁹ The fact that efforts are being made in some ethical systems (e. g. in certain current Soviet theories) to establish inner identification with every legal rule independently of its subject and content, and to declare conscientious observance of legal norms as the minimum of ethical behaviour on that basis, by no means alters this.

Observance of the law appears as the realization of the law, even though the massive observance of the law is the precondition of applying force only in exceptional cases as a last resort, in other words, so that the law should have any effect at all. It follows from all this that the law in itself is by far not sufficient for the actual influencing of social behaviour. Various forms of legitimation, the institutions of morals and religion and a whole range of other ideological inspirations are needed to maintain the effectiveness of the law. In short: the legal complex fulfils its mediating

²¹⁸P, p. 18. 'Jede solche Regelung setzt im Gegenteil voraus, daß die durchschnittlich praktische Handlungsweise der Gesellschaftsglieder diese Vorschriften, wenigstens äußerlich, "freiwillig" befolgt; erst einer relativ kleinen Minorität gegenüber muß und kann der Rechtszwang effektiv wirkungsvoll werden.' MS, p. 17.

²¹⁹Sz, p. 213. 'die legale Korrektheit mit der extremsten Heuchelei verbunden sein kann.' MS, p. 113.

function inasmuch as the total motion of the total complex is also working in an ultimately identical direction.

Lukács makes the relations between law, actual social practice and ideological inspirations conscious in all respects: 'the only way we can convincingly correct the direct appearance of the complete independence of the legal sphere and its purely self-sustaining essence (*fiat iustitia, pereat mundus*) is to demonstrate the indispensability of such interactions. Law cannot be an important means of getting to the roots of social conflicts in people's everyday life if it cannot continually appeal to our socially spontaneously developed convictions related to these same contents.'²²⁰ He adds later: 'Theft, fraud, etc. can operate effectively as legal categories only because in essence they relate to exceptional although typical cases of practice.'²²¹ He indicates with this conceptual sharpness that lawfulness of social happenings can by no means be attributed simply to the efficacy of the law. Specifically legal efficacy arises first of all in the influencing of behaviours which the spontaneous forces of social regulation prove incapable of ordering. On the other hand, from the aspect of 'this sub-soil of multi-faceted interactions'²²² it remains an open question whether the proper efficacy of the law attributable to specifically legal instruments and not to other social factors can ever be delimited, and if it can, to what extent and with what precision.

5.2.2 Positive Law and Natural Law

The question of natural law emerges as an ideological component influencing the practical realization of the law.

Lukács' treatment of natural law merits attention for two reasons.

Firstly, the manner in which he distinguishes it from positive law appears to be a suitable departure for understanding his concept of the legal complex. Secondly, it provides an excellent example of the actual social influence exerted by purely ideological constructions. 'Besides the

²²⁰Sz, p. 485. 'bei dem unmittelbaren Schein einer völligen Selbständigkeit, eines reinen Aufichselbstgestelltseins der Rechtssphäre (*fiat justitia, pereat mundus*) wird dessen seismäßige Korrektur vor allem durch Aufzeigen der Unentbehrlichkeit solcher Wechselwirkungen evident. Das Recht könnte unmöglich jenes wichtige Mittel zum Austragen der gesellschaftlichen Konflikte im Alltagsleben der Menschen werden, wenn es nicht ununterbrochen an ihre gesellschaftlich spontan entstehenden Überzeugungen über dieselben Inhalte appellieren könnte.' MS, p. 991.

²²¹Sz, p. 486. 'Diebstahl, Betrug etc. können nur darum wirksam als juristische Kategorien funktionieren, weil sie wesentlich auf – freilich typische – Ausnahmefälle der Praxis bezogen werden.' MS, p. 991.

²²²Sz, p. 486, 'gerade dieser Untergrund von vielseitigen Wechselwirkungen', MS, p. 991.

effective, actually functioning law, so-called positive law, the idea of a non-enacted law which does not derive from social acts has emerged again and again in the social consciousness of people: the idea of natural law, which has had to assert itself as the ideal of positive law.²²³ It is clear that this ideal is a phenomenon distinct from positive law. As such, its ability to influence social processes lies on a different basis from that of positive law.

Lukács explains the social functioning of the idea of natural law by using the ontological justification of true or false ideological forms: 'Nature, that is an "eternal" measure of social development, can by no means exist. But if correct and realizable demands are set against prevailing principles of regulation in its name, then the decisive contents of the former may in practice acquire effective social significance. Let us remember that positive law is not infrequently corrected in the name of some natural law. We are faced here with an ideology which, as far as its social consequences are concerned, often has an effect in the right direction and which fulfils this positive role on a purely fictitious conceptual-objective basis (in other words, based on false consciousness).'²²⁴

I shall treat some further questions of ideology later. It should suffice here to mention that Marx clearly pointed to the importance of the ontological way of posing the question in his university theses: 'Did not the ancient Moloch reign? Was not the Delphic Apollo a real power in the life of the Greeks?'²²⁵ Lukács sees a methodologically undeveloped, yet definite stand in the way this question is put, in that 'social reality is seen as the ultimate criterion for the social existence or non-existence of a phenomenon.'²²⁶

²²³ Sz, p. 211. 'neben dem wirklichen, real funktionierenden Recht, dem sogenannten positiven Recht im gesellschaftlichen Bewußtsein der Menschen immer wieder die Idee eines nicht gesetzten, nicht aus gesellschaftlichen Akten entspringenden Rechts gegenwärtig war, das als Ideal für jenes zu gelten hat, das Naturrecht.' MS, p. 110.

²²⁴ P, pp. 92–93. 'Eine Natur als "ewiger" Maßstab der gesellschaftlichen Entwicklung kann natürlich überhaupt nicht existieren. Wenn jedoch in ihrem Namen richtige und auch verwirklichtbare Forderungen den jeweils herrschenden Regelungsprinzipien entgegengestellt werden, so können die dabei entscheidenden Inhalte eine praktisch wirksame soziale Bedeutung erlangen. Man denke etwa an Korrekturen, die im Namen eines Naturrechts nicht selten am positiven Recht vollzogen wurden. Wir haben es also hier mit einer – in ihren gesellschaftlichen Folgen – oft richtig wirkenden Ideologie zu tun, die diese ihre Rolle auf einer rein fiktiven gedanklich-sachlichen Basis (also mit "falschem Bewußtsein") vollzieht.' MS, p. 124.

²²⁵ K. Marx, "Difference between the Democritean and Epicurean Philosophy of Nature (Doctoral Dissertation)", in: *MECW* I, p. 104.

²²⁶ 'Marx', p. 4.

Natural law, this 'purely ideological conception',²²⁷ can exert its effect in two directions: for or against positive law. As an ideology, historically it came into being in opposition to positive law, providing an ideal measure for the existing positive law and thereby having disclaimed the latter's legal quality. This is why the problem of natural law mostly emerges in political, philosophical and legal thought in opposition to enacted law, as a problem of primacy. Lukács follows this up when he conceives of the historically changing role of natural law in such a counter-ideology, even though he acknowledges its multi-faceted nature (in its conservatism, in its revolutionary impetus, in its watered-down form to meet academic-rhetorical wishes²²⁸ or in its overcoming the limitations of positive law that equalizes the unequal²²⁹) to a great extent. Yet the role natural law fulfils as a regulative force accepted as natural by the prevailing world outlook (insofar as 'it is imagined to have been determined by God, nature, reason, etc.'²³⁰) in supporting positive law is just as old and is of equal socio-historical importance. Paradoxically enough, this is the least visible and consequently the most neglected, albeit socially still the most effective function of natural law.

Thus natural law may support and correct positive law, and may also induce processes leading to the practical annulment of the law, yet ontologically it is still not equal to positive law.

At this point do we arrive at the separation of positive and natural law. According to Lukács, as I have quoted earlier, positive law is 'enacted', 'derived from social acts', is 'actually functioning', while natural law has different qualities. The core of their difference is to be found in the quality and extent of their institutionalization and in the consequences following from this. The institutionalization of natural law can at most be of an ideological nature. It can only achieve organization at a level where it provides an incentive to some strata of society to support or reject positive law. In contrast, positive law is composed of formal enactments (written law), and/or social acts (customary law) which also emerges factually in the legally acknowledged practice of a coercive machinery.

(I should like to add that the relative heterogeneity of written law and customary law, as well as the specific problem of judge-made law did not even arise with Lukács, since he was always thinking of the law developed in the Continent during the bourgeois transformation. This was certainly

²²⁷ Sz, p. 293, 'rein ideologische Konzeption', MS, p. 233.

²²⁸ Sz, p. 211.

²²⁹ Sz, p. 221.

²³⁰ Sz, p. 221. 'von Gott, von der Natur, von der Vernunft etc. bestimmt gedacht wird', MS, p. 125.

not a conscious choice. This was simply the natural lead given by Hegel and Marx, the foundation on which also the legal theories of Jellinek, Weber and Kelsen were based, in other words, all the philosophical achievements with which he became acquainted and to which he could respond. But, as one can hope, this narrowing down does not too much affect the generality of his thoughts. Anyhow, it has deprived him of a number of refinements in his approach.)

5.2.3 *The Inner Contradiction of Law*

The legal complex, as Lukács conceives it, is an aggregate of the inner contradictions of a complex phenomenon, on the two poles of which there stands legal objectification and its actual functioning.

For social development at a given level of socialization imposes a complex task on the law with which it can cope only if it puts down the content of its mediation, standardizes it and objectifies it as saying of written norms. A written norm becomes socially existent insofar as it actually influences practice: it realizes the behaviours considered desirable in its norms. But since an outwardly law-abiding behaviour is not a specifically legal phenomenon, indeed, since it cannot even be considered as observance of the law (in the sense of conscious observance, in the terms of an "if-then" causality), only the machinery that applies coercion legally can be considered as the subject of the realization of the law. This is what Lukács refers to when he recognizes the duality of the addressees of legal norms: 'in the legal system any general statement is made with a dual intention: firstly, to influence the teleological projections of every member of society in a certain direction, secondly, to persuade the group of people, whose social assignment is to implement statutory definitions of the law into legal practice, to make their teleological projections in a given manner.'²³¹

By the way, I would come to the same conclusion even if I set out from the methodological axioms of the *Ontology*. Since social being is an irreversible process, the existence of the legal complex is also equivalent to its actual practice. And since state administration of justice acquires

²³¹ Sz, p. 219. 'jede allgemeine Feststellung im Rechtssystem mit der doppelten Intention zustandekam, einerseits die teleologischen Setzungen aller Mitglieder der Gesellschaft in einer bestimmten Richtung zu beeinflussen, andererseits jene Menschengruppe, die den sozialen Auftrag hat, die Gesetzesbestimmungen in Rechtspraxis umzusetzen, dazu veranlassen, ihrerseits teleologische Setzungen in bestimmter Weise zu vollziehen.' MS, pp. 122-123.

formal importance within the legal complex, it has to be regarded separately from everyday law-observance as a specific component of the legal complex. So legal complex is the legal objectification seen in its actual operation.

Thus legal objectification and its actual operation form a contradictory unity within the legal complex. This is a fluid and historically dialectical unity, but one historically always concretely defined. Conscious planning will increasingly come to the fore with progress and with the increasing socialization of society. The importance of law-making thus continually grows, but it will not gain independence ontologically, since its function in social being (*seinhaftige Funktion*) will be fulfilled through actual application and implementation of the law into practice. At the same time, the growing importance of legislation is still not a simple fetish, but indicates a reality, since the norm, as one of the motives for law-observance, has a social existence of its own, apart from the momentary stand of official law-application.

5.2.4 Legal Superstructure

The inner complexity of the legal complex inevitably raises the question of the legal superstructure. The traditional view of socialist legal theory was best characterized by two debates which took place in Hungary after 1949, the year of the constitutional declaration of socialist transformation. Their aim was to clarify the kind of legal superstructure based on a socialist economy.

The first debate tried to deny any identification with the past and to sweep away past institutions as mere bourgeois remnants. The theoretical skirmish centred on the problem of continuity of law in virtually ideological terms. A few overscrupulous scholars attempted to point out the necessity for the survival of various elements of legal regulation, but the unambiguously stated standpoint of those who set the tone avoided any wavering. They declared: continuity had no place in the socialist revolution; socialist construction was to be characterized by a complete break with the bourgeois past.²³² From the point of view of the present essay, the debate resulted in the lesson that the participants, almost to one man, considered problems of continuity between the legal superstructures

²³² "Vita a jog és jogtudomány 'viszonylag állandó elemeinek' problémájáról" (Debate on the Problem of "Relatively Continuous Elements" of Law and Legal Science), *Jogtudományi Közlöny* VI (1951) 7.

of different economic bases as being limited to legal objectification (that is, to the formal identity or non-identity, or even affinity, of enacted legal norms).

The second debate took place years later, on the theme of the technical means of making and shaping the law in socialist superstructure, namely on codification. The basic tenor was that the law was determined in both content and form (that is both in the technique and manner of its making and in its written or unwritten, codified or customary form) by the economic base: the law has to correspond in all its aspects to the economic basis.²³³

The following ideas can be deduced from these two debates: (1) the most important element of the legal superstructure is norm-objectification; (2) the superstructure is "created" by its base; (3) a given superstructure is to "correspond" to its own base.

In order to understand Lukács' treatment of the question, I should like to remind the reader that of course not only a voiced judgement retails evaluation with Lukács. In this connection, I have already mentioned the question of social relationships. It seems that the relation between base and superstructure is also a categorical definition of social being which hardly occurs in Lukács' work. The only conclusion I can draw from this silence is that the category in question was simply not sufficiently operative for Lukács at the level of a systematic ontology.

Lukács rarely uses the words "base" and "superstructure", and even then not in important contexts. And when he does touch upon them, he does so mostly to illustrate vulgar Marxism. As to simplifications in vulgar Marxism, he is of the opinion that 'the philosophically decisive role is played by the circumstance that the purely material character of the economy is brought in nothing but opposition to the non-material superstructure and then they say that the former determines the latter absolutely, with the "force of a natural law".'²³⁴ And, according to Lukács, this is simply a crude, rigid, and simplifying portrayal of a relationship torn away from the concrete dialectic of historical development. All this obscures the fundamental fact of development, namely that even the most primitive base is established together with a superstructure,

²³³ M. Világhy, "Az új szakasz és a törvényalkotás elvi kérdései" (The New Phase and the Fundamental Questions of Legislation), *A Magyar Tudományos Akadémia Társadalmi-Történeti Tudományok Osztályának közleményei* V (1954) 1-4, in particular p. 218.

²³⁴ P, p. 349. "In der materialistischen Variante der nachmarxistischen Etappe spielt der Gegensatz vom rein materiellen Charakter der Ökonomie, als ausschließender Gegensatz zum ideellen Überbau, die absolute "naturgesetzliche" Determiniertheit von diesem durch jene die philosophisch entscheidende Rolle." MS, p. 520.

resulting in a symbiotic process. It is precisely the fact of their unity that is ontologically primary; and this is the more emphasized the more socialized social being is.²³⁵

This concrete dialectic has certain consequences. Firstly, the superstructure is not the "creation" of the base, consequently it cannot be maintained that one particular superstructure necessarily "corresponds" to a particular base. Secondly, the relationship of the base and the superstructure cannot be seen as a sort of value-hierarchy either. This does not mean, of course, that the economic sphere is not a decisive ('overriding') element in the social total process. It only means that the problem of the ontological primacy itself can reasonably be raised on the sole basis of the acknowledgement of the inseparable coexistence of base and superstructure.

These conclusions do not only present the complex nature of the interaction among complexes. Two Marxian views also feature to which I will return later on. The first is the ontological being-character of the formations of consciousness, the second is unequal development, which can basically be traced back to the disharmony that results from the relatively independent development of the various components of the total complex.

If one clears the Marxist concept of the relationship between base and superstructure of simplifying distortions which have made it rigid and mechanical, then one can obviously also talk of "legal superstructure" in the sense of the *Ontology*, but in any case law is expected to be understood in its whole as a complex totality. Or, in other words, superstructure cannot be limited to any of its various objectified components, for instance, the legal superstructure to legal norm-objectification.

Thus the possibility of partial continuity is by no means excluded in legal development. Such continuity may exist in respect of the concepts, norms and institutions of the law, of the structure, forms, organization and the whole culture of its practical functioning, indeed even of the organization of legal profession and of its individual representatives; just as it may exist in the case of the state in respect of the institutions, style, technique and means of exercising power, indeed of its various personal and institutional representatives; or, in religion, in respect of the basic tenets of theology, the doctrine of redemption, the temporal hierarchy and its institutions.

²³⁵ P, p. 352.

Consequently, the quality of the superstructure is provided not by the various objectified components, but the totality of these in their actual operation. Therefore, the qualitative novelty of a given superstructure is not in any direct connection with the question of whether some of its objectified components show any continuity with earlier or other superstructures. All that matters is how these components function in the whole of the complex. Anyhow, their functioning does presume the adaptation of these components to given social conditions, in other words, their practical manipulation.

Only when all this is recognized can one understand how it is possible that the mightiest factor of legal development (seen from the point of view of comparative legal history) is paradoxically nothing else but the transplantation of the laws of other countries, or the reinterpretation of the own law.²³⁶ (Only by taking this into account, can one understand how the Christian church has managed to survive from ancient times till the period of socialism at the cost of inner crises and reforms, whilst to a great degree preserving both its theological system and institutional structure.)

Following the above thoughts, I have to dispel yet another misunderstanding, widespread in traditional Marxist thought. I am referring to the peculiar inclination which seeks the class-character and class-determination of the legal superstructure mainly or solely in legal objectification. Such a concept would excessively simplify the dialectic of social movement.

As for Lukács, I should like to recall his recurrent idea that any phenomenon can develop into an ideology, a means in support of the struggle of a particular class, depending on the concrete definitions apparent in the *hic et nunc* of social development. The circumstance that 'every man is involved in social struggles with his whole personality, so that acceptance or denial of any one statement is potentially class-determined'²³⁷ corresponds to this. In other words, in the field of class-character and in that of defining what is to turn into ideology 'we cannot establish a universal division: here ideology ends and something different begins. The division is movable, in a state of flux; it is determined by the social structure of the given period and the state of the class struggles relative to this, and is not founded in the abstract statement itself.'²³⁸

²³⁶ Cf. the convincing, and in many respects pioneering, explanation in A. Watson, *Legal Transplants*, Edinburgh, Scottish Academic Press, 1974 and A. Watson, "Comparative Law and Legal Change", *Cambridge Law Journal* XXXVII (1978) 2.

²³⁷ C, p. 43.

²³⁸ C, pp. 43-44.

Borrowing from the comparison used in the Stalinist linguistic debate, the question is not what sort of weapons are used, but who, with whom, why, and with what effect is using the weapons which may possibly come from identical sources. The class-character attaches not to some *per se* objectification, but to the historical practice that shapes and operates these objectifications, ultimately to social being conceived of as an irreversible process.

5.3 IS LAW A REFLECTION OF REALITY?

5.3.1 Teleology and Causality

Lukács maintains that the particularity of social being can be described as the dialectic relationship between teleological and causal processes which presuppose one another. 'On the one hand, teleology is only possible under the dominance of causality, while on the other hand new objects, forms and connections arise in society only as a consequence of teleological projects.'²³⁹ Thus social being comes to life in a way that teleological projections put causal lines in motion, which then, following their own laws, usually pass beyond the original project: in the final analysis, they give rise to phenomena more or less similar or dissimilar to the original intent.²⁴⁰ In the wake of the Marxian example, Lukács saw the basic pattern of teleological project in labour. This prompted him to state that 'the ontological basic structure of labour is . . . to a certain extent the model of every human activity.'²⁴¹

Law, like any other norm that serves the purpose of social regulation, is based on teleological projection.²⁴² In the example of primitive hunting Lukács realized that regulation appears already in the teleological projection of the first (not Robinson-like) act of labour. Its basic structure is also the same as that of the norms that developed from it later: 'regulation consists in influencing the participants in order to fulfil the teleological projects which have been allotted to them in the total plan of cooperation.'²⁴³

²³⁹C, p. 77.

²⁴⁰P, pp. 295 f.

²⁴¹Sz, p. 267. 'die ontologische Grundstruktur der Arbeit . . . gewissermaßen das Modell zu einer jeden menschlichen Aktivität bildet.' MS, p. 194.

²⁴²C, p. 78.

²⁴³Sz, p. 208. 'die Regelung darin besteht, die Beteiligten so zu beeinflussen, daß sie ihrerseits jene teleologischen Setzungen vollziehen, die im Gesamtplan der Kooperation ihnen zugewiesen wurde.' MS, p. 106.

The tendency what Lukács terms 'socialization' brings the most diverse fields of social reproduction gradually and with increasing universality under control. All this has three consequences: (1) the projections become increasingly purely social ones, i. e. their function will be increasingly to mediate to or between other projections; (2) the social importance of central projections grows; and (3) all this creates the false appearance that every act that occurs in social life is a mere realization of these regulatory projections.

The legal concept with an overtone of *Aufklärung* in the pejorative sense of the word, which is by far not without roots in the actual systems of socialism, also feeds on this. This lurks in all of the ideological and often utopian efforts which absolutize the requirement of 'let man stand on his head, in other words, rely on his ideas, and build reality accordingly'²⁴⁴ without the vindication of practice. This induces inside and outside observers to see social order as if it were centrally planned and enacted and broken down into the various part-fields with axiomatic rigour to such an extent that social life cannot be conceived of as anything but a continual series of lawful or unlawful behaviours.

The inner tendencies of such a development are manifest in the division of labour characteristic of manufactures. 'The individual working men are subordinated to a general, purely economic and therefore social teleological projection even in the division of labour in manufacture. . . The teleological projects fulfilled by individual men . . . become mere components of a total teleological process already set into motion socially. As a general consequence of this development, both quantitatively and in terms of its significance, socialization is manifest also in *ab ovo* purely social projections not directly aimed at the material exchange between man and nature, but at the influencing of other persons in order to fulfil the desired teleological projects.'²⁴⁵

Social regulation emerges with labour. In other words, 'from the very start such social regulators were needed that rank the alternatives of

²⁴⁴ G. W. F. Hegel, *Vorlesungen über die Philosophie der Weltgeschichte* IV, ed. G. Lasson, Berlin, Akademie-Verlag, 1970, part 3, Ch. 3, § a, p. 926.

²⁴⁵ Sz, p. 312–313. 'Die Unterordnung des einzelnen arbeitenden Menschen unter eine allgemeine, rein ökonomische, also gesellschaftlich-teleologische Setzung entsteht bereits in der Arbeitsteilung der Manufaktur. . . Die von einzelnen Menschen vollzogenen teleologischen Setzungen werden also bloße Bestandteile eines gesellschaftlich bereits in Bewegung gesetzten teleologischen Gesamtprozesses. Als allgemeine Folge dieser Entwicklung zeigt sich die Vergesellschaftung auch darin, daß jene von vornherein reinen gesellschaftlichen Setzungen, die nicht direkt auf den Stoffwechsel der Menschen mit der Natur gerichtet sind, sondern das Beeinflussen anderer Menschen bezwecken, damit diese ihrerseits die gewünschten einzelnen teleologischen Setzungen vollziehen, sowohl quantitativ wie ihrer Bedeutung nach ständig zunehmen.' MS, p. 263.

teleological decision-making according to the actually vital needs of society.²⁴⁶

Whether it is a matter of the creation of a primitive tool or some organizational measure to be implemented in a complex machinery, the teleological act will only become real when the suitable means is selected. 'The setting of aims arises from a socio-human need, but in order to enable it to become a real aim, the exploration of the means, that is the cognition of nature must attain a certain degree corresponding to the aim set; without this, the setting of the aim remains but a mere utopian plan, a dream, such as flying was from Icaros to Leonardo da Vinci and for even a much longer time.'²⁴⁷ The basis of the teleological projection is thus the cognition of the 'ever existing and developing objectification-definitions'.²⁴⁸ 'In order to try to find the means that serve the realization of the projected aim, one has to objectively know the causation of the objectivations and processes which must be set in motion in order to realize the aim set.'²⁴⁹

5.3.2 Reflection of Reality and the Question of Incongruence

The problem to which I have to find an answer now is the following: is teleological projection in general and projection in the form of a legal norm in particular reflection?

If reflection is considered strictly in the epistemological sense, it is clear to Lukács that cognition and teleological projection are two 'heterogeneous operations': 'two ways of observing reality, distinct from each other' are involved here.²⁵⁰

However perfect the image of reality developed in our consciousness is, it is obvious that teleological projection contains an extra function over and beyond reflection. The activity of human consciousness is needed to turn cognition into teleology, projecting new connections into reality. Even though the human mind can only recognize and use existing causal relations without changing them one iota, it may in principle still reorder them in a way which results in genuinely new, artificial constructions, which could not arise without the conscious human act of teleological

²⁴⁶ P, pp. 17–18. 'werden von aller Anfang an gesellschaftliche Regulatoren nötig, die die Inhalte der Teleologie setzenden Alternativentscheidungen den jeweils vitalen gesellschaftlichen Bedürfnissen entsprechend regeln.' MS, p. 17.

²⁴⁷ 'Arbeit', p. 26.

²⁴⁸ P, p. 253, 'jeweils seiende und werdende Gegenständlichkeitsbestimmungen', MS, p. 373.

²⁴⁹ 'Arbeit', p. 22.

²⁵⁰ *Ibid.*, p. 36.

projection.²⁵¹ For instance, 'the wheel is certainly something newly produced by men, but yet there is nothing in the wheel that does not correspond exactly to the prevailing causal series in nature that are independent of men.'²⁵²

The creative nature of legal projection is manifest on two planes: in its relations to cognition prior to legal projection, on the one hand, and to other teleological (first of all economic) projections, on the other. For law carries new elements into the organization of economic processes, insofar as 'it rather presupposes this whole world as existing, and attempts to build into it binding principles of order that could not develop out of its immanent spontaneity.'²⁵³

If we take reflection in a wider sense than the epistemological one, we are only laying down a principle of the materialist world outlook, but we do not arrive at any specific explanation. Admitting that the mind obtains the elements placed in new connections by teleological projection and also the very possibility of these connections from the cognizance of reality, is a consequence of the circumstance that we accept cognition as the basis of this projection. Related to this, the statement that every activity of the mind is but the expression of a lively interaction with reality, i. e. that everything that the mind produces is drawn from reality, says nothing new. It does not provide any explanation of the Aristotelian example, which Lukács brings up in the following: 'The house exists in the same way as material, as does the stone, the tree, etc., yet the teleological project produces an objectivity completely different from these elements. A house can in no way be "deduced" merely from the *per se* being of the stone or the tree, however immanently we develop their properties, the regularities and forces effective in them.'²⁵⁴

Lukács describes the making of a legal norm reflection in a way that its primary ontological specificity is precisely that it cannot be apprehended epistemologically. Paradoxically speaking, one could also say: the law is an image, which does not portray what it reflects. It is known what Marx wrote to Lassalle in his letter of the July 22, 1861: 'the *legal* conception of particular property relationships, although grows out of these, is, nevertheless, not congruent with and cannot be congruent with them.'²⁵⁵ Lukács emphatically underlines the fact that it is not a matter

²⁵¹ C, p. 74; and 'Arbeit', p. 21.

²⁵² C, p. 74.

²⁵³ 'Marx', p. 125.

²⁵⁴ 'Arbeit', p. 21.

²⁵⁵ K. Marx to F. Lassalle in Berlin (July 22, 1861), in: K. Marx and F. Engels, *Werke* 30, Berlin, Dietz, 1964, p. 614.

of mere incompleteness or epistemological distortion. 'Marx has in mind an ontological social situation in which this congruency is impossible in principle, because of a mode of appearance of social practice in general which, for better or worse, as the case may be, can only function precisely on the basis of incongruency.'²⁵⁶

Referring to Marx's aphoristic definition 'Law is only the official recognition of fact,'²⁵⁷ Lukács explains in detail his opinion on the character of legal projection. Firstly, 'even ascertaining when and how a particular event can be regarded as a fact reproduces not the cognition of the objective existence *per se* of the social process, but rather the will of the state as to what and how it must happen in the given instant, what and how it must not occur in this connection.' Secondly, 'the legal reflection must not be purely of a theoretical, but particularly of a directly practical nature in order to become a truly legal system. Any legal establishment of facts therefore has a dual character. First of all, it must be the only relevant conceptual record of the facts constituting a case or an offence, and it must expose this conceptually in the most exact, definition-like manner possible. The various establishments of facts must create a coherent and rigorous system, free of contradictions. Here, too, it is completely clear that the more this systematization is extended, the further removed from reality it will be. What may perhaps be some relatively small deviation in the various establishments of facts must diverge even further from reality as an element for such a system, and interpreted in the terms of such a system. For the system does not grow out of the reflection of reality, but it can only be its abstractly-conceptually homogenizing manipulation.' To sum up, therefore, 'the establishment of the facts, placing them into a system is not rooted in social reality itself, but merely in the will of the ruling class to regulate social practice to suit its own purposes.'²⁵⁸

²⁵⁶ 'Marx', pp. 125–126.

²⁵⁷ Cf. *Supra*, 7.3, note 180.

²⁵⁸ Sz, pp. 217, 218, 218. 'schon die Feststellung dessen, wann und wie eine Begebenheit als Tatsache zu betrachten ist, nicht eine Erkenntnis des objektiven Ansichseins des gesellschaftlichen Prozesses selbst reproduziert, vielmehr den staatlichen Willen, was und wie in einem gegebenen Fall zu geschehen habe, was und wie in diesem Zusammenhang nicht vorkommen dürfe.' 'die rechtliche Widerspiegelung keinen rein theoretischen, vielmehr einen eminenten und unmittelbar praktischen Charakter haben muß, um ein wirkliches Rechtssystem sein zu können. Jede rechtliche Tatsachenfeststellung hat also einen Doppelcharakter. Einerseits soll sie als einzig relevante gedankliche Fixierung eines Tatbestandes gelten, diesen möglich exakt, definitionsmäßig gedanklich darlegen. Und diese einzelnen Feststellungen sollen ihrerseits ein zusammenhängendes, folgerichtiges, Widersprüche ausschließendes System bilden. Dabei erscheint uns wiederum als ganz klar, daß je durchgeführter diese Systematisierung ist, desto weiter muß sie sich von der Realität entfernen. Was bei der einzelnen Tatsachenfeststellung nur eine relativ geringe Abweichung sein

I think that incongruency can be demonstrated on at least two planes.

If I examine legal regulation *at the level of the individual norm*, it is evident from the above that the point under discussion is teleological projection which draws both its elements and their interconnections from the cognition of reality, yet still adds something new to reality with the specific processing inherent in these projections. It projects relationships into reality which were not there before and could not have spontaneously developed there either.

At the same time, the legal norm is peculiar as a teleological project, because the proper projection of the aim no longer appears in it, but only the instrumental activity which the legislator qualifies as such related to this unnamed aim. Thus the instrumental activity is getting independence in the legal norm: it is promoted to being the proper, exclusive aim. The text of the legal provision is its only relevant conceptual record. And to render it as indisputable as possible, the legislator describes the instrumental activity in the text of the legal provision only externally, in a manner recognizable only from formal features that constitute a case. Accordingly, the legislator usually disregards the content and inner motives of the behaviour in question.

But the definition of the instrumental activity does not yet establish a legal norm. This definition provides nothing more than a description of the desirable (or not desirable) conduct, and also a basis for comparison for the evaluation of the conformity (or non-conformity) of the actual conduct. All this becomes a legal norm when the legislator holds out the prospect of definite sanctions (advantage or disadvantage) for the case of its observance (or non-observance).

Thus the law influences the attitudes of its addressees in such a way that others have to link them with sanctions according to the dictate of the law. Therefore it influences the attitudes of its proper addressees by also defining the attitudes to be followed by other addressees: a professionally specialized, paid, disciplined and controlled group in society, devoted to achieving this purpose, i. e. those responsible for the state administration of law and justice. Thus the legal norm is both a rule of conduct and of decision. On the one hand, it has dual addressees and content. On the other, it brings about a second nature built by man

mag, muß als Bestandteil eines solchen Systems, im Sinne dieses Systems interpretiert, den Boden der Realität noch weit mehr verlassen. Denn das System wächst nicht aus der Widerspiegelung der Wirklichkeit heraus, sondern kann nur deren abstraktiv-gedanklich homogenisierende Manipulation sein.' 'die Feststellung der Tatsachen, ihr Einordnen in ein System ist nicht in der gesellschaftlichen Realität selbst verankert, sondern bloß in dem Willen der jeweils herrschenden Klasse, die gesellschaftliche Praxis ihren Intentionen gemäß zu ordnen.' MS, pp. 120, 120-121, and 121.

around himself not only with its specifically objectified form, but also by postulating an independent institutional system of sanctioning together with all of the material, ideological, etc. consequences that also influence the social division of labour.

But the legal norm never exists in isolation. It always occurs *organized into some sort of system*. Consequently, the formation of single norms is greatly influenced by a rich store of experience accumulated in the tradition as well as by the present environment.

With respect to the past, I refer to my earlier remark: one of the most momentuous factors in legal development is the transplantation of legal solutions, institutions, or whole systems of provisions of earlier and/or foreign systems. 'The conservation of past facts in the social memory continuously influences every later event. This fact by no means stops the objective regularity of the process, but sometimes decisively modifies it, because the consciously preserved experiences of the past, practically applied and consciously processed to suit new situations, also contribute to the objectively produced and objectively efficient conditions of any further steps.'²⁵⁹

The transplantation of past or foreign laws secures a kind of continuity, which makes possible the utilization of earlier refined and tested constructions by transplanting them into a medium which appears optimal for meeting the given requirements. Lassalle regarded this sort of transplantation as the 'misunderstanding' of the old, yet it was inevitable in Marx's opinion, since it was the only possibility. As Lukács explains, 'in the continuity of historical development the attempts to grasp a legal phenomenon in thought and to transform it into practice time and again conducted in the form of regression to institutions from earlier eras and their interpretation, and in fact must be so conducted. But these are nevertheless received and applied in a manner that in no way corresponds to the original meaning of the tradition, and which assumes its misunderstanding.'²⁶⁰ In terms of content Lukács points out that the question is always the satisfaction of the needs of the present,²⁶¹ even though means and techniques are used which originally came into being in a different environment and to fulfil other functions.

²⁵⁹ Sz, p. 189. 'Die Aufbewahrung der vergangenen Tatsache im gesellschaftlichen Gedächtnis beeinflusst ununterbrochen jedes spätere Geschehen. Dadurch wird die objektive Gesetzmäßigkeit des Prozesses keineswegs aufgehoben, wohl aber, zuweilen sogar entscheidend modifiziert. Denn zu den objektiv produzierten und objektiv wirksamen Voraussetzungen eines jeden weiteren Schrittes treten die bewußtseinsmäßig aufbewahrten und auf die neue Situation praktisch angewendeten bewußtseinsmäßig bearbeiteten Erfahrungen der Vergangenheit ergänzend hinzu.' MS, p. 78.

²⁶⁰ Marx', p. 126.

²⁶¹ Ibid., pp. 126 ff; 'Arbeit', pp. 116 f; Sz, p. 189.

Thus the institutions of various legal systems with their very definite profiles could for millennia lead to varied developments through rather different socio-economic structures, due to the practice of transplantation.

The relative freedom of the choice of means is even greater in instances of purely formal arrangements, e. g. quantitative units, where the given choice is necessarily arbitrary within limits that can only be drawn approximately. Lukács quotes Hegel: 'The quantitative element of a punishment, for instance, cannot be made adequate by any conceptual definition, and whatever the decision is, it is always arbitrary from this point of view. But this incidentality itself is also necessary.'²⁶²

The mentioning of arbitrariness brings up the question of the relationship between ends and means. I cannot delve into this matter. Perhaps it will suffice to say that even where the arbitrariness of the choice of means is most manifest, it can only occur within a socially determined scope, and even in its arbitrariness this delineates the content, purpose and the approximate limits of the choice of means.

The effect of the past and of the present asserts itself partly directly and partly indirectly, i. e. through the systematization of legal enactments. The individual norms are made not by and in themselves, but with regard to other norms that already exist or are intended to be introduced into the legal system. Sometimes ancient traditions, at other times the stimulating effect of newer (albeit for the present completely irrational) solutions assert themselves in the determination of the bases of legal systematization. The kind of legal institution, the system of sanctions and the branch of legal regulation into which a legal norm is to be fitted may be of decisive importance in the shaping of a legal norm.

To sum up, the system-character of the law can be concluded from the following features. Firstly, the system-character of the law is a practical requirement: it is an indispensable prerequisite of the store of means of the law in order to enable it to operate and exert an effect as a relatively autonomous complex. Secondly, the connections which make up the system are determined by the requirement of the optimal choice and arrangement of the means, considered from the aspect of their practical effect. Thirdly, logical and epistemological considerations can only play a subordinated role to all these, a role to be fulfilled exclusively in the arrangement of the components and connections of the system in a conceptual form. Fourthly and finally, the system is not constructed

²⁶² G. W. F. Hegel, *Grundlinien der Philosophie des Rechts*, ed. E. Moldenhauer and K. Markus Michel, Frankfurt am Main, Suhrkamp, 1970, § 214, Zusatz.

conceptually and in an axiomatic manner, but is postulated normatively in the historical process of law-making. It means that the system-character of the law consists primarily of its actual state (or, to use the rather peculiar Lukácsian terminology, of its *Gerade-so-Sein*). Even though a doctrinal approach with its linguistic-logical analysis can forge a logically rigorous and coherent *meta*-system from the valid system of the law, this does not alter the given system of enacted laws, being the exclusive vehicle of its system-character.

I have still said nothing of the fact that the total sum of enacted legal norms cannot in itself ensure the system-character of the law. In order to render the system logically free of contradictions and really consistent and coherent, a series of implicitly accepted external postulates are needed, which anticipate the assumed rationality of the legislator in the interests of the suitable organization of the law's various technical components.²⁶³

The practical requirements of socially functional operation therefore play a primary role in the system. Lukács expresses this in the following sequence of ideas: 'The system-character of the law demonstrates partly that this is a purely postulated system from the start, unlike the systematic nature of the economic reproduction process which developed spontaneously. But the principles of its structure and coherence are not guaranteed by the fact that the determinations of the economic process itself will be gradually recognized. Indeed, these principles have to be suitable for fighting the conflicts to a finish at the level of the highest possible level of generalization according to the existing society and its prevailing power relations of classes. . . The criteria of the objectifying abstracting process which legal enacting implements in the total social reality are whether it is able to arrange, define, systematize, etc. the socially vital conflicts in a system which can guarantee the relative optimum for the resolution of the conflicts in question in line with the current level of development of the given formation. . . Logic . . . remains here the mere instrument of conceptual forming: the contents of what, for instance, has to be regarded as identical or non-identical, is not determined by social objectivity in itself, but by how the ruling class (or classes, class compromises) are interested in the regulation and resolution of definite conflicts in a certain manner. In the meantime it can easily happen that elements which belong to each other socially are separated and that heterogeneous ones are reduced to a common denominator.

²⁶³ Cf., e. g., L. Nowak, "De la rationalité du législateur", in: *Etudes de logique juridique* III, ed. Ch. Perekman, Brussels, Bruylant, 1969, pp. 65 ff.; N. Bobbio, "Le bon législateur", in: *Le raisonnement juridique*, ed. H. Hubien, Brussels, Bruylant, 1971, pp. 243 ff.

Whether and when this happens and whether and when uniting or separating them is correct are not decided by logical criteria (even though everything appears in a logical form), but by the concrete needs of some concrete socio-historical situation.²⁶⁴

Maybe it is proof of the problem-sensitivity of legal theory in Hungary and also of the timeliness of Lukács' *Ontology*, that a similar and yet independent answer was given to this burning question by Imre Szabó at the very same time. It is the merit of Szabó's work that it demonstrated the incongruous relationship between the law and other complexes. This was done at the level of the individual norms by an evaluation of legal relationships as specific, formal expressions of other social (property, production, etc.) relations, and at the level of the legal system by the qualification of the law as a 'socially insensitive' reflection, since the ontological differences of the social relationships brought under regulation are not reflected in the homogenizing vehicle of the legal norm-system.²⁶⁵

5.3.3 *The Nature of Juridical Concepts*

In the following I shall endeavour to outline how decisive the practical dimension is, and how it step by step erodes the fixed points which would allow us to speak about an epistemological approach in a reasonable way. The arguments presented here are based on an earlier enquiry which—in

²⁶⁴ Sz, pp. 483–484. 'Dieser Systemcharakter des Rechts zeigt einerseits, daß es, im Gegensatz zur spontan entstehenden Systematik des ökonomischen Reproduktionsprozesses, von vornherein ein rein gesetztes System ist. Die Prinzipien des Ausbaus und der Kohärenz sind aber nicht einfach eine Verwandlung ins Bewußte der Bestimmungen des ökonomischen Prozesses selbst, sondern müssen geradeso beschaffen sein, daß sie geeignet werden, Konflikte im Sinne der jeweilig bestehenden Gesellschaft, im Sinne der in ihnen jeweils vorhandenen Machtproportion der Klasse, auf der Stufe der jeweils möglichen höchsten Allgemeinheit auszutragen.' 'Der vergegenständlichende Abstraktionsprozeß, den das juristische Setzen an der gesamten gesellschaftlichen Wirklichkeit vollzieht, hat seine Kriterien darin, ob er imstande ist, die sozial relevanten Konflikte so anzuordnen, definieren, systematisieren etc., daß sein System eine für den jeweiligen Entwicklungsstand der eigenen Formation ein relatives Optimum für das Austragen dieser Konflikte garantieren kann.' 'Denn das Logische bleibt hier ein bloßes Instrument der gedanklichen Formung: den Inhalt dessen, was etwa als identisch oder nicht identisch betrachtet werden soll, wird nicht von der an sich seienden gesellschaftlichen Gegenständlichkeit bestimmt, sondern das Interesse der herrschenden Klasse (oder Klassen, oder Klassenkompromisse) daran, wie bestimmte Konflikte in bestimmter Weise zu regeln und dadurch auszutragen sind. Dabei kann sehr wohl das gesellschaftlich an sich Zusammengehörige getrennt und das Heterogene auf einen Nenner gebracht werden, ob und wann es geschieht, ob und wann Vereinigung oder Trennung richtig ist, entscheiden nicht logische Kriterien (obwohl alles in logischer Form erscheint), sondern die konkreten Bedürfnisse einer konkreten gesellschaftlich-geschichtlichen Lage.' MS, pp. 988, 989, and 989–990.

²⁶⁵ Szabó, part I.

connection with Lukács' ideas—was aimed at the examination of some features of legal reflection, centred on the legal concept of thing.²⁶⁶

It can be presumed (though hardly proven) that once an ideal state existed in the development of law, when things manifested themselves in their very simplicity: a state, when legal ideas did not require manipulation so as to be enabled to fulfil their practical role; when legal ideas coincided with ordinary ideas, and legal meaning with everyday meaning. But our early relics, in which legal ideas are evident, seem to belie this possibility.

The only statement I can hazard in this respect is that no matter whether ordinary concepts and legal ones coincided once or not, what was once regulated as a "thing" became the core onto which the fiction of everything to be similarly regulated as "thing" was superposed. Perhaps only those areas were first brought under regulation as "things" which showed some analogy with the real thing. Later, other areas were brought under such a regulation—as the analogy of analogies—and soon pure fictions arose from the series of analogies. Finally, the possibility is by far not excluded that further fictions were built up on the top of the existing ones, and all this cast legal "things" incomprehensible distances away from everyday things.

Thus legal concepts are pragmatic concerning their fundamental definition. They are further and further removed from the point where they can be *in merito* examined epistemologically. Nevertheless, elements and interconnections of reality are reflected in their development. But the content and the extent of the concept developing from these are not ultimately determined by the copying of reality, but purely by practical considerations and the regulation techniques available. The juridical concept will be a function of their encounter.

For this reason, the juridical concept inevitably includes arbitrariness. If I am to carry through to the end the methodological lessons of the enquiry mentioned, I am forced to the conclusion that the point in question is ultimately not so much a concept reflecting reality, but rather a conventional one. Its truth content is like that of an axiom of an axiomatic system, which reflects first itself and then, through itself, the theoretical and practical considerations behind its postulation as an axiom. Thus it is a category of reality which, treated as an image, portrays reality in a very indirect manner.

Such an estrangement from reality is not an autotelic process. Its real purpose is to provide a suitable means for the optimum operation of the

²⁶⁶ Cf. *Infra*, A. 2.

legal complex. But this makes legal "reflection" specific and heterogeneous, and this is also expressed to a smaller or greater degree in the handling of juridical concepts as mere means. As Lukács put it: 'an epistemological objective identity or convergence can in no way provide the decisive motive for choice or rejection; this motive consists in an actual applicability in concrete present circumstances, from the standpoint of a resultant in the struggle between concrete social interests.'²⁶⁷

Thus, directly, and in the epistemological sense, the law only reflects itself as a postulated legal reality: a slice of the second nature built by man around himself. Of course, this by no means excludes the possibility of making intelligent deductions about reality from the law (through the glasses of a "legal paleontologist") so that it can be reconstructed, at least in its major outlines. The above statement only refers to the fact that not all conceptual expression can be purely traced back to epistemological reflection. Conceptual expressions may also cover processes other than epistemological reflection, ones hitherto little explained philosophically.

5.3.4 Validity as a Distinctive Quality of Law

The specific feature of legal objectification, namely that it is based on the cognition of reality, yet uses the results of cognition (according to purely practical considerations) embedded in the medium of a means that ensures the optimal satisfaction of existing needs, has further consequences.

The inner contradiction of the law as a specific kind of social mediation is that it plays an instrumental (i. e., in terms of content, subordinate) role in its relationship to other complexes, but formally it demands realization of the mediation according to its own laws. The possibility of such a contradiction is already foreshadowed by the circumstance that the relative autonomy of the various social complexes becomes increasingly emphatic as socialization advances. All this is extremely pronounced and polarized in the law, since ultimately society resolves its most extreme conflicts of interest with the mediation of institutionalized coercion. Therefore the law is the most formalized means among the various types of social control, and it also has an extensive organizational machinery which moves precisely on the paths outlined by the system of enacted legal norms.

²⁶⁷ 'Marx', p. 128.

This is how Lukács describes this situation: 'the social task generally requires for its fulfilment a system whose criteria, at least in a formal sense, can neither be derived from the task itself nor from its material foundation, but must be specific, internal and immanent. What this means in one case is that a legal regulation of human social intercourse requires a specific and juridically homogenized ideal system of rules, etc., whose construction ultimately depends on the "incongruency" that Marx established between this realm of ideas and the economic reality'.²⁶⁸ One side of the contradiction is that 'the means of the realization of a teleological project possesses — within specific limits . . . a specific and immanent dialectical connection and the internal perfection of this is one of the most important moments for the successful realization of the project.' This immanent fulfilment is 'of a formal and homogenizing kind'. The other side is that 'the formal closure of a system of arrangements of this kind may stand in an incongruent relationship to the material that has to be arranged, as the reflection of this, but certain of its actual essential elements still have to be correctly grasped both in thought and in practice if it is to be able to perform its regulating function.'²⁶⁹ Accordingly, "legal reflection" consists of elements, which are arbitrary from the point of view of epistemology, but their validity or invalidity does become revealed in the 'peculiar socio-historical dialectics'²⁷⁰ of their practice.

Therefore, the law is internally contradictory, since as a criterion it 'combines two heterogeneous moments, i. e. a material and a teleological one. In the case of labour this appears as the necessary unification of the technological and the economic moment, in the case of law as the immanent juridical coherence and consistency in its relationship with the political and social goals'²⁷¹ of the legal system.

This duality involves heterogeneity, whose root is to be found in socialization: in the becoming of teleological projects increasingly indirect, i. e. in the interposition of new and new projects in the teleological process. The point in both economy and law is that the original project defined only in terms of content (the achievement of the economic or the socio-political aim) can only be realized through the interposition and observance of a formally defined project (a technological or a legal stipulation). Thus the single teleological project, which was once sufficient in spontaneously developing social practice, now doubles with the formalization developed in the course of socialization.

²⁶⁸ *Ibid.*, pp. 126–127.

²⁶⁹ *Ibid.*, p. 127.

²⁷⁰ Sz, p. 189, 'in einer eigenartigen gesellschaftlich-geschichtlichen Dialektik', MS, p. 78.

²⁷¹ 'Marx', pp. 127–128.

When Lukács talks of the 'formal closure' of the system of law or of the 'immanent juridical coherence and consistence' to characterize the operations that take place behind the facade of the law, he clearly realizes that the legal complex is not simply heterogeneous, but also formally distinct from other complexes.

The formal autonomy of the law is an important feature, which developed together with the relative autonomy of the law in the course of its historical development. There were already some early examples in antiquity and in medieval times; but it gained its first expressed form in the Italian city-states, in those early centres of bourgeois development.

It is the concept of formal validity that separates the law declared "valid" from mere traditional law and makes it a function of the ruler's enactment, carried out in a predetermined manner and form. Thus it also limits the extent and draws the boundaries of the rules to be regarded as the law, opening the way to their linguistic-logical treatment and systematization, the so-called doctrinal study of the law.

It seems that Lukács misunderstood the formal importance of this heterogeneity on one point. When he compares the internal character of the criterion of the 'system of fulfilment' of the law with the external character of the postulation of this criterion, he adds that bourgeois legal formalism recognizes this as some sort of duality. He quotes Kelsen, who (as Lukács has already blamed him for it)²⁷² calls legislation 'the great *mystery* of the state and the law'^{273, 274}. His sarcasm is biting when he writes: 'Didn't Kelsen contend in the 1920s, for example, that the formation of law was a mystery for legal science? Now it is obvious that the formation of law is not at all mysterious. There are the most complicated debates and class struggles around it. The average trader in the Federal Republic will certainly not see it as a mystery, but rather ask himself whether his particular pressure group can exert a sufficiently strong, therefore *de facto* ontological pressure on the government, for a paragraph to be formulated in its interest. Kelsen, however, was not simply a fool to see a mystery here; this follows, rather, precisely from the impossibility of solving problems of real life by logic or epistemology.'²⁷⁵

As for Kelsen, a world-famous professor of constitutional and international law, as well as of political science, and the architect of the Austrian Constitution in the twenties, forced to emigrate in order to escape racial

²⁷² HCC, p. 108.

²⁷³ H. Kelsen, *Hauptprobleme der Staatsrechtslehre*, Tübingen, Mohr, 1911, p. 411.

²⁷⁴ 'Marx', p. 128.

²⁷⁵ C, p. 24.

discrimination, he surely had some inkling of what took place behind the majestic facade of legislation. His originality was precisely that he went along the road, whose direction was marked by the jurist's traditional "world concept" based on legal positivism, almost *ad absurdum* in terms of his legal theoretical view. The effect of neo-Kantianism and the spirit of the Viennese school, were by no means accidental in all this. Nevertheless, his theory could become a classic in his lifetime only because he endeavoured to carry through such methodological trends, which had increasingly become presumptions of the very life and inner operation of the law during recent centuries and were thus regarded as real factors in its actual practice. The so-called pure theory of law therefore owes its sterility to the same factor as its epoch-making power, namely to the fact that it took rigorous account of the specific definitions inherent in the heterogeneity of law.

Thus the picture that Kelsen gives is, in fact, a Utopia created by the juristic "world view". It is an interpretation of the functioning of a law which rigorously and rigidly follows the postulates which it imposes upon itself in relation with its functioning. To use a vivid comparison, Kelsen kicks off his theoretical ball to see where it rolls and where it stops if it completes its course without hindrance. In the meantime, of course, he himself is also aware that a law that is strictly consistent with its own rules is just as much condemned to failure as any truly rule-abiding airline or railway (it would be almost equivalent to a strike), since its rigid rules would hinder its own functioning.

The pivotal concept of the heterogeneity of law is validity. This is the inner postulate of the system of law: it defines which norms are to be regarded as belonging to the system. Naturally, the postulate of validity can only assert itself in dependence on the prevailing movement of the social total process. Accordingly, behaviour on the part of the state authorities which is a negation of validity *de jure*, yet is still asserted steadily in the name of the law as *de facto* legal, may break through this postulated validity just as well as a revolution. A revolution is (Lukács quotes Kant) the negation of all existing legality, yet it can and must claim full legal validity at the same time.²⁷⁶

Validity is an organizing principle within the legal complex and efficacy is what becomes ontologically existent in the actual process of mediation. Efficacy describes the circle within which the question of validity can be raised in a reasonable way. Using an image borrowed from

²⁷⁶1. Kant, *Die Metaphysik der Sitten*, Das Staatsrecht, § 49, quoted in 'Marx', p. 171, note 39.

the Hungarian writer Frigyes Karinthy, the rules of chess followed by Ben Jussuf, the pirate captain, are only reasonable until Caesar, a prisoner of Jussuf, moves his king off the table and asserts this new, modified rule by slaying Jussuf.²⁷⁷

Once we accept the simultaneous existence of total social dependence and heterogeneity arising from the relative autonomy of the law,²⁷⁸ we can no longer dissolve validity in efficacy. Indeed, the formal determinations issued from the heterogeneity must be preserved in order to maintain effectivity as legal effectivity.

Therefore the existence of 'problems insoluble from the immanent juristic point of view' is quite natural and necessary.²⁷⁹ Validity as a postulate within the system cannot explain its own postulation just as the axiom of a system of axioms can only be the point of departure of deductions, but not its own explanation. Whether or not one accepts an assertion as an axiom is just as much outside the system as the origins of validity is a question of meta-law.

5.4 LAW IN ACTION: FORMAL LEGALITY *VERSUS* SOCIAL OPTIMUM

5.4.1 Components of Law-Observance

Social development strengthens the apparently self-regulating elements of the legal system. This process is in accord with the advance of legal validity, which makes possible the clear and formal distinction of the law from any other social phenomenon. The growing emphasis on form is, on the other hand, the result of socialization. The fact that 'the consciously postulated form . . . exercises a decisive influence on most processes of the social being in the more developed forms of social existence'²⁸⁰ is due to this. It is therefore obvious for Lukács, too, that 'the more purely social life is socialized, the more strongly and purely. . . the legal form develops.'²⁸¹ In other words and in a broader context this means that 'the legal sphere can fulfil its task in the system of the division of labour only

²⁷⁷In: F. Karinthy, *A lélek arca* II, Budapest, Magvető, 1957, pp. 28 ff.

²⁷⁸'*Arbeit*', p. 109.

²⁷⁹Sz, p. 287, 'immanent juristisch unlösbare Probleme', MS, p. 224.

²⁸⁰P, p. 161. 'eine bewußt gesetzte Form . . . in höheren Formen der Gesellschaftlichkeit auf die meisten Prozesse des gesellschaftlichen Seins bestimmend einwirkt.' MS, p. 236.

²⁸¹Sz, p. 212. 'So differenziert jedoch die Rechtsinhalte in ihrer Genesis und ihrer Geltung auch sein mögen, zu einer solchen Gleichartigkeit entwickelt sich die Rechtsform erst im Laufe der Geschichte; je reiner gesellschaftlich das gesellschaftliche Leben wird, desto stärker und reiner,' MS, pp. 112–113.

if it accentuates externalization of all facts of social life up to the extremes, and the more developed this division of labour is, the truer this is.²⁸²

One has to realize that Lukács is basically integrating the lessons of the Weberian analysis into his own system of thoughts. He hardly moves beyond the scope of his *Reification and the Consciousness of the Proletariat*, yet his analysis is still a self-critical surpassing of the position taken at the time of writing *History and Class Consciousness*. He breaks off with his previous dramatization when, driven by a messianistic zeal, he damned the rationalizing tendencies which developed parallel with the development of the exchange of goods as the dehumanizing essence of capitalism. Now it appears that he only wants to register soberly the changes that really occurred.

I tend to see in this the recognition of the inner tendencies and moving forces of a universal process that necessarily takes place as socialization advances, and not the negative judgement of this process, which disciples of Lukács read into it.²⁸³ If it were otherwise, we would get into an insoluble contradiction over the question of why socialism develops rationalization to increasingly higher levels, and why this also becomes the necessary feature of the socio-economic formation Marx and Engels had a prophetic dream about, notably communism.²⁸⁴ These are questions about which Lukács' silence can only be explained by the acceptance of the above.

As Lukács propounds, 'capitalism was aimed at a universal legal regulation of every social activity by necessity, and in doing so it made the prestige and authority of central regulation one of the basic questions of social life compared with every other regulation.'²⁸⁵ Thus it outlines a universal tendency (even though it first developed really in laissez-faire capitalism) that 'the more law generally became the normal and prosaic regulator of everyday life, the more the pathos it had acquired in the initial period disappears and the more the manipulatory elements of positivism gain strength in it. It becomes a sphere of social life where the

²⁸² Sz, p. 483. 'die Rechtssphäre ihre Aufgabe im System der Arbeitsteilung – je entwickelter diese ist, desto entschiedener – nur erfüllen kann, wenn sie alle Tatsachen des gesellschaftlichen Lebens zu einer extremen Zugespitztheit der Entäußerung führt.' MS, pp. 987–988.

²⁸³ Feher et al., p. 110.

²⁸⁴ Varga 'Codification', Ch. 10, § 1.

²⁸⁵ Sz, p. 214. 'der Kapitalismus . . . notwendigerweise sowohl einer universellen rechtlichen Regelung aller gesellschaftlichen Aktivitäten zustrebte, wie zugleich die Überlegenheit und damit die Autorität der zentralen Regelung allen anderen gegenüber zu einer Hauptfrage des gesellschaftlichen Lebens machte.' MS, p. 115.

consequences of actions, the changes of success and the risks of losses are calculated in the same way as in the economic world itself. Of course, this happens with the difference that, firstly, the point in questions is mostly a (relatively independent) function of economic activity, where the likely outcome of legally permitted activity and, in case of conflict, lawsuit, are a subject of specific calculation within the main economic target; and, secondly, specialists are needed over and beyond the economic calculation, too, to estimate these additional prospects as exactly as possible.²⁸⁶

The system of legal norms has to be developed as a logical system in order to ensure predictability and calculability, and this has definite consequences for both its making and application. 'The new fetishization lies in the circumstances that the law . . . is treated as a solid, coherent, "logically" unambiguously defined field, and not only in practice, as a subject of pure manipulation, but also theoretically as an immanently closed, in itself closed complex correctly treatable only with juristic "logic".'²⁸⁷

This objective description of the tendency for growing independence in modern legal development is extended beyond the stand taken in *History and Class Consciousness* by a new factor. It unequivocally regards the character of this process as ideological, yet at the same time as having a definite social existence. To be more precise, I recall the development of the heterogeneity of the various part complexes in the ontology of complexes, the fact that the legal complex also develops into a more and more autonomous system, progressing according to its own regularities and asserting its own determinations with increasing consistency. It develops into a structure whose epistemological approach could—in most of the cases—only point out its arbitrariness, since the real properties of the legal

²⁸⁶ Sz, p. 215. 'Je mehr das Recht zu einem normalen und prosaischen Regulator des Alltagslebens wurde, desto mehr verschwindet im Allgemeinen sein in der Entstehungszeit erworbenes Pathos, desto stärker werden in ihm die manipulationsmäßigen Elemente des Positivismus. Es wird zu einer Sphäre des gesellschaftlichen Lebens, wo die Folgen der Taten, die Chancen des Gelingens, die Risiken der Verluste ähnlich kalkulationsmäßig erfaßt werden, wie in der ökonomischen Welt selbst. Freilich mit dem Unterschied, daß erstens zumeist von einem — allerdings relativ selbständigen — Annex der wirtschaftlichen Aktivität die Rede ist, wobei das gesetzlich Erlaubte, im Konfliktfall das prozessual Wahrscheinliche den Gegenstand einer besonderen Kalkulation innerhalb des wirtschaftlichen Hauptzwecks ausmacht; zweitens daß man neben der wirtschaftlichen Kalkulation besonderen Spezialisten braucht, um diese akzessorischen Voraussichten möglichst genau zu berechnen.' MS, pp. 116–117.

²⁸⁷ Sz, pp. 215–216. 'Die neue Fetischisierung besteht nun darin, daß das Recht . . . als ein festes, zusammenhängendes, "logisch" eindeutig bestimmtes Gebiet behandelt wird, und zwar nicht nur in der Praxis als Gegenstand der reinen Manipulation, sondern auch theoretisch als ein immanent abgeschlossener, nur mit der juristischen "Logik" richtig handhabbarer, selbstgenügsamer, in sich abgeschlossener Komplex.' MS, p. 117.

complex can only be understood on the basis of the actuality and ontologically relevant motive powers of its practical functioning.

Thus a specific object is given in the legal complex which postulates its own maintaining-operative-reproducing subject: the legal profession. The peculiarity of the legal profession is not that it occupies an independent position in the social division of labour, but rather that its functioning is also characterized by the ideological factor, an epistemological analysis of which would be in vain, since that would again lead only to the finding of an arbitrariness that can lead no further conceptually. It is worth noting in this connection that Lukács sets against the spontaneous development of language not the simply conscious development of the law, but that what requires just a specific consciousness. As he writes, the law 'can only exist, function and reproduce itself if the social division of labour selects a group of people specialized for that purpose, whose specially trained way of thinking and acting deals with the work necessary here with a certain consciousness. (It is another matter that this consciousness is necessarily false to a certain extent).'²⁸⁸

It is apparent from the above that Lukács attributes ontological importance to the legal profession. 'The specific form of existence of the law as an ideology is only fulfilled by the fact that the differentiation of the social division of labour. . . also created professional jurists.'²⁸⁹

Placing the legal profession on this kind of pedestal would be characteristic of British-American or Scandinavian legal realism; but the theory and the legal set-up of these countries was surely a *terra incognita* for Lukács. It is not unfounded therefore to suggest that the inspiration could have come from Weber. Lukács brings the legal profession into relation with law ontologically. The task of this profession is to operate the law and to cultivate it in order to ensure the reproduction of the legal complex.

It is obvious from the above that the law emerges as a self-sufficient regulating power to cope with its mediating function relatively independently. This is supported by such apparent (though officially postulated)

²⁸⁸ Sz, p. 229. 'ein Spezialgebiet der menschlichen Aktivitäten, das nur dann existieren, funktionieren, sich reproduzieren kann, wenn die gesellschaftliche Arbeitsteilung eine dafür spezialisierte Menschengruppe delegiert, deren auf diese Spezialität gerichtetes Denken und Handeln die hier nötige Arbeit mit einer gewissen Bewußtheit verrichtet. (Wie weit diese Bewußtheit notwendig in einem bestimmten Sinne eine falsche sein muß, gehört nicht hierher).' MS, p. 137.

²⁸⁹ Sz, p. 485. 'die Differenzierung der gesellschaftlichen Arbeitsteilung . . . auch die Berufsjuristen geschaffen hat. Erst damit vollendet sich die besondere Seinsart des Rechts als Ideologie.' MS, p. 990.

phenomena as the law's own 'system of fulfilment', its logical organization and logically defined functioning. The reason why this is interesting in connection with the role of the legal profession is that the jurists themselves are responsible for the ideological maintenance and reproduction of these phenomena. It should be added that Lukács regards this role as a responsible one indeed, since he writes that 'it is in the elementary interests of such a specialist stratum to make its own activity appear as important as possible within the total complex', and that 'such specialist strata are likely to resist most vigorously the ontologically correct understanding of ideologies.'²⁹⁰ His exposition ends with a rather rigorous statement: 'One can express the real character of the law . . . only if one sees this self-glorifying distortion for what it is, namely the ideologization of the ideology that evolves by necessity when the social division of labour entrusts the cultivation of the ideology to a specialist stratum.'²⁹¹

Well, Lukács is absolutely right vis-à-vis any kind of fetishistic distortion. But in this connection he fails to mention the ideological motives which necessarily permeate the development and operation of the law and which he himself has also appreciated elsewhere as the marks of its heterogeneity. The totality concept of the *Ontology* points in the direction of the only possible solution. This is nothing but the simultaneous recognition that the total complex is the ultimate determinant, although the legal complex is heterogeneous within it. Thus, if we compare the logical appearance of the law with reality, the result can only be the expression of the inner contradictory nature of the requirements the law has to comply with.

Formal rationalization thus goes hand in hand with the increased emphasis on the question of practical functioning. Therefore the circumstance that 'becoming increasingly abstract, modern law has endeavoured to encompass everything, and as an objective symptom of the socialization of society, there was a struggle for the legal regulation of every possible vital activity', was accompanied by the strengthening of the manipulative elements of positivism, and above all by the consequence

²⁹⁰ Sz, p. 486. 'es ein elementares Lebensinteresse von solchen Spezialistenschichten ist, ihre Tätigkeit im Gesamtkomplex als eine möglichst gewichtige erscheinen zu lassen' 'die stärksten Widerstände gegen eine seismäßig richtige Erfassung der Ideologien gerade solche Spezialistenschichten auszulösen pflegen.' MS, p. 992.

²⁹¹ Sz, p. 487. 'Der wirkliche Charakter des Rechts kann also nur so herausgestellt werden, daß diese glorifizierende Entstellung als das begriffen wird, was sie ist, als eine Ideologisierung der Ideologie, die notwendig entsteht, wenn die gesellschaftliche Arbeitsteilung eine Spezialistenschicht zu ihrer Pflege delegiert.' MS, p. 992.

that 'existing positive law becomes such a practically very important field in positivism, whose social origin and social conditions of development seem less and less important even theoretically compared with its purely practical utility.'²⁹² Practical utility leads again to the ontological approach: to efficacy as the ultimate measure of the social being of any phenomenon.

Lukács approvingly refers to Jellinek at this point. The latter talked of the normative power of factuality when he analysed the continuous interaction between the social total practice and the actual validity of legal definitions.²⁹³ How does Lukács put it? He writes of 'the simultaneous coexistence and intertwinement of the valid system of positive law and of its socio-economic factuality in everyday life.'²⁹⁴ Then he adds that 'the fact itself as well as its official recognition express the socio-historical result of the class struggle in the society, i. e. the constant dynamic social change of what is regarded as legal fact and how this is officially recognized.'²⁹⁵ Lukács also mentions the contradiction which stresses the difference between 'the immanency and closed nature of the legal system and its incessant correction through the factualities of social life.'²⁹⁶

We have to note the adjectives here: 'simultaneous', 'constant', 'incessant', emphasizing the process-likeness also in relation to legal norms. The process-likeness is characterized by Lukács as irreversibly progressing.

I have already analysed the dual teleological projection as a feature of legal mediation, the phenomenon that the legal complex promotes the realization of the socio-political aim through realizing itself as predeter-

²⁹² Sz, p. 215. 'das immer abstrakter werdende Allumfassen des modernen Rechts, der Kampf um die rechtliche Regelung möglichst aller lebenswichtigen Aktivitäten – ein objektives Symptom des Gesellschaftlichwerdens der Gesellschaft' 'So wird das jeweilige positive Recht im Positivismus zu einem praktisch äußerst wichtigen Gebiet, dessen gesellschaftliche Genesis, dessen gesellschaftliche Entwicklungsbedingungen auch theoretisch immer gleichgültiger neben seiner rein praktischen Nutzbarkeit erscheinen.' MS, pp. 116 and 117.

²⁹³ G. Jellinek, *Allgemeine Staatslehre*, 3rd ed., Berlin, Springer, 1922, pp. 334 and 339, quoted in Sz, p. 216.

²⁹⁴ Sz, p. 216. 'Dieses gleichzeitige Nebeneinanderbestehen und Ineinanderverschlungenheit des geltenden Systems des positiven Rechts und der ökonomisch-sozialen Tatsächlichkeit im Alltagsleben.' MS, p. 118.

²⁹⁵ Sz, pp. 219–220. 'sowohl die Tatsache selbst wie ihre offizielle Anerkennung erweist sich als gesellschaftlich-geschichtliches Ergebnis des Klassenkampfes in einer jeweils konkreten Gesellschaft, als eine ständige dynamisch-soziale Wandlung dessen, was als rechtliche Tatsache betrachtet und wie sie offiziell anerkannt wird.' MS, p. 123.

²⁹⁶ Sz, p. 225. 'Diesen Widersprüchen ... zwischen Immanenz, Abgeschlossenheit des Rechtssystems und seiner ununterbrochenen Korrektur durch die Faktizitäten des gesellschaftlichen Lebens.' MS, p. 130.

mined by its own projection. This is a basic principle of legal functioning. At the same time this duality of legal functioning is itself only a result of a social postulate, a more or less officially proclaimed requirement. Therefore it is an ideal, whose assertion is generally regarded as being desirable, yet which can never be decisive to such an extent that it would suspend the effect of the total process.

The actual social reality of the ideal of legality thus ultimately depends on the degree it enjoys in supporting the total process. If a contradiction arises between the social total movement and actual mediation fulfilling the requirements of legality, the resolution of that contradiction depends on the former's concrete balance, on the concrete conditions of the assertion of opposing interests. In instances like these, there is an opportunity for the assertion of the relative autonomy of the law in its entirety. The outcome of the resolution of the contradiction can move on the broadest imaginable scale: from the domination of the law over the economy and compromises disguised in a variety of ways to the open suspension of the law, or even its suppression.

Lukács' treatment suggests that the two extremes (perfect harmony with or rigid opposition to the total process) which Engels described so sharply,²⁹⁷ are by no means typical socially. Consequently, the new element in Lukács' view is not the acknowledgement of the possibility of extremes, but precisely an incessant sequence of middle-of-the-road conflict resolutions appearing in various ways, i. e. a practical life of the law which manifests itself precisely in the constant search for compromises.

Engels refers to the ever incomplete state of the system of law, its unbroken development and constant changes, when he wrote: 'Thus to a great extent the course of the "development of law" consists only, first, in attempt . . . to establish a harmonious system of law, and then in the repeated breaches made in this system by the influence and compulsion of further economic development, which involves it in further contradiction.'²⁹⁸

²⁹⁷ Engels, p. 492.

²⁹⁸ *Ibid.*, pp. 491 f. In the translation 'development of right' stands for the German 'Rechtsentwicklung'. Cf. K. Marx and F. Engels, *Ausgewählte Schriften in zwei Bänden II*, Moscow, Verlag für Fremdsprachige Literatur, 1950, p. 464.

The task is thus the ontological explanation of the process-like character of the everyday life of the law.

The starting point is again the need for the predictability of the law. It brought in its wake the re-organization of the law as a formal system in the modern age. The circumstance that 'with this, the problem of subsumption becomes actual, and the specific discrepancies developing in this emerge'²⁹⁹ is only one of the several consequences to Lukács' mind. In the description of the process he follows Weber. Nevertheless, he constructs an ontological analysis (partly from Weberian elements), which far surpasses the achievements of Weber's legal sociology, both methodologically and theoretically.

Lukács characterized the process in question in the following way: 'subsumption will get a particular shape owing to the fact that some teleological project (the law) is destined to produce another teleological project (its application), and thus the already mentioned dialectic, the conflict of class interests that springs from this becomes the ultimate determining factor, and the logical subsumption is based on this only as a phenomenal form.'³⁰⁰ Therefore, 'the functioning of positive law is based on this method: the mass of contradictions has to be manipulated in such a way that not only a uniform system should develop from it, but one which is able to regulate the contradictory social event practically and optimally and which always moves flexibly along the antinomic poles (for instance, naked force and conviction bordering on the ethical sphere), in order to realize and influence the decisions of social practice (which are currently optimal for society) in the course of shifts of balance that constantly occur within slowly or rapidly changing class rule. Clearly, a wholly specific manipulative technique is necessary for this and it explains the fact that this complex can reproduce itself only if society always reproduces the "specialists" needed for this purpose (from judges and lawyers to policemen and hangmen).'³⁰¹

²⁹⁹ Sz, p. 220. 'Damit wird das Problem der Subsumtion aktuell und mit ihr die in ihr entstehenden spezifischen Diskrepanzen.' MS, p. 124.

³⁰⁰ Sz, p. 220. 'Er erhält aber eine besondere Gestalt dadurch, daß eine teleologische Setzung (das Gesetz) eine andere teleologische Setzung (seine Anwendung) hervorrufen soll, wodurch die früher erwähnte Dialektik, der daraus entspringende Konflikt der Klasseninteressen zum letztthin bestimmenden Moment wird, dem die logische Subsumtion nur als Erscheinungsform aufgelagert wird.' MS, p. 124.

³⁰¹ Sz, pp. 225–226. 'Das Funktionieren des positiven Rechts beruht also auf der Methode: einen Wirbel von Widersprüchen so zu manipulieren, daß daraus nicht nur ein einheitliches System entstehe, sondern ein solches, das fähig ist, das widerspruchsvolle gesellschaftliche Geschehen

Lukács did not indulge in detailed analyses of the technique and forms of manipulation: it was not his purpose, either. However, he provided a fundamentally new insight for Marxist legal thinking with this concise characterization: he evaluated manipulation as a property of the everyday practice of official law-application, and thus he made it not only an indispensable, but also a downright positive concomitant of the life of law.

Manipulation has a definitely pejorative tinge to any traditional conception; it suggests illegal tampering with the law. Over the past two decades Marxist legal theory has begun to recognize that even the illegitimate formation of the law can function in an ontological manner, indeed, it can fulfil its role as a law in the sociological sense.³⁰² After such preliminaries, the demonstration that manipulation is a possible form of developing the law (even though it acts only as an incidental corrective) was a theoretical achievement of the recent past.³⁰³

Supporting these ideas and at the same time theoretically superseding them, Lukács sees manipulation as a practical vehicle which ensures the social being of the norm and, with it, of the whole legal complex, i. e. their irreversibly progressing process-likeness. Manipulation is thus a factor in everyday legal life, and as such it by no means suggests spectacular or coarsely artificial solutions. It needs only as much as the mediation of the dynamic social movement requires by the use of static objectification.

As far as law-application is concerned, obviously those conflicts require judicial decisions which themselves are socially real together with their economic, political and moral implications.

But in order to formulate conflicts in his reasoning, the judge first has to convert them into conflicts *within* the law. Then, in the first phase of manipulation, the selection and clarification of the facts of the case take place in conformity with the choice and interpretation of the corresponding ("relevant") norms of the legal system. The phenomenon which

praktisch, mit einer Tendenz aufs Optimale zu regeln, sich jeweils elastisch zwischen antinomischen Polen – z. B. nackte Gewalt und ans Moralische grenzendes Überzeugenwollen – zu bewegen, um im Verlauf der ständigen Gleichgewichtsverschiebungen innerhalb einer sich langsam oder rascher ändernden Klassenherrschaft die für diese Gesellschaft jeweils günstigsten Entscheidungen, Beeinflussungen der gesellschaftlichen Praxis herbeizuführen. Es ist klar, daß dazu eine ganz eigene Manipulationstechnik notwendig ist, was schon genügt, um die Tatsache zu erklären, daß dieser Komplex sich nur reproduzieren kann, wenn die Gesellschaft die dazu nötigen "Spezialisten" (von Richtern und Advokaten bis zu Polizisten und Henkern) immer wieder neu produziert.' MS. pp. 131–132.

³⁰² *Kulcsár*, Ch. VI, § 1; V. Peschka, *Jogforrás és jogalkotás* (Sources and Making of the Law), Budapest, Akadémiai Kiadó, 1965, Ch. II, § 2.

³⁰³ *Eörsi*, Ch. IX, § 2.

neo-Kantian legal philosophy used to call the conflict between the abstract wording of the law and the concrete facts constituting a case, takes place in this phase. It may also be revealed at this time that there is a gap in the law or even a "critical gap" (when a "legally relevant" norm is available but one that would have a socially undesirable result), which the Anglo-American literature usually describes simply as "hard cases".

In the second phase of manipulation, the conflict thus converted into a conflict within the law is dissolved, i. e. reduced to a false conflict in legal reasoning. This is when the "facts constituting the case", already qualified from a juristic point of view, and the correspondingly interpreted provisions of "the law" are formulated, i. e. manipulated so that they make possible the presentation of the desirable decision as *also a logical result* deriving from the "facts constituting the case" as well as from "the law" based on "legal reasoning".

It is to be noted that both the establishment of the facts and the interpretation of the law is of decisive importance for understanding the creative nature of law-application as well as the nature of manipulation. The establishment of the "facts of the case" is never a simple declaration of the existence or non-existence of some fact, but the transposition of facts drafted in the language of everyday life into the system of concepts (*meta-language*) of the law, with the result that the qualification of the facts according to a given norm more or less automatically brings in its wake the imposition of the sanctions in line with the given norm.

Lukács says nothing about the specifically professional aspects of manipulation. Certain conclusions can still be drawn about the nature and extent of the above from what he says about the gulf between the official declaration of the system of law as free of contradictions and the fact of its ceaselessly reproducing contradictoriness. 'The theoretical considerations worked out for legal practice and utilized in it do not have the primary role of a generally theoretical proving that existing positive law is free of contradictions, but rather to eliminate those contradictions practically which may incidentally arise in practice.'³⁰⁴

This means that consistency is an ideal which every system of law endeavours to approach and maintain. Yet an ontological analysis demonstrates that actually contradictory systems do fulfil their own functions in social existence. Endeavouring to be system-like is therefore a

³⁰⁴ Sz, p. 225. 'Die für die Rechtspraxis ausgearbeiteten und in ihr angewendeten theoretischen Erwägungen haben deshalb vor allem nicht die Funktion, allgemein theoretisch die Widerspruchslöslichkeit des gerade geltenden positiven Rechts nachzuweisen, vielmehr alle in der Praxis eventuell auftauchenden Widersprüche praktisch aus der Welt schaffen'. MS, p. 131.

tendency whose presence is pointed out by Lukács in general but whose completion in actual, concrete situations he is forced to disclaim: 'the theoretically closed nature and officially declared consistency of the existing system of positive law is but a mere appearance, but naturally only from the point of view of the system. From the point of the ontology of social being, every form of such regulation, however energetically manipulated it is, is always a socially concrete necessity: it belongs to the actual state of the society in which it functions.'³⁰⁵

The semblance that the system of norms of the law is of system-character is accompanied by the apparent logicity of the practical application of its norms. Lukács words this as follows: 'In his last phase, Kelsen clearly saw through the merely apparent logic at work here, and destroyed it methodologically but only methodologically, of course. He questions whether the "individual norm" (application of some law to an individual case) "logically" derives from the "general norm". He quite rightly regards this logical relation as a mere analogy, the analogous blurring of the difference between "the truth and falseness of two contradictory general statements", and "the observance and non-observance of two general norms in contradiction with each another".' But, he continues, if the legally prescribed sanction 'is not carried out, then we are dealing with a concrete social contradiction, not with some false logical operation.'³⁰⁶

The sham world of logic, which Lukács exposes with such a harsh straightforwardness, is crowned by the way how judicial decisions are motivated officially. For motivation is meant to prove in writing and in a categorical manner that the decision is the only one to which the provisions of the law could lead on the basis of the facts. Thus the

³⁰⁵ Sz, p. 218. 'Andererseits ist die theoretische Geschlossenheit des jeweiligen positiven Rechtssystems, seine offiziell dekretierte Widerspruchslosigkeit ein bloßer Schein. Freilich bloß vom Standpunkt des Systems; vom Standpunkt der Ontologie des gesellschaftlichen Seins ist jede Form einer solchen Regelung, auch die noch so energisch manipulierte, eine jeweils konkret gesellschaftlich notwendige: sie gehört mit zum Geradesosein eben der Gesellschaft, in der sie funktioniert.' MS, p. 121.

³⁰⁶ Sz, p. 219. 'Den hier vorherrschenden logizistischen Schein hat Kelsen in letzter Zeit klar durchschaut und methodologisch, freilich nur methodologisch zerstört. Er bestreitet, daß die "individuelle Norm" (die Anwendung eines Gesetzes auf den Einzelfall) aus der "generellen Norm" "logisch" folgen würde. Diesen logizistischen Zusammenhang betrachtet er, mit Recht, als eine bloße Analogie, als ein analogisierendes Verwischen des Unterschieds zwischen "Wahrheit und Unwahrheit zweier in Widerspruch stehender genereller Aussagen" und zwischen "Befolgung und Nichtbefolgung zweier in Konflikt stehender genereller Normen".' 'Wird dieses . . . nicht vollführt, so haben wir es mit einem konkreten gesellschaftlichen Widerspruch zu tun und nicht mit einer falschen logischen Operation.' MS, pp. 122 and 123.

authoritative decision also creates the appearance of a logically unambiguous and necessary decision

Even if I disapprove of Lukács' outspokenness, I must admit I do not do it for the sake of rhetorical effect. I have followed Lukács in the representation of the sequence of semblances and also agree with his polemical tone. However, the picture that Lukács suggests is itself only a semblance, too. If I regard it as a programme, which he himself quotes from Marx ('This *conceptual grasp* does not boil down to what Hegel thinks, to recognizing the determinations of the logical concept everywhere, but to grasping the specific logic of the specific subject'³⁰⁷), then the exposing of apparent logic would not necessarily have to lead again to a merely apparent alogicality.

The relationship between law and logic can hardly be the subject of this study. With reference to some papers of mine published earlier³⁰⁸ it may suffice to indicate some of the implications which the Lukácsian exposure of apparent logic may have for the Marxist legal thinking.

Firstly, the system-character and the requirement that one proposition has to logically result from the other, is not a half-naked need or mere mystification, but the real organizing principle of the legal complex, to be asserted according to prevailing concrete conditions. Secondly, the absence of logical necessity in judicial decision is not equivalent with the rule of alogicality or even illogicality, but the preponderance of relations connected with content rather than with purely formal relations. Thirdly, logic is not eliminated in legal reasoning even in such instances; it merely withdraws to its own territory: it exercises control as a means of conceptual reconstruction.

In order to understand the ontological lesson of the Janus-faced role of logic and also of the dual nature of law-application, one has to reach back to Lukács' critique of vulgar Marxism. He accuses the mechanical worldview of economism of 'making a sort of special natural science out of the objective laws of economy, and reifying and fetishizing economic laws so much that the individual was necessarily presented as an object of the operation of these laws and as lacking any influence.'³⁰⁹ The result of

³⁰⁷ K. Marx, "Contribution to the Critique of Hegel's *Philosophy of Law*", in: *MECW* III, p. 91 quoted in *P*, p. 45.

³⁰⁸ Varga 'Reasoning', pp. 21 ff; Varga 'Law', §§ 2-3; as well as Cs. Varga, "Logic of Law and Judicial Activity: A Gap Between Ideals, Reality and Future Perspectives", in *Legal Development and Comparative Law—Evolution du droit et droit comparé* 1982, ed. Z. Péteri and V. Lamm, Budapest, Akadémiai Kiadó, 1982, pp. 47 ff.

³⁰⁹ Sz., p. 258. 'hat aus der objektiven Gesetzmäßigkeit der Ökonomie eine Art spezieller Naturwissenschaft gemacht, hat die ökonomischen Gesetze derart verdinglicht und fetischisiert, daß der einzelne Mensch als ein völlig einflußloses Objekt ihrer Wirksamkeit erscheinen mußte.' MS, pp. 180-181.

this is 'the reified basic concept of the world, . . . according to which there are things and "powers" operating independently and yet moving them,'³¹⁰ i. e. a duality based on the sharp separation of "things" and 'processes', and 'statics and dynamics'.³¹¹

Traditional theory of legal objectification proposes a similar standpoint, when it presumes an objectification (law-making), and then additionally examines its practical implementation (law-application). The picture thus gained is very reminiscent of what Lukács said about economism as a sort of vulgar Marxism. According to the above, the work of the law is virtually completed by its making, since the law-maker also postulates the principle of legality, and this principle obviously has to take care of the implementation of all enactments, i. e. of turning law-making into its practical application. Of course, this description is an extreme caricature, since I have omitted certain refinements for the sake of lucidity. Notwithstanding, for accuracy's sake I should add that legal objectification has a relatively independent existence indeed. It was produced from the very start for the purpose of fixing and influencing social behaviours and the resolutions of conflicts that arise from the clash of the former as a means of mediation.

I must recall, however, what I called at the beginning of the analysis of *Ontology* the Marxian starting point. Accordingly, historicity is the fundamental characteristic of existence and it is manifest in the irreversibly progressing process as the form of existence, characteristic of being. Well, it is clear to Lukács that 'thing-likeness itself has to be negated and also retained in an objectively ontological way in the process-likeness', i. e. that objectivity itself only exists as an irreversible process. Consequently, the river of Heraclitus, into which you cannot step twice in the same way is the 'progressing form of objectivity'³¹² itself.

Meaning (the extremely entangled mutual relations of the various concepts and of the norms originating from them, etc.) is the vehicle of this process-character in legal objectification, i. e. in the written text of norms. Therefore everyday practice can continuously enrich the meaning of legal provision actualized in practice, shape it by shifts of emphasis and work out new connections which may be momentarily unprovable and yet become in the long run evident both practically and theoretically even in

³¹⁰P, p. 261, 'die verdinglichte Grundauffassung der Welt (Dinge und davon unabhängig wirkende, sie bewegende "Kräfte").', MS, p. 387.

³¹¹P, p. 97, "Dinge" und "Prozesse" 'Statik und Dynamik', MS, p. 131.

³¹²P, p. 104. 'die Dinghaftigkeit selbst sich objektiv-seinshaft in eine Prozeßhaftigkeit aufheben muß.' 'prozessierende Gegenständlichkeitsweise', MS, p. 142.

instances where there is no modification of the text itself. Naturally, it is also a part of this process-character that these deviations, imperceptible in themselves, do not simply follow each other, but are organized in such a way that each deviation also serves as the starting point of the next. The summation of their effect can thus be realized the same way as that of the surplus effect necessarily arising at the realization of teleological projects, of which Lukács had the following to say: 'Naturally, at certain primitive stages the deviation might be quite minimal, but it is quite certain that the whole of human development depends on such minimal displacements.'³¹³

It may be of interest to mention that language also bears such inner contradiction. The fundamental opposition, manifest in law between standardized recording and its practical manipulation, has its linguistic equivalent in the contradiction between the drive for unambiguousness and the impossibility of eliminating ambiguity on principle. Lukács' description of the contradictory nature of the functioning of language is particularly applicable to the legal complex as well. 'Language . . . can and must be realized in practice precisely in this doubling of opposing requirements, in this dialectical contradictoriness. This dual movement in different directions is characteristic of all living languages for this very reason. . . Only the attempts at overcoming the contradictions reveal in their totality the essential, specific nature of language: its determined existence and movement in a way enabling it to reproduce as an increasingly appropriate (never perfect) means of satisfying both requirements. . . This is how its movement becomes in its contradictoriness the basis of the specific and inexhaustible fertility of language.'³¹⁴

³¹³ C, p. 18.

³¹⁴ Sz, pp. 200–201. 'die Sprache . . . gerade in dieser Verdoppelung entgegengesetzter Forderungen, gerade in dieser dialektischen Widersprüchlichkeit praktisch verwirklicht werden muß und kann. Die Doppelbewegung in entgegengesetzten Richtungen charakterisiert deshalb die Richtung einer jeden lebenden Sprache.' 'Erst die Versuche der Überwindung der Widersprüche ergeben in ihrer Gesamtheit die wesentliche Beschaffenheit der Sprache: ihr Dasein, ihre Bewegung, und zwar in einer Weise, daß sie als ein immer geeigneteres – nie vollkommenes – Mittel zur Erfüllung beider Bedürfnisse reproduziert wird . . . Die Bewegung in ihrer Widersprüchlichkeit wird dadurch zur Grundlage der Eigenart, der unerschöpflichen Fruchtbarkeit der Sprache.' MS, pp. 94, and 94–95.

5.4.3 "Jurist's World View" and the Ideology of the Legal Profession

The analysis of the dialectics of the realization of the law gradually reveals a new picture of the legal complex.

Discussing the above-quoted letter of Engels, Lukács states: 'Engels is absolutely right, when he methodologically emphasises consistency and thus the domination of formal logic in this field.'³¹⁵ But the essence of Engels' theme is by no means to emphasize this. His exposition is aimed at proving precisely that 'the jurist imagines he is operating with *a priori* propositions, whereas they are really only economic reflexes; so everything is upside down. And it seems to me obvious that this inversion, which, so long as it remains unrecognised, forms what we call *ideological concept*, in its turn reacts upon the economic basis and may, within certain limits, modify it.'³¹⁶

If someone believes he can see a contradiction between these two statements, he can easily resolve it by seeing the former as the methodology of a specific activity and the latter as the reconstruction of the real ontological context of this activity. I may add to this the rigorous formulations in *The German Ideology*, about what Marx and Engels critically called the "jurist's world view", and it will be clear then that the critique of the classics has an ideological function. Its historical aim is no less than to destroy the ideology which a particular age raised to a theoretical pedestal.

Nevertheless, the critique of the classics leaves the problem proper unsolved. The question is formulated at the level of the legal complex, while the answer given by Engels is shifted to that of the total complex. Thus everything that justifies the existence and heterogeneity of law becomes irre recognizable in the total definition of the total complex. Although a real problem, an actual duality is involved here.

Law came into being as a means of mediation. The only way it can fulfil its role is if it acquires relative autonomy (in function of the increasing complexity of social development). Its autonomy is manifest above all in the need to realize the aims set by society through asserting its own projects. A given level of socialization also supposes the formalization of the whole process and system of projection. Thus increasingly formal

³¹⁵ Sz, p. 484. 'Engels hat vollständig recht, wenn er die Widerspruchslosigkeit, also die Herrschaft der formalen Logik für dieses Gebiet methodologisch in den Vordergrund stellt.' MS, p. 989.

³¹⁶ Engels, pp. 492–493.

criteria serve to control the realization of the projects. In order to secure its indisputability, the law projects not the aims to be socially realized, but the instrumental conducts considered desirable (or undesirable) in achieving them. The law attaches sanctions to their observance (or non-observance), thus officially declaring the instrumental conducts to be independent aims in its system. The principle of legality is meant to ensure the functioning of the system according to its own projects. This principle declares the system to be closed, self-sustaining and thus a self-sufficient structure regulated by its own laws.

Law must suggest a semblance of *logical* organization and *legal* functioning, both in the eyes of its addressees and the specialists entrusted with its practical assertion in order to maintain its heterogeneity. The task of these specialists is to measure the actual behaviour by the criteria offered by these projects, and to qualify it as lawful or unlawful behaviour. Their function is therefore by far not of a cognitive character. Their aim is not to reflect the behaviours in all their concrete diversity, but to attribute to them reasons in order to qualify them as realization (or non-realization) of the facts that constitute a case, which has already been defined and recorded in a formal way.

Law-application is thus simply the grasping and practical processing of the extremely multifaceted and constantly changing reality in the closed conceptual system of legal enactments. Consequently, law-application makes reality rigid and homogeneous: the answers it gives to "questions of law" know only of the alternatives of a "yes" or "no"; in other words, it attempts to break reality into a series of patterns according to a formal classification system, an operation which (from the epistemological point of view) is unquestionably arbitrary and distorting.

Administration of justice as a profession therefore presupposes a specific attitude, and is also accompanied by specific consequences. For this reason thinking, characteristic of jurists, may exhibit structural similarities with the thinking of adherents of certain sects, which try to understand the twentieth century by using the closed conceptual system of a two thousand-year-old literary work: the Bible. The members of sects are often fanatics and therefore one-tracked.³¹⁷ But the role undertaken consciously by the state administrator of justice presupposes two-facedness, and to this extent a certain split of personality. The jurist is aware

³¹⁷ Cf. L. Kardos, *Egyház és vallásos élet egy mai magyar faluban* (Church and Religious Life in a Hungarian Village of Today), Budapest, Kossuth, 1969, pp. 141 ff.

that he is only a servant of the law, yet also knows that the service of the law is only a means of serving society.

All this means that the jurist's professional ideology and the principle of legality, which unambiguously determines it, have functions of a real existence in the legal complex. Yet this cannot limit or forge the consciousness of jurists, since any such distortion (particularly in a critical situation) would have dysfunctional results. The professional ideology of jurists must therefore be supplemented by the realization that the law is only a mediating determinant: it does not serve itself, but the aims which can always be concretely traced in the social total process.

Going back to the critique of ideology provided by Marx and Engels one may infer that the split, which necessarily characterizes the mind of the state administrator of justice, does not feed on itself. Its roots are to be found in the inner contradictoriness of the requirements raised in respect of the law.

The circumstance that the legal complex is a formally heterogeneous phenomenon and is still determined by the social total complex, has further consequences. The first is what is called *double-talk*. The law and the jurists maintaining it make their own function seen as if they were following projects within the law, even though determination by legal projects is embedded in the social total process and in its social total determination.

Undoubtedly, double-talk is the more marked the more rigidly the law formulates the postulates of its heterogeneous functioning. A certain duality is demonstrable even in the traditional system of customary or sacred laws. All this is shown differently in the system of Common Law (where law is built up of a series of judicial precedents, and even statutes, etc. are only authoritative sources by virtue of being broken down into individual cases in a series of precedents), and differently again in the system of Civil Law developed in continental Europe (where, on principle, the law is nothing but the individual actualization of the projects issued by those delegated to their making).

The fact that "application of the law" as a professional term developed only in continental Europe perhaps adequately expresses the different nature of Common Law and Civil Law concepts. Even the idea of a deductive "application" cannot survive in Common Law; only that of its ultimate function, i. e. of "administration of justice".

And still (or just for this reason) the possibility that the actual realization of the law points beyond its mere legal validity must also be reckoned within Civil Law. For, as we have seen, the norm in the legal complex can only acquire social existence in its practice, i. e., in Lukács' wording, in the irreversibly progressing process of its practice, and in this law-application by state agencies plays an eminent role. If judicial practice continually runs against legal projects or goes beyond them, this may produce an actual modification in the legal complex. In such instances the place of the legal complex in the social total complex and the concrete outcome of their interaction determines whether this deviation remains *alegal* or even *illegal*, or whether it will be organized into a valid part of the law's actual functioning.

Observing the problem from the aspect of concrete social functioning, the caesura between legality and illegality sometimes depends not on the doctrinal interpretation of the law, but on the practical-political influencing of the whole complex. It may perhaps suffice to recall the decision formulated at the 20th Congress of the Communist Party of the Soviet Union, which had a role in the development of Soviet legal life without any considerable modification of the formal legal system.

The *Ontology* is based on the totality concept; and the totality concept can be fruitful not by glossing over the heterogeneities inherent in the totality, but only by developing their specific dialectic.

Perhaps it will be expedient to close my exposition with Lukács' emphasis on heterogeneity: 'The more developed a society is, the more it is dominated by social categories, the greater is the autonomy of the legal field as a whole within the interaction of the various social complexes.' Consequently, 'the not insignificant problem of the reproduction of social existence lies behind the recurrent demand for the specialization of the representatives of the legal sphere. The social division of labour in its quantitative and qualitative dimensions produces special functions and special forms of mediation between the various social complexes, and the peculiar inner structure of these mediations flows precisely from the circumstance that they fulfil such special functions in the reproduction process of the total complex. Meanwhile, the inner necessities of the total process preserve their ontological priority and therefore determine the character, essence, direction, quality, etc. of the functions of the mediating complexes. But just because correct functioning, at a higher

level of the total complex, imposes specific partial tasks on the mediating part-complex, necessitated by objective regularity, a certain independence and autonomy of action and reaction develops in it, which just in its peculiarity becomes indispensable for the reproduction of the totality.' In other words, 'the logically unpredictable, thus incomprehensible and yet socially-ontologically rational relative independence and refined peculiarity of such part-complexes is ontologically necessary. Therefore, the more vigorously and peculiarly they enhance their specific particularity, the better they can fulfil these functions within the total process.'³¹⁸

³¹⁸ Sz, pp. 226, 227, and 228. 'Je entwickelter eine Gesellschaft ist, je stärker die gesellschaftlichen Kategorien in ihr vorherrschend werden, eine desto größere Autonomie erhält das Rechtsgebiet als Ganzes innerhalb der Wechselwirkung verschiedener gesellschaftlichen Komplexe.' 'hinter dem immer wieder geforderten Spezialistentum der Repräsentanten der Rechtssphäre ein nicht unwichtiges Problem der Reproduktion des gesellschaftlichen Seins steckt. Die gesellschaftliche Arbeitsteilung schafft in ihrer quantitativen und qualitativen Ausdehnung Spezialaufgaben, spezifische Vermittlungsformen zwischen den einzelnen gesellschaftlichen Komplexen, die eben wegen diesen besonderen Funktionen im Reproduktionsprozeß des Gesamtkomplexes eigenartige innere Strukturen erhalten. Die inneren Notwendigkeiten des Gesamtprozesses bewahren dabei ihre ontologische Priorität und bestimmen deshalb Art, Wesen, Richtung, Qualität etc. in den Funktionen der vermittelnden Seinskomplexe. Jedoch gerade darum, weil das richtige Funktionieren auf höherem Niveau des Gesamtkomplexes dem vermittelnden Teilkomplex besondere Teilfunktionen zuweist, entsteht in diesen – von der objektiven Notwendigkeit ins Leben gerufen – eine gewisse Eigenständigkeit, eine gewisse autonome Eigenart des Reagierens und des Handelns, die gerade in dieser Besonderheit für die Reproduktion der Totalität unentbehrlich wird.' 'die ontologische Notwendigkeit einer logisch nicht voraussehbaren und nicht angemessen erfassbaren, jedoch gesellschaftlich-ontologisch rationalen relativen Selbständigkeit und entwickelten Eigenart derartiger Teilkomplexe. Deshalb können diese ihre Funktionen innerhalb des Gesamtprozesses desto besser erfüllen, je energischer und eigenständiger sie ihre spezifische Besonderheit herausarbeiten.' MS, pp. 132, 133–134, and 135.

CHAPTER 6

THE ONTOLOGICAL APPROACH AS A HORIZON IN THE GENERAL RENEWAL OF MARXISM

In his relationship with Marxism both as a philosophy and a methodology for the research in social sciences, Lukács always placed an emphasis on continuity. He thus continued the classical legacy and aimed at reconstructing the original methodological concepts of Marx and Engels, thereby contributing to the renewal of Marxism. At the same time, he was aware that such a renewal was dependent on two factors. First, whether the theory of Marxism, developed during the last century, could succeed in regenerating itself in the face of the vast mass of scientific research carried out on an almost industrial scale in our century. Second, whether it could successfully develop its own theories in fields untouched (or barely traversed) by the classics.

When he looks back, Lukács still sees the preservation of continuity and the need for renewal as mutually dependent tasks. 'I see it as the central task of my life to apply the *Weltanschauung* of Marxism-Leninism correctly in fields I know, and to further develop them appropriately insofar as it is shown to be important in the light of newly discovered facts.'³¹⁹ Yet, when he completes the *Ontology*, the preservation of continuity and the intention of renewal merge. The preservation of continuity and the need for inner renewal is formulated as a harmonic unity, the foundation of which lies in the *Ontology* itself, as a rigorous reconstruction of the methodological ideas of Marx, formed into a more or less systematic whole. The third and last completed unit of the *Ontology*, the *Prolegomena*, states as a purpose for Marxist philosophy in general: 'Marx's true method and true ontology must be resurrected primarily not only to make possible a historically true analysis of the course of social development since the death of Marx. . . but also to grasp and describe the whole being in the Marxian sense as a fundamentally historical (irreversible) process.'³²⁰

³¹⁹ 'Postscriptum', p. 647.

³²⁰ P, p. 127. 'die echte Methode, die echte Ontologie von Marx wieder zum Leben zu erwecken, vor allem um mit ihrer Hilfe nicht nur eine historisch getreue Analyse der

This way, the *Ontology* has contributed to the historical task which it wanted to fulfil, i. e. 'the coming renaissance of Marxism.'³²¹ It has redeemed the debt of Marxism, even if what Lukács said back in 1957 is still valid as far as the essence is concerned: 'working out sciences of a general character along Marxist lines is an unfulfilled task, not an already existing, ready achievement: . . . If we say: we have no Marxist logic or aesthetics yet, no Marxist ethics, psychology, etc., we are not recording some dismal state of affairs. On the contrary: we are talking optimistically of our great and inspiring scientific duties which may benefit the lives of whole generations.'³²²

Obviously the Marxist theory of law cannot shirk such high expectations and programmes. The circumstance that there are definite international efforts to formulate the problems of Marxist legal theory in a modern context and that research in Hungary has had some partial successes is promising. Yet any kind of theoretical synthesis has to be seen as a task still awaiting completion.

Personally I guess that Lukács' oeuvre as crowned by the *Ontology* is a valuable contribution to Marxist legal thinking; at least it may contribute a special inspiration to the formulation of a theoretical synthesis.

It may, perhaps, suffice to recall that (unlike philosophers in general and Lukács' disciples in particular) Lukács had a definite knowledge in the law, and this enabled him to show appropriate sensitivity for the inner workings and regularities of law. He acquired legal erudition, however, without ever having come in direct contact with the legal profession. The professional ideology did not influence him, and current legal-political considerations left him untouched. Consequently, he was able to analyse the legal phenomenon with a cool detachment and objectivity but also as a problem-sensitive thinker. The totality concept of his *Ontology* could thus suggest him an approach which saw the law in its practical realization and not through the embellishing filter of the *ought* (*Sollen*) component of legal enactments.

Owing to this, he was able to formulate positions as inner contradictions of the legal complex as a whole which, until now, have been hidden mostly in the antinomies of the positivist and the sociological approaches. A duality always reemerging and resolved as the real and therefore contradictory driving force behind the operation of the law ultimately

gesellschaftlichen Entwicklung seit Marx' Tod, sondern auch um das gesamte Sein, im Sinne von Marx, als in seinen Grundlagen historischen (irreversiblen) Prozeß zu begreifen und darzustellen.' MS, pp. 182–183.

³²¹ P, p. 211, 'eine Renaissance des Marxismus', MS, p. 309.

³²² *Postscriptum*, p. 656.

threw light on the inherently ambivalent character of the juristic ideology of the legal profession and thus on the fact that apart from real factors, also purely ideological ones play a leading role in the jurist's ideology and that although it consists partly of purely ideological components, it is still indispensable precisely in its two-facedness for the legal functioning of the legal complex.

Naturally, the proper jurisprudential utilization of the *Ontology* could be most fruitful if its lessons led to the reformulation of various problems of law through the reformulation of the whole Marxist thinking. But this is too great a task for the time being, since it would first presuppose an adequately profound philosophical evaluation of the *Ontology*, a thorough consideration of its inner connections and latent contradictions, and a harmonization of its categories with the traditional system of Marxism. Lacking all this, the present endeavour is a substantially more modest attempt. It has endeavoured to come closer to a solution of some of the problems of Marxist legal theory by gathering together its most important aspects in the light of Lukács' work, setting them in a hopefully coherent system and drawing some lessons from them.

Should I have to sum up the questions raised by Lukács' enquiry into the Marxist thinking about law in one sentence, I would put it as follows: is *Marxist* theory of law (which attempts to become a general social science theory of law) and *socialist* theory of law (which is to lay the theoretical foundations of socialist law in harmony with the legal-political and social requirements raised in respect of this very law) sufficiently differentiated? In the light of the Lukácsian analyses, it appears that Marxist theory of law may only become a general theory of law if it (1) appreciates the present as a transitional product of development (i. e. if it is based on a *historical* outlook), (2) regards the current socialist legal set-up with its roots in Civil Law as one of several development alternatives while being in its form historically concretely necessary (i. e. if it lays claim to *comparison*), and (3) describes the actual workings, operation and regularities of the subject phenomenon instead of its merely preferred and/or projected principles (i. e. if it adopts an *ontological* approach).

In want of such a differentiation it is not certain that the evaluation of law at the level of the total complex and its description within the legal complex leads to an adequate theoretical synthesis. Due to its professional-ideological limitations, it may easily become subject to the risk of being a theoretical formulation of the ideal type of law instead of a general theory of the working types of law, which considers any deviation from what is accepted as desired not so much as an objective feature of actual functioning, but rather as a negligible and soluble margin of error.

APPENDIX: "THING" AND REIFICATION IN LAW

A.1 "THING" OR REIFICATION IN MARXIST PHILOSOPHY?

Things, legal property, legal objects, objects of legal interest, objects of legal relationships, etc.—all these are concepts used both in jurisprudence and everyday legal practice. These are categories in which the law expresses itself and which are components, fundamental pillars, indeed, in some legal cultures the conceptual framework of the philosophy and ideology that penetrates the practical life of law in all its elements. These are products of a long historical development, whose roots reach back to the beginnings of the doctrinal study of law, to the beginnings of abstract generalization in late Roman law and the birth of modern, analytic dogmatic jurisprudence.

The most obvious feature common to all these categories is that they are *meta-legal*: they point outwards from the world of law. The point is not simply that these are legal concepts whose content relates to outside reality. To simplify a little, legal concepts could be classified in the following way: there are (a) concepts which have a meaning exclusively within the legal domain; (b) others whose meaning, defined by the law too, refers to external reality by giving the legal qualification of it; and finally (c) those, whose sole purpose is to define the limits of the legal sphere and external reality by outlining the sphere of external reality coming under legal qualification. The concepts listed above belong to this last category. If, for the sake of clarity, one accepts the methodological requirement that one has to distinguish between "internal" and "external" concepts (i. e. inner definitions specifically characteristic of the law, on the one hand, and examination from the aspect of socio-economic determination on the other),³²³ this being nothing but the simplified expression of the basic thesis of Lukács' *Ontology* (society is a complex of complexes, in which one is expected to examine the various complexes both in themselves and

³²³ Gy. Eörsi, *Jog-gazdaság-jogrendszer-tagozódás* (Law-Economy-Division of the Legal System), Budapest, Akadémiai Kiadó, 1977, pp. 7 ff.

in their dependence on and functioning within the movement of the total complex), then one has to fix the position of the concepts in question at the point where the "internal" and "external" meet. The concepts in question are the propositions of the legal complex referring to itself on the lines of division to be drawn between the legal complex and other complexes.

A seminar organized by the Paris *Centre de Philosophie du Droit* on the theme of *Recherches sur les notions de bien ou de chose juridique* attests to at least four views worthy of note by research.³²⁴ First, "thing" concepts are not peculiar to one or another branch of the law (e. g. private law concerned predominantly with property relationships). These are concepts which may arise particularly in private law, but basically impregnate every branch of legal control: they integrate the whole of the legal system as an organizing medium that separates the sphere of the law from that of the non-law. Second, "thing" concepts are historical categories. They themselves develop as functions of social development, integrating an ever increasing portion of the natural-social environment of the law into the system of legal control. Third, "thing" concepts are also common in differing legal cultures and traditions of control. And fourth, "thing" concepts change not only historically and depending on the traditions of legal set-up, but also have a changing image depending on different philosophical systems, especially ontologies.

These assumptions seem to suggest preliminary conclusions. First, that "thing" concepts in the law relate to the proper concept of thing in the material-objective sense of the word only in their primitive formation. That is to say, they set out on a course that very soon becomes independent as the organizing category of the technique of legal expression and control; they live their own life in the course of which they themselves also gain application in the law as reified categories. Second, that the socio-historically conditioned nature of "thing" concepts in the law is simply an affirmation and particular expression of the circumstance that the relative autonomy of the law is at the same time limited by its being conditioned by other complexes. Yet in the global social process, the total movement of the total complex plays a decisive (or, as Lukács formulates, an overriding) role. This redrafting of the classical thesis of Marxism, however, only defines a rather general framework, in which social occurrences take place in close interaction with one another. The mere fact that interactions take place is of necessity in general, but not the

³²⁴The present essay was originally prepared as a paper, commissioned by the *Centre de Philosophie du Droit* in Paris in 1977; its first version was also published as material read at the seminar.

actual occurrence of any of their concrete forms, the less so because that again depends on interaction with other factors. Or, what concerns the historical connections between various concepts of the universe and "thing" concepts in the law, the existence of a connection as measured on a large scale seems to be certain, and it may be a promising field of research. But with respect to any concrete connection between the concept of "thing" of Marxist philosophy and that of socialist law, my answer is likely to cause disillusionment.

As it is asserted by its ideologists, the socialist revolution was a social transformation in the history of mankind which claimed to be most consequentially prepared and carried out both ideologically and with respect to its philosophical bases. Anyhow, independently of the veracity of this assertion, the revolutionary change found the world of the law more or less unprepared. On the one hand, theoretical preparation had to concentrate on questions important for the seizure of power and on fundamental teleological projections concerning the building and structuring of a new society. On the other hand, you must not forget that the revolutionary intention involved a transition into a radically different social formation. And the germs of a genuinely socialist law could hardly take shape in the preceding society, such as the case of the *Code civil*, which was drafted and enacted as the result of the French Revolution but in the formation of which the results of the jurisprudence of several centuries also played a great role. The outcome of all this was not only that the new, socialist theory of law had to seek its adequate expression in its formative age in the attraction of opposite poles (in the utopianism of the immediate withering-away, or at least complete laicization, of the law and the whole bourgeois legacy³²⁵) but also in the fact that the new codes and regulations could only derive technical solutions and conceptual frameworks for their institutions from the only available bourgeois ones, from the stock of technique for legal engineering accumulated over the millennia. Blurred as these problems are at the level of theoretical generalization, they emerge just as clearly when some particular case is studied, e. g. the source of the 1922 Soviet-Russian Civil Code.³²⁶

³²⁵ Cf. D. Pfaff, *Die Entwicklung der sowjetischen Rechtslehre*, Cologne, Wissenschaft und Politik, 1968, pp. 115 ff; Varga 'MTK', pp. 324 ff; and for certain features of utopian illusion, Varga 'Utopias', pp. 34 ff.

³²⁶ Cf., above all, Lenin's letters to Kursky in February 1922; Kursky's writings at that time; Stuchka's early theoretical works, particularly P. Stuchka, *Das Problem des Klassenrechts und der Klassenjustiz*, Hamburg, Hoym, 1922, and the essays of Amphiteatrov and Goyhbarg. For its social and legal context, see N. Reich, *Sozialismus und Zivilrecht*, Frankfurt am Main, Athenäum, 1972, pp. 153 ff; for a negative view, N. Nenovsky, "K voprosu o tak nazyvaemom dyugizme v sovetskoy

All this seems to support the conclusion that "thing" concepts in the law were the less subject to change under the direct influence of Marxist philosophy the more actually thing-like they were and the more they belonged to the classical stock of instruments of legal expression and control. Therefore the conceptual novelty of Marxism becomes more sensible the further we move away from the proper, material-objective concept of thing towards organizing categories of legal dogmatics such as objects of legal interest, objects of legal relationships, etc.

And it is only now that I get round to putting the question intimated in the title: "Thing" or reification in Marxist philosophy? The apparent indirectness of the Marxist philosophical contribution is explained not only by the technical character of the legal concept of "thing", but also by the inner structure of that philosophy. Namely, thing as such does not stand in the frontline of a genuinely Marxist interest; only the study of the phenomenon of reification throws some light on it, as a derivative phenomenon. Yet, a positive contention is manifest in Marxist philosophy taking account with thing as an element of reification. This is the approach to and distinction of things according to their social contents, and their elevation thereby from ordinary natural existence into the sphere of social existence. Thus we arrive at the core of the problem, one with which Marx struggled from the *Economic and Philosophic Manuscripts of 1844* right through his life and which was a central question for the Lukács of *History and Class Consciousness* as well as the Lukács who completed his life's work in his posthumous *Ontology*.

Owing to the specificity of Marxist approach, I have to conduct my enquires in two directions: revealing the social content concealed in the fictitious nature of legal "thing" concepts and interpreting reification in law as a social phenomenon.

A.2 CONCEPTS OF "THING" AS FICTIONS IN THE LAW

Regarding the object of the law of ownership, the Hungarian Civil Code defines the thing as corporeal object which can be taken possession of. But it immediately adds that money and securities as well as any powers

pravovoy nauke i v sovetskom zakonodatelstve 20-kh godov" (On the Question of the So-Called Influence of Duguit in the Soviet Legal Science and Legislation of the Twenties), in: *Godishnik na Sofiskiy Universitet, Yuridicheskoy Fakultet* LXI (1972), pp. 107 ff; and for a partial analysis, L. Sólyom, *The Decline of Civil Law Liability*, Budapest and Alphen aan der Rijn, Akadémiai Kiadó and Sijthoff and Noordhoff, 1980, pp. 198 ff.

of nature utilizable in the manner of corporeal objects are taken into consideration as things.³²⁷

I thus arrive at the core of the problem. No matter how sketchily I review legal development, I have to cover the gradual enlargement of the sphere of "things", their increasing limitlessness. In the very first system of law which demanded abstract generalization owing to the development standard of commodity exchange relations, i. e. in late Roman law, "thing" concepts diverge from the thing concepts proper. The sale and purchase of "things" non-existent in any material-objective sense (e. g. *emptio rei futurae*, *emptio spei*) questions the proper thing concept, and the putting of obligations and other merely legal constructions under the self-contradictory concept of *res incorporalis* downright invalidates it. After this the further widening of the "thing" concept (particularly under bourgeois conditions of commodity exchange) occurs as a chain reaction. Not only rights and claims, but human labour also becomes "thing"; and as soon as human knowledge becomes a force of productive labour, its intellectual products also become "things", as do rights linked to the latter in copyright. Money (representing an abstract value) and securities (incorporating merely a right relating to such value) become general mediators in commodity exchange, i. e. real things, whose direct physical-sensual properties are the least interesting in their becoming a legal "thing".

In the liberal progress that followed the euphoria of the bourgeois revolution, protection of so-called personality rights become established, covering everything from man's bodily and intellectual integrity to his appearance, voice, honour and good name, indeed, to the privacy of his private communications. Just as the liberal capitalism of small ventures is gradually substituted by the monopoly capitalism of big companies, those personality rights which are important for economic life soon appear as rights of corporations as well. This is the process in which the name, reputation and prestige of a business corporation become "thing"; just as the unprejudiced nature of business conduct (in the practice of "other rights" under para. 823 of the German Civil Code, by virtue of the right to the established and operational business organization); or the integrity and secrets of management (by right of the protection of "economic

³²⁷ 'Section 94. (1) Anything that can be taken possession of may be capable of ownership. (2) Unless otherwise provided by this Act, the rules dealing with the rights of ownership shall apply accordingly to money and securities, as well as to such powers of nature as are utilizable in the manner of corporeal things.' *Civil Code of the Hungarian People's Republic*, trans. P. Lamberg, Budapest, Corvina, 1960, p. 31.

personality" in Switzerland); or the protection of the reputation of a business (by right of "goodwill" in Britain).

You can also observe expansion in other areas. The unbelievably large field of things, which was considered as defying human control even around the turn of the century (*res communis omnium*), has suddenly shrunk in the wake of the economic-technological progress of the last few decades. The oceans have become larders through industrial fishing, seawater has become the raw material of large salt-drying companies, icebergs have become the object of commercial shipping, air has become the raw material source of chemicals manufactures, indeed, even the surface of planets may be soon considered as "thing" and as human property.

What consequences can one draw from all this?

First of all, an increasingly large proportion of the natural-social environment is being socially appropriated in the course of social development. This is not simply a question of extension: legal control increasingly integrates the social existence of man not only quantitatively, but in depth as well. Consequently, the 'socialization of society' (one of the most important categories in Lukács' *Ontology* and seen as indicating a development trend) is only the increasingly institutionalized self-appropriation of the very existence of society.

Second, something new comes into existence by way of this institutionalized self-appropriation. The difference is, perhaps, well demonstrated by Marx's conclusion that 'one would be right in saying that there are families and clans which only *possess*, but do not *own* things.'³²⁸ The factuality, mute in itself, is changed to institutionalized legality by way of legal control.

Third, the social character of this process is already indicated by the historicity and institutional form of the process of becoming a "thing". Yet the recognition that the point here is not things *in se*, but the way they practically concern us, lends it peculiar character. The joint regulation of *res corporalis* and *res incorporalis* shows clearly that regulation does not relate things which mutely relate to one another, but persons who are in definite relation to each other with their possessions, financial claims, etc. The socially and historically defined sum of things and non-things becomes "thing" in the law in that they are bearers and/or motivators of social relations, substantial from the point of view of social conflicts. Therefore, legal regulation by no means supposes the separate entities of things and the law, but a dialectic process, in which the progress of social

³²⁸ K. Marx, "Introduction to the Critique of Political Economy", in: K. Marx, *A Contribution to the Critique of Political Economy*, trans. N. I. Stoke, Calcutta, Bharati, 1904, p. 295.

conditions supposes the extension of natural-social existence with newer and newer motives and the qualification of these motives as a legal "thing". Therefore, it is merely the institutionalized legalization of the facticity of this linkage (for political, economic, etc. reasons) that calls for the qualification of these motives as a legal "thing", i. e. for their inclusion in regulation.

Fourth, we must realize that this is a chain reaction type of process in which constantly new social motives, requiring legal regulation, are added to "things" which are not themselves material either and these become unrecognizable and unbridgeable distances through multiple abstraction from things in the original, material-objective sense. As soon as "things" in the legal sense are formed through the abstraction of real things, further "things" are based on these "things" through renewed juristic abstraction, until they reach the stage where they almost completely lose any relation to the material world, traceable only in a genetic sense.

Fifth, it is this growth into a more or less limitless category which indicates that the point is not to falsify the concept of "thing" epistemologically, but to turn it into a technical instrument of practical action. We would be deluding ourselves, if we stated that these are even analogous concepts. Although analogical reasoning might play a role in their formation, this does not influence their basic character. "Thing" concepts in the law are simply fictions that have become the traditional instruments of legal technique by analogy to real things, i. e. instruments used to separate "objects", "things", "goods", etc. of legal interest from those of no legal interest.

Would I be venturing too far from reality in suggesting that the techniques in themselves are mostly conservative and that only ideologies behind social change revolutionize their utilization? It seems at least that the Hungarian textbook on civil law does not break new ground when it openly states of capitalist development: 'Socialist jurisprudence adopted and uses the concept of thing in this sense.'³²⁹

The extent to which technical expression has become the structure-forming principle of legal reasoning, can be easily demonstrated with a few examples.

Private lawsuits concerning liability for damage traditionally investigate man's liability and enquire into quasi-criminal or moral culpability in order to penalize them, although the issue involved is purely financial: it involves damage to property. The theory of legal personality is based on

³²⁹M. Világhy and Gy. Eörsi, *Magyar polgári jog* (Hungarian Civil Law) I, Budapest, Tankönyvkiadó, 1973, p. 170.

the fiction of real persons. The purely postulatory nature of this becomes apparent when the liability of firms, etc. is also discussed in terms of culpability. French jurisprudence is an exception, making possible 'responsibility for damage caused by the fact of things' pursuant to para. 1384 of the *Code Civil*. It is exceptional, for it seemingly personifies things as subjects causing damage. But this is in fact disanthropomorphization pointing to the absurdity of the traditional construction of liability cases, based on "anthropomorphization". As Lukács explains, science as such emerged and proved suitable for influencing natural-social processes by virtue of their own objective being, when it became disanthropomorphized: unlike religion, etc., it no longer projected the psychically experienced motives of the individual's ego into the external world, but attempted to reflect and reconstruct these processes in his own consciousness according to their actual workings and laws.³³⁰ The anthropomorphizing tendency of liability cases, although it involves the possibility of the estimation of liability as a social relationship, is worthless from the point of view of epistemology, since it falsifies the workings and the laws of the economic and legal processes actually taking place.

As for the civil law protection of the personality rights, a kind of "thing" concept lingers, continually causing chaos and uncertainty. It is beyond doubt, on the one hand, that their judicial protection through lawsuit and sanctioning is a straightforward social necessity. It is unclear on the other hand, why this is attached to the private law. Sometimes the victory of the socialist concept is seen in the fact that non-material compensation is awarded for non-material damages, since this, they say, represents a victory over the bourgeois concept which turns moral damages into material ones. But on certain occasions efforts have been made to trace back the protection of honour to some material relation (e. g. success in life and work). Such principles are observed in Soviet legal practice; and in recent years Hungarian legislation makes possible the payment of 'reasonable damages' in cases of non-material damage 'durably and severely handicapping' life.³³¹

Looking at the problem from a broader perspective, we find that while predominance of private law has corresponded to phases of commodity production based on small enterprise (ancient Rome, liberal capitalism), the role of autonomous structures has preceded in the period of large-scale

³³⁰ G. Lukács, *Die Eigenart des Ästhetischen*, 1. Halbband, Neuwied am Rhein and Berlin-Spanndau, Luchterhand, 1963, Ch. II.

³³¹ Act No. IV. of 1977 on the *Hungarian Civil Code*, Section 354.

business³³² and (as Lenin's warning related to socialism³³³ indicates it) the public law view-point of the 'managing managed' has come to the fore, with the corresponding increased importance of administrative, economic, etc. law. Consequently, without affirming the reasoning of either Sir Henry Maine or his critics, one can agree with the thesis, at least in general, according to which development from *status* to *contract* again slowly gives way to the boundness of *status*-like complexes.³³⁴

The tendency one can observe now shows a peculiar contradiction. The legal concept of "thing" is definitely diverging away from things proper in the material-objective sense, yet the dialectic of the process ensures a balance through the simultaneous advance of the opposite tendency. Namely, man and his environment become more and more deeply and completely integrated into the whole of the social structure and this is conditioned by the overwhelming force of the economic sphere. In the language of Lukács' *Ontology*, increasingly more complex structures come into being with the socialization of society, playing their role within the total complex in an increasingly differentiated way. But this does not lessen it, merely further differentiates the role played by the economy.

To sum up, one can say: "thing" concepts in the law are not epistemological categories or images of reality, but (to use the words of Klaus' logic) 'artificial human constructions' for influencing this reality by establishing and implementing definite rules of human conduct.³³⁵ These are bare instruments of legal technique, to be examined primarily not epistemologically, but ontologically and as practical instruments for the exertion of legal influence. The question is not, therefore, whether they are real abstractions, able to be used as a springboard in the epistemological reconstruction of real things but whether they are suitable constructions for a socially responsive functioning as demanded by the social total complex.

³³² Cf. Gy. Eörsi, *Fundamental Problems of Socialist Civil Law*, Budapest, Akadémiai Kiadó, 1970, pp. 9 ff.

³³³ "We do not acknowledge "private affairs", for us *every question* concerning the economy is a matter of public law and not of civil law'. V. I. Lenin, "Zapishka D. I. Kurskomu (20. II. 1922)" (Note to D. I. Kursky) (February 20, 1922), in: V. I. Lenin, *Sochinenia* (Works) 36, 4th ed., Moscow, Gossizdat. Polititsheskoy Literatury, 1957, p. 518.

³³⁴ H. Maine, *Ancient Law*, ed. F. Pollock, 5th ed., London, Murray, 1906, p. 194; Pollock's note, pp. 183 ff. For the critical evaluation of the current literature on the problem, see A. Harmathy, "Változások a szerződések burzsoá elméletében" (Changes in the Bourgeois Theory of Contracts), *Állam és Jogtudomány* XVII (1974) 4, p. 588 and Eörsi, pp. 263 f.

³³⁵ G. Klaus, *Einführung in die formale Logik*, Berlin, VEB Deutscher Verlag der Wissenschaften, 1958, p. 72.

It follows from this that “thing” concepts as one of the structuring components of legal reasoning can by no means be reproached in itself. It is another question that renewed attempts are being made based on the methodological principle of the so-called Occam razor (*non est ponenda pluralitas sine necessitate*³³⁶) in order to suppress this construction as an inadequate expression and to describe actual social-legal processes without its aid. Reduction of the number of the principles of explanation may increase the rationality of explanation and may considerably contribute to the movement from metaphysics towards science.

The only important thing is to see “thing” concepts in the law in their ancillary role and not to let them grow into a category of epistemology and an ideological expression that might dominate our thinking. This is the situation to which the following reasoning, based on the Marxian analysis of commodity fetishism,³³⁷ seems to hold good: ‘In connection with fetishism Marx examines how existing relations arise as everyday evidence in an upside-down world (since social relations are not simply reflected as reified relations in the mind, but become such in the actual practice of commodity production), i. e. he sees the fetishised character not so much in the reversal itself as in the natural, eternal and evident appearance of this reversal. This is how the reversed consciousness of the upside-down world as an adequate consciousness (since without the consciousness of commodity fetishism an adequate behaviour on the part of the producers of commodities is inconceivable) fulfils its function, which is at the same time orientative, and protects the existing world.’³³⁸

A.3 OBJECTIFICATION, REIFICATION AND ALIENATION AS QUALITIES OF THE EXISTENCE OF LAW

The analysis of the concepts of objectification and reification is inconceivable in Marxist philosophy without clarifying the concept of alienation and the relations between the three. But one immediately gets entangled in difficulties. Alienation is a fundamental concept in Marxist sociological thinking. Yet, it is a concept which preoccupied Marx mainly during the time he wrote his early works, such as the *Economic and Philosophic Manuscripts of 1844* and *A Contribution to the Critique of*

³³⁶ W. Ockham, *Sententiarum*, d. 27 q. 2 K.

³³⁷ Marx, pp. 79 ff.

³³⁸ A. Ágh, “Az ideológia időszerűsége (Timeliness of Ideology)”, *Világosság* XVIII (1977) 10, p. 587.

Political Economy. His subsequent works (particularly the separate chapter on alienated labour in Volume I of *Capital*) naturally adopt it, but the emphasis, the conceptual description and, indeed, even the terminology change in line with the development of the Marxian oeuvre. Realizing that the two works of Marx mentioned were not published before 1932 and 1939 respectively, Lukács' main essay in his *History and Class Consciousness, Reification and the Consciousness of the Proletariat*, occupies a historically unique position and considerably advances genuine Marxism. Both as the embodiment of a sort of Messianic revolutionarism and in its connection to the utopian illusions of the Hungarian Soviet Republic, this work was and still is the subject of much debate. Still, it was this book that turned the interest of Marxists to reification as the substance of capitalism, and to formal rationalization as the organizing medium of the latter. Be that as it may, Lukács himself pointed out in his critical self-analysis in 1967 (perhaps to blunt the edge of his own earlier views) that, following Hegel, he considered objectification to be a category identical with alienation in his *History and Class Consciousness*.

The debate which followed the publication of Marx's original texts did not lead to any clear conclusion about the problem of alienation. One opinion sees a categorical difference between alienation and reification, one that follows from the logic of Marx's own intellectual development. The reasoning is as follows: alienation corresponds to the analyses of labour by the young Marx, while reification expresses the shift in emphasis to commodity production and commodity fetishism.³³⁹ Another view feels that alienation should be regarded as a general concept which necessarily includes reification. Should this be accepted, reification would obviously lose its heterogeneity and could only play a role as the carrier of some of the features of alienation. A third approach thinks that objectification, reification and alienation are all heterogeneous categories which by no means overlap, albeit historically they are embedded in the same process: objectification may have a stimulative effect on reification, and reification on alienation. I believe Lukács took this view in his *Ontology*.

My intention now is to establish law in the context of *Towards the Ontology of Social Being*, seen from its transformation into an external reified force.

³³⁹ Israel, *passim* and later, J. Israel, "Alienation and Reification", in: *Theories of Alienation*, ed. R. F. Geyer and D. R. Schweitzer, The Hague, Nijhoff, pp. 41 ff.

A.3.1 Objectification

In his *Ontology*, Lukács distinguishes between objectiveness and objectification. *Objectiveness* is a natural category, 'the synonym of being'.³⁴⁰ *Objectification* is a social one. It is an objective process in which natural objectiveness is being transformed in the course of man's activity, so becoming socialized and socially actual for us. Lukács writes: 'in the course of labour . . . all movement . . . is primarily directed towards objectification, i. e. towards the teleologically appropriate transformation of the object of labour. The culmination of this process manifests itself in the object which existed merely naturally before becoming objectified, i. e. socially useful.'³⁴¹ Objectification, produced by labour, Lukács writes elsewhere, 'does not only objectively change social being, but also makes this change the object of the projection of the human will.'³⁴² Objectification is the product of the increasing socialization of society³⁴³ and at the same time its medium: objectification is nothing but 'the really objectivized, therefore really objective substance of all kinds of social practices.'³⁴⁴

Now we arrive at the point of taking objectification into account in relation to law. 'For objectification is indeed a phenomenon that cannot be eliminated from human life in society. If we bear in mind that every

³⁴⁰ *P*, p. 311. 'Marx . . . die Gegenständlichkeit . . . als Synonyme mit dem Sein schlechthin bezeichnet hat.' *MS*, p. 463. In a similar sense, Lukács continues: 'every being, in so far it is a being is also objective.' *P*, p. 311. 'jedes Sein, indem es Sein ist, ist gegenständlich.' *MS*, p. 463.

³⁴¹ *Sz*, p. 570. 'Jede Bewegung, jede Erwägung während (oder vor) der Arbeit ist primär auf Vergegenständlichung, d. h. auf teleologisch entsprechende Umwandlung des Arbeitsgegenstandes gerichtet: die Vollendung dieses Prozesses äußert sich darin, daß der früher bloß naturhaft existierende Gegenstand eine Vergegenständlichung erfährt, d. h. eine gesellschaftliche Brauchbarkeit erlangt.' *MS*, p. 8.

³⁴² *Sz*, p. 356. 'was das gesellschaftliche Sein nicht nur objektive verändert, sondern die Veränderung zum Gegenstand einer menschlichen, gewollten Setzung macht.' *MS*, p. 840.

³⁴³ '... objectification ... moves the objective world towards socialization.' *Sz*, p. 407. 'die Vergegenständlichung eine Veränderung der Objektwelt in der Richtung auf ihr Gesellschaftlichwerden bewerkstelligt.' *MS*, p. 899; 'The socialization of society, the forcing back of the natural limits is materially directly carried out by the socially concerted play of the acts of objectification.' *Sz*, p. 418. 'Die Vergesellschaftung der Gesellschaft, das Zurückweichen der Naturschranke vollzieht sich materiell-unmittelbar durch das gesellschaftliche Zusammenspiel der Vergegenständlichungsakte.' *MS*, p. 911; '... objectification spontaneously objectifies every object, be it of a material or cognitive nature. Human practice becomes spontaneously social by its mediation, without consciously aiming ... at that target.' *Sz*, p. 471. 'die Vergegenständlichung alle Gegenstände, materieller wie bewußteinnemäßiger Art spontan vergesellschaftlicht. Durch ihre Vermittlung wird die menschliche Praxis ohne dieses Ziel . . . bewußt gesetzt zu haben, spontan gesellschaftlich.' *MS*, p. 974.

³⁴⁴ *Sz*, p. 404. 'die Vergegenständlichung darin real objektiviertes und darum real objektives Wesen des gesellschaftlichen Seins, einer jeden gesellschaftlichen Praxis ausmacht.' *MS*, p. 895.

externalization of an object in practice (and hence, too, in work) is an objectification, that every human expression, including speech, objectifies human thoughts and feelings, then it is clear that we are dealing with a universal mode of commerce between men'.³⁴⁵ There is no doubt that law is objectification. Without considering its special features for the time being, it may be regarded as the product of man's practical activity (or, more precisely, of his conscious teleological projection), which is directed towards the control of his social relations and hence of the totality of his social existence. It is evident that any objectification is being built into the network of other objectifications, and, by continuous interaction with them, reinforces the system of objectifications and thus the extension of man's control over his own existence. Lukács gives the example of language, which 'expands . . . the objectivized world in people and around people by thought-images' through 'consciousness-typed objectification'.³⁴⁶ The 'disanthropomorphizing . . . thought apparatuses' are even more direct examples, 'by way of which disanthropomorphizing cognition can be extended to ever increasing fields'.³⁴⁷

All this seems tautological: an abstract expression of everyday experience. This is true, but only since 'objectification is a neutral phenomenon'.³⁴⁸ Objectification becomes the expression of socially important tendencies through the fact that man produces an increasingly vast complex of objectifications in increasingly more complex relations with other objectifications. Lukács, examining this process in itself, naturally considered it to be the sign of development.³⁴⁹ But objectifications with their mass and increasing complexity may develop into a man-made second nature, which may then bring acute social problems to the surface in the form of reification.

³⁴⁵ 'Preface', p. XXIV.

³⁴⁶ Sz, p. 403. 'bewußtseinmäßige Vergegenständlichung' 'durch gedankliches Abbilden der Ausdehnung der vergegenständlichten, nicht mehr bloß gegenständlichen Welt in und um die Menschen weiterzutreiben verhilft.' MS, pp. 894 and 895.

³⁴⁷ Sz, p. 427. 'die desanthropomorphisierende . . . Gedankenapparaturen, mit deren Hilfe immer größere Gebiete der desanthropomorphisierenden Erkenntnis unterworfen werden können.' MS, p. 922.

³⁴⁸ HCC, p. XXIV.

³⁴⁹ 'The more objects and relationships of objects are changed into objectifications, and the more these are fitted into the system of these objectifications, the more determinedly man will step out of the natural state, and the more social, and in respect of its tendency, the more human his existence will be.' Sz, p. 418. 'Je mehr Gegenstände und Beziehungen aus Gegenständen in Vergegenständlichungen verwandelt und in ihre Systeme eingefügt werden, desto entschiedener ist der Mensch aus dem Naturzustand herausgetreten, desto mehr ist sein Sein ein gesellschaftliches, ein der Tendenz nach menschliches'. MS, p. 911.

According to a definition, reification is 'a social relation which camouflages the relations between individuals as the relation between things.'³⁵⁰ Strictly speaking, reification is the objectified functioning of the objectifications of social being, and/or the reflection of this functioning as an objectified one. Thus the concept conceals a contradiction. On the one hand, 'the concerted (albeit through contradictions) aggregate of social practice could never function were it not always and everywhere inundated and carried by this atmosphere of . . . objectifications.'³⁵¹ But, on the other hand, 'in every process in the exclusive use of certain things as carriers of strictly differentiated functions, the tendency develops to assert the functioning of these things purely like things. This happens the more variedly and decisively, the more developed the technical-economic working methods of a society are. In the meantime, nothing happens yet directly, where forces generating alienation by necessity would operate.'³⁵² In other words, reification is the mere consequence of the emergence of objectified complexes of being, which does not mean any distortion in itself. Not only is it natural as a process, it is also one that continuously regenerates itself, since it is a general 'economic-social necessity that new and (in respect of the degree of reification) more perfect reifications replace the obsolete ones.'³⁵³ Yet it is obvious that there are no isolated functions in social existence. These functions acquire a role as the social practice of given subjects reacting upon these subjects and shaping their views and opinions. Thus reification supposes an object as well as a subject. It gets finished only when the reified function is reflected as such in the subject, becomes an internalized experience, the mind-content of the subject, and promotes reification tendencies in other fields as well. 'The reason,' writes Lukács, 'why reification becomes a

³⁵⁰ A. Schaff, "L'appareil conceptuel de la théorie marxienne de l'aliénation", *L'homme et la société* (1976) No. 41–42, p. 33.

³⁵¹ Sz, p. 471. 'Ein (auch durch Widersprüche) zusammengestimmtes Ensemble der gesellschaftlichen Praxis könnte aber niemals funktionieren, wenn es nicht von dieser Atmosphäre der Vergegenständlichungen und Entäusserungen überall und ständig umflutet und getragen wäre.' MS, p. 974.

³⁵² Sz, pp. 651–652. 'in dem ausschließlichen Gebrauch bestimmter Dinge als Träger streng differenzierter Funktionen für jeden Prozeß die Tendenz entsteht, sein Funktionieren in einer rein dinghaften Weise zur Geltung zu bringen. Je entwickelter die technisch-ökonomischen Arbeitsweisen einer Gesellschaft sind, desto vielfältiger und entschiedener. Dabei entsteht unmittelbar noch nichts, worin Kräfte, die zur Entfremdung führen, wirksam werden müßten.' MS, pp. 131–132.

³⁵³ Sz, p. 660. 'der ökonomisch-soziale Zwang, an Stelle veralteter Verdinglichungen neue – auch bezüglich des Grades der Verdinglichung – vollkommenere zu setzen.' MS, p. 145.

social power-factor is precisely that these convictions spread and become strong, thus they effect everyday people (in spite of their purely ideological nature) like a reality, indeed as the reality itself.³⁵⁴ It is no accident, therefore, that language is the medium and the very manipulative means whereby reification extends to wider and wider fields. According to Lukács, language aimed at exerting a social influence, i. e. the language of politics, ideology, administration, etc. is the best example of 'how reifyingly it alters the internal attitudes of people to actual events, their carriers and objects in their lives.'³⁵⁵

What is then the situation concerning law?

According to its traditional appearance, law is the total set of pre-fixed norm structures. It is an aggregate of texts which contains patterns of conduct for a wide circle of people to whom it is addressed, and patterns of decision for a more limited number of the population who are responsible for its implementation and for sanctioning the cases of non-observance.

As a set of norm structures, law is the product of an abstracting process of an extraordinarily high degree. The recognition of causal relations between behaviours and their social effects, the teleological projection of desirable effects as an aim, as well as the selection of conducts deemed most appropriate for their realization as a positive or negative instrumental behaviour: these are the components which form the process of the establishment of norms. Only instrumental behaviour appears in the norm structure as a positive or negative aim. The causal relation and the teleological projection that provide the basis remain obscure, just as the general social background of and reasons for establishing the norm.³⁵⁶

Another ingredient is that norm structures in the law are being made and organized as elements of an in itself coherent system at a given stage of development. (In Europe, for instance, this has been the case due to the advance of commodity production and bourgeois development within feudal absolutism.) Weber's analyses demonstrate the consequences of

³⁵⁴Sz, p. 671. 'Indem solche Überzeugungen sich verbreiten und verfestigen, wird eben dadurch die Verdinglichung zu einem gesellschaftlichen Kraftfaktor, so daß sie auf die Menschen des Alltagslebens – trotz ihrer in Wirklichkeit rein ideologischen Beschaffenheit – als eine, ja als die Wirklichkeit einwirkt.' MS, pp. 161–162.

³⁵⁵Sz, p. 652. 'wie sehr dadurch die innere Stellungnahme der Menschen den unmittelbaren Ereignissen ihres Lebens, zu deren Träger und Objekte verdinglichend modifiziert wird.' MS, p. 133.

³⁵⁶For some transitional forms between the norm structure and its social context, see Cs. Varga, "The Preamble: a Question of Jurisprudence", *Ajurid.* XIII (1971) 1–2, pp. 101 ff; and Cs. Varga, "Die ministerielle Begründung in rechtsphilosophischer Sicht", *Rechtstheorie* XII (1981) 1, pp. 96 ff.

the advance of the type of organization based on formal rationality.³⁵⁷ Namely, as far as the law is concerned, a system of norms evolves that seems to be developing according to its own laws *as well*, complete with its own stock of concept, principles, institutional and technical apparatuses, with a separate host of officials serving it, involving their professional interests, traditions in training and ideology, etc. The symbiosis of charismatic responsibility and irresponsibility engendered by the lack of regulation comes to an end, where, as Anouilh has it in his medieval play, 'it gives us great power that we do not know exactly what we want. Amazing freedom of manoeuvre is born of the profound uncertainty of intentions.'³⁵⁸ The proliferation of the law assumes such proportions that you are no longer able to perceive them unless you confront their present existence with the more natural existences of past centuries. A Hungarian industrial executive once uttered these words: 'The *Ten Commandments* contains 279 words, the *American Declaration of Independence* 300. But the Common Market regulation concerning the importation of caramel sweets consists of exactly 25,911 words.'³⁵⁹

This is a seemingly distorted growth in social existence, yet it fills its own (*seinhaftige*) function. Reified functioning and the reified view behind it conform exactly to the demands of formal rationality: the social demand for impersonal, quick and safe administration of justice that foresees every eventuality; that is why law evolves in the social total complex as a specific, heterogeneous part-complex developing tendencies towards becoming independent. Lukács demonstrated that in the interest of really fulfilling its functions, the legal complex whose specific task is to mediate among other complexes, has to develop its own specificity and relative autonomy the more so as the social total complex in which it has to function is made up of more and more differentiated and independent complexes.³⁶⁰

What Marx and Engels called the jurist's world concept and illusion,³⁶¹ is essentially the adequate expression of socio-legal existence as it is. A kind of presentiment of the phenomenon of and need for reification

³⁵⁷ Cf. Varga 'Rationality', pp. 676 ff; and Varga 'Law', pp. 297 ff.

³⁵⁸ J. Anouilh, *Becket ou l'honneur de Dieu*, Act III.

³⁵⁹ Quoted by general manager R. Burgert from the March 12, 1977 issue of the poultry breeders' journal of the Federal Republic of Germany; cf. B. Bertha, "Babilónia" (Babylon), *Élet és Irodalom*, XXI (1977) 46, p. 16.

³⁶⁰ Sz., pp. 227 ff, etc.

³⁶¹ E. g. K. Marx and F. Engels, "Die deutsche Ideologie", in: Marx-Engels, *Gesamtausgabe* part I, vol. 5, ed. V. Adoratskii, Moscow and Leningrad, Verlagsgenossenschaft ausländischer Arbeiter in der UdSSR, 1933, pp. 307 ff, 398 and 536 f.

under primitive social conditions might have been what once transcended the source, legitimacy, and coercive force of the law on a religious pattern and attributed them to a mythical law-giver.³⁶² The adaptation of the legal specialist to this reified system is necessary for the functioning of the law in the modern age. Or, in other words, the reified law itself produces the ideology which best suits its functioning according to its own postulates. Accordingly, this upside-down ideology of the legal profession, which recognizes the determining factor in the law and the determined one in the legally ordered relationships of society, is indeed the adequate reflection and consciousness of an upside-down system. Ontologically the self-same factors produce the ideology of the legal profession as the ones which establish the system that serves as its basis. To unmask the ideological character behind the "jurist's world concept" means therefore also to unmask the aspirations of the system to acquire autonomy.

It follows that the professional ideology of legal specialists has to be considered in two respects: from the point of view of ontology and from that of epistemology. Ontologically, the reified operation of the reified structure needs and produces a reified consciousness. At the same time, the social tendency concealed behind 'the phantastic form of a relation between things'³⁶³ has to be explored epistemologically so that man may see beyond reification and may locate the structure in question within the total structure. Jurisprudence not only has the function of cognition when it explores the real status of the law and its specialist in society hidden behind their reified functioning and views. It is to activize its specialists so that they could take part in socio-legal processes more consciously and more efficiently.

Ontologically, the drive to transcend the reified view is but an attempt to transcend reified functioning. As is known, formal rationalization culminates in the euphoria of the victories of bourgeois revolutions and in *laissez-faire* capitalism. Now, efforts to dissolve the formally rigid bounds of the law are being made all over the world. Under the conditions of monopoly capitalism this is most frequently expressed by the practical exclusion or evasion of the law or making it more flexible,³⁶⁴ and under the conditions of socialism by the direct introduction of social, political, etc. aspirations into the body of the law.³⁶⁵ It is open to question

³⁶² Sz, p. 537.

³⁶³ Marx, p. 75.

³⁶⁴ Cf., e.g., Eörsi, Ch. IX.

³⁶⁵ As exemplified by socialist civil and criminal codification, see Cs. Varga, "The Function of Law and Codification", in: *Anuario de Filosofía del Derecho* XVII, Madrid, Instituto Nacional de Estudios Jurídicos, 1973-1974, pp. 500 f, reprinted in: *Ajurid.* XVI (1974) 1-2, pp. 274 f.

whether legal formalism (and, in line with it, also the drive to overcome reification) is related or not to the deepening complexity of society. Anyhow, to analyse that in the present context would take me too far.

While it is pointed out that the depersonalized machinery of legal enactments and their depersonalized functioning are the product of the modern state, it must also be emphasized that reification can be discovered even in the practice of the most ancient codes, from Hammurabi through to the archaic sacred Roman rituals and the medieval trials by combat. Should credence be given to the very uncertain sources available, the law could only be non-reified when (1) it is not formal, i. e. before it is codified, for it does not depart from the everyday life of the community;³⁶⁶ when (2) it could still be comprehended as *dikaion* (δικαίον), i. e. the embodiment of justice as related to the concrete case;³⁶⁷ or when (3) administering justice still aimed at genuine conflict-resolution as was the case in traditional Chinese, Japanese, Bantu, etc. conciliation procedures.³⁶⁸

Object and subject obviously complement one another in reification, yet the roles they play are not of identical importance historically. The emphasis of the former corresponds to the Civil Law pattern. Unlike Civil Law, the Common Law pattern is based on norm structures not fixed in advance and not applicable deductively. But this has no bearing on the degree of reification, only on its form of manifestation. The object of reification (the mass of precedents built up in layers over centuries) is not absent here either, even though the prime emphasis here is on the role played by the courts operating with precedents in a reified manner. As Weber described this, the formally rationalized structure is absent in any direct form, but the spontaneously traditionalized rational functioning of the courts produces similar results in the end.³⁶⁹

Studying law from the aspect of reification is of course not peculiar to Lukács; it has attracted the attention of others as well. But the conceptions are often questionable.

Lucien Goldmann, for instance, dealing with reification, writes this: 'there is law and order everywhere, but it is specific to the partly capitalist societies of the ancient world and to modern capitalist society that they

³⁶⁶ Varga 'Codification', Ch. II, § 1 and Ch. VII, § 3.

³⁶⁷ See, first of all, M. Villey, "Une définition du droit", in: M. Villey, *Seize essais de philosophie du droit*, Paris, Dalloz, 1969, pp. 15 ff, and later, M. Villey, *Philosophie du droit I*, Paris, Dalloz, 1975, Section I.

³⁶⁸ Cf. Varga 'Reasoning', pp. 69 ff, and Varga 'Codification', Ch. VII, § 3.

³⁶⁹ M. Weber, *Wirtschaft und Gesellschaft*, Studienausgabe, 5th ed., ed. J. Winckelmann Tübingen, Mohr, 1976, p. 826.

produce a legal formalism which transforms the judge into an automaton who often applies an abstract law against his better judgement, arriving at decisions, which, in order to stick strictly to legality, have by now little to do with equity and the human category.³⁷⁰ It is clear (and Goldmann makes no secret of it) that his analyses are based on the ideas of Lukács' *History and Class Consciousness* and thus on the Weberian idea of formal rationality. But formal rationality and reification are by no means categories that can substitute each other. Although it is historically true that formal rationality goes in the direction of reification, reification in law has not come from this source alone, but from the emergence of mediation through the means of law in the form of a complex of being entering a relatively autonomous development, from its distinct functioning as well as from the ideological consequences of all these.

Following Marx's view as formulated in his *Economic and Philosophic Manuscripts of 1844*, Imre Szabó describes the essence of the process as follows: 'Man projected and alienated the law as a right from himself and made it a social, "external" alien category for himself. But this is, after all, the very moment when the law emerged since the law was alienated from man from the very start because its essence is external and alien, otherwise it would be a different social phenomenon, perhaps internal morality. . . If man does not separate the law from himself in the form of an external social power, or if he can retain the law in himself as a community product, a *force sociale*, then the alienation of the law ceases, but then so will the law itself, since its substance consists in this external alienness, this standing apart.'³⁷¹ Having dispensed with the Weberian-Lukácsian views (convincing in respect of capitalism, yet simplistic otherwise) and having returned to the original Marxian idea, Szabó sees the root of the problem in the separation of the legal complex. But what Szabó does not grasp is the necessity to distinguish between the categories of objectification, reification and alienation. Considering that in the law the element that is linked to the class society is not the mere existence or formal rationality of the pre-fixed norm structures (the regulative element), but their social contents and enforcement, if any kind of social regulation as "external" is itself interpreted as alienation, then even communism dreamed about by the classics should be regarded as an alienated order.³⁷²

³⁷⁰ L. Goldmann, *Recherches dialectiques*, Paris, Gallimard, 1959, p. 82.

³⁷¹ I. Szabó, *Előadások Marxról és a jogról* (Lectures on Marx and the Law), Budapest, Gondolat, 1976, pp. 109–110.

³⁷² For the characterization of the law as a class regulation in the spirit of Lukács' *Ontology* (Sz, p. 208) and the reasoning that regulation (as a system of previously enacted, formally

István Mészáros relates law to alienation in three ways. First, law is but 'a reified form of "fixing".' Second, 'institutionalized legality can only externally relate itself to man as abstractly public man, but never *internally* to the real individual.' Third, 'the existence of legality . . . proves that the social needs of man as a particular member of society have not become internal needs for the real individual, but remained external to him as "needs of the society".'³⁷³ This approach is more differentiated insofar as it distinguishes between reification and alienation in respect of the law. But it remains doubtful whether, as Szabó correctly perceives, the external element is from the very start concealed in every form of regulation, distinct from "internal morality". The social total complex produces the need for such mediations even at very primitive levels of social development (and Lukács' hint to the hunter seems relevant here), where the plain "internal" is not satisfactory, and, in the abstractly generalizing norm structures of regulation, 'externally unambiguous, general signs of the facts that may constitute a case'³⁷⁴ are necessary to grasp man and his behaviour 'from the outside'. Therefore, it is possible that the alienation theories of law would end up in utopianism since their ultimate tendencies deny not only class-like elements, but also the *per se* neutral technical elements of social order.

Finally, some words should be devoted to the relationship between formal rationalization and reification, with reference to the view of the young Lukács on this matter. The position of *History and Class Consciousness* is clear: the messianic longing for the socialist revolution is materialized in the total repudiation of capitalism. Thus Lukács overtaxes actual historical tendencies, when he wants 'to understand reification as a *general* phenomenon constitutive of the *whole* of bourgeois society.'³⁷⁵ It should be added, however, that Lukács only discusses the connection between rationalization and reification and not their identity. It is the confusion of ideas when someone points to the 'disintegration of the aim, process and result' as the root of alienation,³⁷⁶ boggles the mind, since just this 'disintegration' is the essence of formal rationalization. This means that the 'disintegration' in question can stimulate tendencies

rationalized norm structures) will surely survive the class contents and enforcement of the various norm structures, as formulated in the Soviet debate that followed the 22nd Congress of the Communist Party of the Soviet Union, see Varga 'Rationality', pp. 688 f.

³⁷³ Mészáros, pp. 188 and 187.

³⁷⁴ M. Weber, *Rechtssoziologie*, ed. J. Winckelmann, Neuwied, Luchterhand, 1960, p. 102.

³⁷⁵ HCC, p. 210, note 22.

³⁷⁶ I. Hermann, *A polgári dekadencia problémái* (Problems of Bourgeois Decadence), Budapest, Kossuth, 1976, p. 86.

towards reification that are there anyhow but it is by far not identical with it. Thus I regard the view of Joachim Israel as perhaps the best. He also treats the Weberian account of the problem of rationality as an alienation theory, but sees the decisive difference as follows: while Weber analyzed the organizational principles of modern society as being a technique of in itself neutral value and the individual as being automatically subject to the prevailing power structure, Marx was concerned with the consequences of all these functions and their ideologies for the whole of society and the individual. Consequently, what remained a seemingly neutral description with Weber, was a passionate social-critical theory of alienation with Marx.³⁷⁷

A.3.3 Alienation

Finally, as far as alienation is concerned, both Marx in the *Economic and Philosophic Manuscripts of 1844* and Lukács in *The Young Hegel* expressed themselves with extraordinary accuracy, but the lack of conceptual differentiation did lead to misunderstanding for a long time. Marx writes: 'the object which labour produces—labour's product—confronts it as *something alien*, as a *power independent* of the producer. The product of labour is labour which has been embodied in an object, which has become material: it is the *objectification* of labour. Labour's realisation is its objectification. Under these economic conditions this realisation of labour appears as *loss of realisation* for the workers; objectification as *loss of the object and bondage to it*; appropriation as *estrangement, as alienation*. . . The *alienation* of the worker in his product means not only that his labour becomes an object, an *external* existence, but that it exists *outside him*, independently, as something alien to him, and that it becomes a power on its own confronting him. It means that the life which he has conferred on the object confronts him as something hostile and alien.'³⁷⁸ And Lukács describes Hegel seeking his way in Jena with the following words: 'in his social practice man necessarily transcends the original immediacy, the element given in nature, and in this process gives way to a system of formation created by human practice through his own labour and achievement; and this labour produces not only these social objects, but also reshapes the human subject insofar as it eliminates the original immediacy here too and alienates the subject.'³⁷⁹

³⁷⁷ Cf. Israel, Ch. V, § 2/h, pp. 191 ff.

³⁷⁸ K. Marx, "Economic and Philosophic Manuscripts of 1844", in: *MECW* III, p. 272.

³⁷⁹ *H*, p. 657.

Both positions are in themselves quite neutral, and it is their encounter with given social conditions that produces the objective fact and subjective experience of alienation. In order to clarify this distinction, the old Lukács expressly emphasizes: 'Only when the objectified forms in society acquire functions that bring the essence of man into conflict with his existence, only when man's nature is subjugated, deformed and crippled can we speak of an objective societal condition of alienation and, as an inexorable consequence, of all the subjective marks of an internal alienation.'³⁸⁰

In his *Ontology*, Lukács proves that as to its direct appearance, alienation may derive from a socio-economic source (in the process of labour, e. g., the development of human abilities to the detriment of the human personality) as well as from an ideological one (e. g. religion)³⁸¹, and develops the view produced so far about alienation in two directions. On the one hand, he demonstrates that alienation coincides historically with the increasing development of social existence, i. e. socialization,³⁸² and in this way it is concomitant of human history even in eras prior to the class society.³⁸³ On the other hand, however, it does not follow that alienation is 'a generally superhistorical *condition humaine*', but that it is 'a phenomenon always clearly and concretely describable in social terms'.³⁸⁴ This conclusion has a specific role in the *Ontology*. It emphasizes that alienation is a social phenomenon, which has its origin, deepening and multiplying effect in the interaction of various social complexes, of a series of objective and subjective factors, in such a way that all this can only be explained by the position it occupies in the social total complex and never *per se*. In other words, for *Ontology*, writes

³⁸⁰ HCC, p. XXIV.

³⁸¹ Sz, pp. 574 f; P, p. 261, etc.

³⁸² '... the social evolution that leads out of the narrow natural bond of the most primitive laws, and thereby breaks through the natural limits, socializes the conquest of nature, that is realizes the social existence in its ancient-original sense, must immediately manifest its inner contradictions, the contradictoriness of the newly evolving, no longer dumb species-character.' P, p. 221. 'eine Gesellschaftsentwicklung, die über die enge Naturgebundenheit der primitiven Stufen hinausführt, die damit deren Naturschranken durchbricht, die Naturbeherrschung vergesellschaftet, d. h. das gesellschaftliche Sein in seinem ureigensten Sinn verwirklicht, sofort ihre tiefe innere Widersprüchlichkeit, die der neu entstehenden, nicht mehr stummen Gattungsmäßigkeit zu offenbaren gezwungen ist.' MS, p. 325.

³⁸³ 'In a certain sense, one can say that the whole history of mankind is also the history of human alienation ever since a certain degree of the division of labour (most probably since pre-slavery times).' Sz, p. 573. 'In bestimmtem Sinn könnte man sagen, daß die ganze Menschheitsgeschichte von einer bestimmten Höhe der Arbeitsteilung (wahrscheinlich schon von der der Sklaverei) auch die der menschlichen Entfremdung ist.' MS, pp. 13-14.

³⁸⁴ Sz, p. 574. 'das gesellschaftlich stets klar und konkret umschreibbare Phänomen' 'eine allgemeine überhistorische "condition humaine," MS, p. 15.

Lukács, 'alienation can never be an isolated, self-contained phenomenon, but an element of the economic and social evolution at any time and subjectively that of the ideological reactions to the state, direction of movement, etc. of the society as a whole.'³⁸⁵

Thus have I arrived at the conclusions which can be drawn in connection with law.

Law is an objectification whose objectified functioning and the objectified view of this functioning produce reification. Law is a reified phenomenon from the very start and this remains characteristic of it in spite of the considerable efforts in eliminating it, particularly nowadays. Law as a reified structure does not, however, itself produce the phenomenon of alienation. The total motion of the social total complex engendering alienation is necessary for this, and no social arrangement, not even socialism is exempt from this. Combatting, or at least reducing alienation ought to be one of the proper goals of socialism.

It is an extremely complex goal, indeed, it is problematical. Even tendencies which are not themselves alienated, may tend to create, to strengthen or promote alienation or its subjective acceptance in the increasingly more differentiated total motion of the social total complex. Consequently, Lukács' statement is particularly characteristic of the realm of law: 'If modes of social conduct, "innocent" in themselves from the point of view of alienation, penetrate everyday life deeply, they will increase the influencing force of modes of conduct which already have a direct effect in this direction; on the other hand, the more their life relations are abstractedly reified and the less they recognize these as concrete and spontaneous process-like relations, the easier people will fall prey to alienation tendencies and the more spontaneously and defencelessly will they be attracted to them. . . For the more man's everyday life produces alienating forms and life-situations, the easier will the man in the street adjust spiritually and without moral resistance to them as to his "natural surrounding", and the resistance of average people to really alienating reifications will thereby weaken, although not of necessity in principle.'³⁸⁶

³⁸⁵Sz, p. 755. 'die Entfremdung niemals etwas Isoliertes, Aufsichselbstgestelltes sein kann, sondern objektiv ein Moment der jeweiligen ökonomisch-sozialen Entwicklung, subjektiv ebenfalls ein Moment der ideologischen Reaktionen der Menschen auf Stand, Bewegungsrichtung etc. der Gesamtgesellschaft ist, muß natürlich auch hier festgehalten bleiben.' MS, p. 298.

³⁸⁶Sz, pp. 652-653. 'einerseits verstärken vom Standpunkt der Entfremdung an sich "unschuldige" gesellschaftliche Verhaltensarten, wenn sie tief ins Alltagsleben eindringen, die Durchschlagskraft jener, die bereits direkt in dieser Hinsicht wirken, andererseits werden die

This means that if anybody wants to seriously fight against alienation in the field of law, he must wage the fight not only against the directly alienating tendencies of society and its law, but also moderate the merely reifying tendencies of the law (to the extent and in ways made possible in the given society at any time) by the gradually increasing approach to and dissolving in the societal qualities inherent in/at work behind the façade of the law.

A.4 CONCLUSIONS

The thing has no separate theory in Marxist philosophy: the *Ding* gains significance only in relation to *Verdinglichung* (reification). This also means that the thing is a socialized category: a part of the material world, with which man has established relation, i. e. what man has acquired and made part of his own social existence.

“Thing” concepts in the law can at the most be traced back to the philosophical concept of the thing in their genesis. The development of the technique of the law carries “thing” concepts further and further from its senses abstracted by analogy, until it becomes a purely technical concept with a purely conventional meaning. Thus there is no use of examining “thing” concepts in the law epistemologically, since in point of principle and as to their content they are pure fiction. On the other hand, the social relations directly affected by having become subject to “thing” concepts can be accurately delineated by ontological reconstruction. For “thing” concepts are being formulated for separating spheres brought under legal control from non-legal ones and hence to qualify (or non-qualify) social behaviour in terms of the law.

Marxist philosophy distinguishes between the categories of reification, objectification and alienation. Objectification and reification are in themselves neutral. Reification is nothing else but the objectified functioning of objectifications and the objectified view of this. From the moment law has evolved as a social complex of relative autonomy and

Einzelmenschen desto leichter von Entfremdungstendenzen erfassbar – man könnte sagen: inklinieren desto spontaner und widerstandsunfähiger auf diese –, je mehr ihre Lebensbeziehungen abstrahierend verdinglicht und nicht als konkret, spontan prozeßhaft wahrgenommen werden. . . . Denn je mehr das Alltagsleben der Menschen – vorläufig noch im bisher angegebenen Sinn – verdinglichende Lebensformen und Lebenssituationen schafft, desto leichter wird der Mensch des Alltagslebens sich diesen ohne geistig-moralischen Widerstand als “Naturgegebenheiten”, geistig anpassen, und dadurch kann im Durchschnitt – ohne prinzipiell notwendig zu sein – ein abgeschwächter Widerstand gegen echte, entfremdende Verdinglichungen entstehen.’ MS, pp. 133–134.

developed its own particularities, it has become a reified structure. And this is not a burden, but a feature that enables it to function as a mediating complex. However, since its reified functioning fulfils a function of social existence (*seinhafte Funktion*) and this functioning is only possible due to its support by reified views, a distinction has to be made between the ontological description and the epistemological examination of the ideology of the legal profession.

The encounter of reification with further social conditions produces alienation as an objective phenomenon together with its subjective consequences. Since, supported by other factors, reifications not themselves alienated may also have an effect contributing to alienation, both the reification of the law and the wide use of purely fictitious concepts in the law may also become sources of such alienation tendencies.

This is the point where the *Ding* is related to the problem of *Verdinglichung* in the field of law. For law in itself is a reified complex, therefore adding further reifying structures to the law with artificially established concepts that only serve as a fiction can only be justified if this is necessary for its socially responsive functioning. In other words, if this is needed not only to obscure, conceal, or to express as processes of independent objects and powers, the genuinely social processes actually taking place behind the facade of the law.

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POSTSCRIPT

**THE CONTEMPORANEITY OF LUKÁCS' IDEAS
WITH MODERN SOCIAL THEORETICAL THOUGHT**
**(The *Ontology of Social Being* in Social Science Reconstructions
– with Regards to Constructs like Law)***

1. Ontologies and *The Ontology of Social Being* [197] 2. Some Key Terms of LUKÁCS' *Ontology* [199] 3. *The Ontology of Social Being* as Applied to Law [206] 4. *Gattungswesen* and Alienation [213]

1. Ontologies and *The Ontology of Social Being*

Philosophies are not conceived of, and especially the various kinds of ontology have not been formulated, in history with the exclusive aim of serving the self-fulfilment of philosophers by sketching a temporary summation of their own teachings. Since medieval times, when the cultivation of sciences had developed enough to become increasingly differentiated, departmentalised and professionalised, ontologies were placed in, and became subsequently judged as against, a double context.

That is, on the one hand, they were expected to synthesise, by rephrasing through philosophical generalisation and within a systematic framework, the latest standing achievements of contemporary scholarship. In the case of an *Ontology of Social Being*, this synthesis would be expected to cover both relevant social theories and the main trends of the sciences, from the study of the cosmos and geography via physics and chemistry to biology (including all the related abstract projections and virtualisation, like those parts of mathematics and geometry), with a world-outlook and methodology that underlie the conceivability and feasibility of any social theorising. Under such a heading, only the bare fact that a critical approach to LUKÁCS' specific work in monograph form remains lacking can be signalled here. The question of whether or not—and to what degree and depth indeed—LUKÁCS's *Ontology* was in line with both the world concept drawn from the new achievements in science since the end of the 19th century, in general, and the challenges from social theories in his life-

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time, in particular, is an issue that awaits particular attention and research on behalf of the international philological investigations that can be devoted to the internal and external evolution of LUKÁCS' oeuvre.¹

On the other hand and at given any time, ontologies do fulfil their proper role as a function of the frequency as well as the extension of fields they may have supported by fostering their advancement and scientific renewal through exerting a fermentative influence upon the supported fields. For such a fertilising effect to become activated, however, the receptivity by, e.g., the social sciences theories concerned, may easily prove to be stronger when compared to the intrinsic merits of either the ontologies in question or their otherwise relevant philosophical criticism. Although the decade and a half after the posthumous publication of his *Toward the Ontology of Social Being* abounded in essays on diverse terrains as the authors searched for a new path to be taken in Hungary,² these hardly synthesised with monographic treatment their partial subjects except as to two specific fields; yet these were apparently far away from LUKÁCS' own central interests, namely, drama³ and the law⁴—perhaps because precisely these were the domains to which the essays could contribute the most terminological and methodological insights without having their own impact extended to monographic treatment.⁵

¹ Based on my readings of LUKÁCS and an examination of his otherwise captivatingly rich personal library, I have some doubts without, however, becoming entitled to express an opinion. Cf., by the author, *Lectures on the Paradigms of Legal Thinking* (Budapest: Akadémiai Kiadó 1999) vii + 279 pp. [Philosophiae Iuris], passim.

² E.g., from Egyed Péter 'Az ontológiai nyelvmodell: A nyelvi közvetítés társadalmi dialektikája' [The ontological model of language: The social dialectic of linguistic mediation] in *Modell és valóság* (Temesvár: Facla 1981), pp. 7–41 {& in <<http://adatbank.transindex.ro/vendeg/htmlk/pdf6343.pdf>>}, via Reiner Ruffing Agnes Heller Pluralität und Moral (Opladen: Leske & Budrich 1992), pp. 23–30 {& in [Hungarian translation: 'Heller és Lukács'] <<http://www.c3.hu/~prophil/profi004/RUFF4.html>>} and *Hungarian Studies on György Lukács I–II*, ed. László Illés, Farkas József, Miklós Szabolcsi & István Szerdahelyi (Budapest: Akadémiai Kiadó 1993) 699 pp., to Miguel Vedda 'Lukács György és az esztétikum ontológiai megalapozása' [Lukács and the ontological foundation of the esthetics] *Világosság* (2008) 7–8, pp. 93–124 {& <<http://vilagosság.hu/pdf/20080911101331.pdf>>}, up to ending in the critical overview by Márkus Péter 'Az eltűnt Lukács nyomában' [Following the traces of Lukács disappeared] *Eszmélet* (2001), No. 50, pp. 159–169 {& in <<http://freeweb.hu/eszmelet/50/markus50.html>>}.

³ E.g., by Tamás Bécsy, *Drámaelmélet az ontológia és az esztétika határán* [The theory of drama on the borderline of ontology and aesthetics] (Budapest: Magyar Színházi Intézet 1977) 100 pp. [Színházelméleti füzetek], *A dráma lételeméletéről* Művészetontológiai megközelítés [On the ontology of drama: An ontology of the arts approach] (Budapest: Akadémiai Kiadó 1984) 323 pp. and *A színházi lételeméletéről* [On the ontology of theatre] (Pécs: Dialóg Campus 1997) 265 pp. [Dialog Campus szakkönyvek] as well as, for translations, *Drama as a Genre and its Kinds* (Budapest: International Theatre Institute 1986) 87 pp. and *Ontológia drámy* (Bratislava: Tatran 1989) 533 pp. [Okno]. Cf. also Magdolna Jákfalvi & Árpád Kékesi Kun *A színháztudomány az akadémiai diszciplínák rendjében* Bécsy Tamás életművéről [Theatre studies as an academic discipline: On the oeuvre of Tamás Bécsy] (Budapest: L'Harmattan 2009) 219 pp.

⁴ See note 9.

⁵ For instead focusing on anything taken on and by its face value, LUKÁCS concentrated his topical interests on processing these by forming particles out of them, as mere addenda to his efforts to maximalise his rationalisation of the philosophy of history.

2. Some Key Terms of LUKÁCS' *Ontology*

Social science reconstruction is needed to explain our vital social issues in a theoretical manner. The conceptual differentiations that have laid the foundations of our scientific thought since the era of classical German philosophy (such as those between phenomenon and essence, or form and content,⁶ taken in their duality and/or final synthesis)⁷ unchangingly provide the turning points for our methodical thinking and abstract intellectual processing as variations corresponding to the philosophy and methodology of the sciences we cultivate in renewed forms today.

The posthumously published synthesising work of GEORGE LUKÁCS⁸ already made it clear in its time⁹ that social descriptions must reckon with *s o c i a l i s a t i o n* [*Sozialisierung/Vergesellschaftlichung*]*—*accompanied by,

⁶ See, by the author, 'The Quest for Formalism in Law: Ideals of Systemicity and Axiomatisability between Utopianism and Heuristic Assertion' *Acta Juridica Hungarica* 50 (2009) 1, pp. 1–30 {& <<http://www.akademiai.com/content/k7264206g254078j/>>}, especially para. I/1: »Form and Content«, pp. 2–7.

⁷ For a genuinely MARXian notional duality founded upon the economic basis, see, e.g., by the author, 'Autonomy and Instrumentality of Law in a Superstructural Perspective' *Acta Juridica Hungarica* 40 (1999) 3–4, pp. 213–235 {& <<http://springer.om.hu/content/x713702123847t53/fulltext.pdf>>}.

⁸ In original: Georg Lukács *Die ontologischen Grundlagen des menschlichen Denkens und Handelns* (Referat zur „Ontologie des gesellschaftlichen Seins“, gehalten an der Ungarischen Akademie der Wissenschaften 1969) (Wien: Verein Gruppe Hundsblume 1970) 37 pp., *Zur Ontologie des gesellschaftlichen Seins* Hegels falsche und echte Ontologie (Neuwied & Berlin: Luchterhand 1971) 129 pp. [Sammlung Luchterhand 49], *Die ontologischen Grundprinzipien von Marx* (Neuwied & Darmstadt: Luchterhand 1972) 194 pp. [Sammlung Luchterhand 86], *Die Arbeit* (Neuwied & Darmstadt 1973) 164 pp. [Sammlung Luchterhand 92], as well as *Prolegomena, I–II*, hrsg. Frank Benseler (Darmstadt: Luchterhand 1984–1986) 692 + 747 pp. [Georg Lukács Werke 13–14]; in Hungarian translation: György Lukács *A társadalmi lét ontológiájáról I–III*, trans. István Eörsi (Budapest: Magvető 1976); and in English translation: George Lukács *The Ontology of Social Being* Hegel's False and his Genuine Ontology, trans. David Fernbach (London: Merlin Press 1978) 117 pp., *Marx's Basic Ontological Principles*, trans. David Fernbach (London: Merlin Press 1978 [reprint: 1982]) 173 pp., and *Labour*, trans. David Fernbach (London: Merlin Press 1980) v + 139 pp.

Cf. also Ernest Joós *Lukács's Last Autocriticism, the Ontology* (Atlantic Highlands, N.J.: Humanities Press 1983) x + 149 pp., Nicolas Tertulian *Lukács La rinascita dell'Ontologia* [dibattito Jacques d'Hondt et al.] trad. Gilda Piersanti (Roma: Riuniti 1986) 111 pp. [Biblioteca minima], Ulrich Wolf *Georg Lukács – Zur Ontologie des gesellschaftlichen Seins* Studie zum Verhältnis von Marxismus und Ontologie (Paderborn: Hochschulschrift 1986) 451 pp. [Univ. Diss.], *Objektive Möglichkeit* Beiträge zu Georg Lukács' „Zur Ontologie des gesellschaftlichen Seins“ (Frank Benseler zum 65. Geburtstag) hrsg. Rüdiger Dannemann & Werner Jung (Opladen: Westdeutscher Verlag 1995) 325 pp., Fariborz Shafai *The Ontology of Georg Lukács* Studies in Materialist Dialectics (Brookfield, USA: Avebury 1996) x + 186 pp. [Avebury Series in Philosophy] and Sergio Lessa *A Ontologia del Lukács* (Maceió: EDUFAL 1996) {& <http://209.85.129.132/search?q=cache:sgvJsXDPHnoI:www.geocities.com/srglessa/Onto_de_Lukacs.pdf+%22csaba+varga%22+luk%C3%A1cs+brasil&cd=20&hl=hu&ct=clnk&gl=hu>} {followed by his *Para compreender a ontologia de Lukács* 3. ed. rev. e ampl. (Ijuí, R.S.: UNIJUÍ 2007) 231 pp. [Filosofia 19] and summarised in <<http://br.monografias.com/trabalhos914/compreender-ontologia-lukacs/compreender-ontologia-lukacs2.shtml>>}, as well as Erich Hahn 'Georg Lukács – eine marxistische Ontologie' *Zeitschrift marxistische Erneuerung* in <<http://links.net.de/de/artikel/18056>> and Mário Duayer & João Leonardo Medeiros 'Lukács' Critical Ontology and Critical Realism' *Journal of Critical Realism* 4 (2005) 2, pp. 395–425.

⁹ Cf., by the author, *The Place of Law in Lukács' World Concept* [in Hungarian: 1981] (Budapest: Akadémiai Kiadó 1985 & 2nd [reprint] ed. 1998) 193 pp. {with chapters previously published in Hungarian, English, French, German and Serbian from 1977 on}.

of course, mediation/mediatedness [*Vermittlung*] within its womb—as an irreversibly and unbreakably progressing process, capable of erecting, through historical accumulations, networks that are complex in themselves. This is the environment that provides the medium within which objectification [*Objektivierung/Objektivierung*] can emerge at all while possibly turning into an overwhelming power in society. It is, further, an environment that can produce, in the course of its own self-development, the potential and the social reality of reification [*Verdinglichung*] that may yet be accepted as functional in social workings, and of alienation [*Entfremdung*] that is already to be seen as dysfunctional.

It has been known at the latest from the time of MAINE's inquiry into *The Ancient Law* a century and a half ago¹⁰ that various kinds of social formalism had already developed since the earliest social formations, in order to transform human practices and uses into more secure and foreseeable forms, like repetitions within a systemic framework, that is, in order to make them more economical in all senses of the word.¹¹ Social science now designates this trend as conventionalisation, and symbolises it—in the course of analysis—within the frame and in terms of speech-act theory as its master example.¹² Notwithstanding the fact that LUKÁCS did not participate in any such field of research, it is by no means by mere chance that, by investigating mediations taking place between the social total complex and its partial complexes, he

For its self-abstracts, see 'La place du droit dans la conception du monde de George Lukács' *Acta Juridica Academiae Scientiarum Hungaricae* XXV (1983) 1–2, pp. 234–239 and *Acta Juridica Hungarica* 42 (2001) 1–2, pp. 127–131 {& <<http://springer.om.hu/content/q4990gr0c7kbeeqe/fulltext.pdf>>}.
 As to its reviews, cf. Christian Atias in *Revue internationale de Droit comparé* XXXVIII (1986) 3, pp. 996–997; *Droit et Société* (1986), No. 4, pp. 474–475; V[ittorio] Olgiati in *Rivista della Sociologia del Diritto* XIV (1987) 1, pp. 175–176; Rüdiger Dannemann in *Archiv für Rechts- und Sozialphilosophie* LXXIII (1987) 2, pp. 286–288; Frank Benseler in *Zeitschrift für Rechtssoziologie* 8 (1987) 2, pp. 302–304; J[erzy] Wróblewski in *Państwo i Prawo* XLII (1987) 4, pp. 117–118; Werner Grahn & Irène Lewtschkenko in *Deutsche Literaturanzeiger* 109 (1988) 1–2, pp. 89–92; Alessandra Dragone in *Rivista internazionale di Filosofia del diritto* LXIII (1986) 2, pp. 304–306; Paul Browne in *Science and Society* 51 (1987) 3, pp. 382–383; *Реферативный Журнал за Рубежом* 4: Государство и Право [Moscow] (1986); Eugene Kamenka in *Bulletin of the Australian Society of Legal Philosophy* [Sydney], 10 (December 1986), Nos. 38–39, pp. 255–263 & *Rechtstheorie* 18 (1987) 4, pp. 516–523 & [and the latter in reprint] in *Marxian Legal Theory* ed. Csaba Varga (Aldershot, Hong Kong, Singapore, Sydney: Dartmouth & New York: The New York University Press 1993), pp. 201–208 [The International Library of Essays in Law & Legal Theory, Schools 9]; Bo Carlsson in *Tidskrift för Rättssociologi* 4 (1987) 1, pp. 72–75; *Current Legal Theory* VI (1988) 1–2, p. 292; and Paul Browne 'Lukacs' Later Ontology' *Science and Society* 54 (Summer 1990) 2, pp. 193–218.

¹⁰ Henry James Sumner Maine *The Ancient Law Its Connection with the Early History of Society, and Its Relation to New Ideas* (London: John Murray 1876) viii + 415 pp. {introd. & notes Sir Frederick Pollock (London: John Murray 1930) xxiv + 426 pp.}.
¹¹ Cf. also Henri Lévy-Bruhl 'Réflexions sur le formalisme social' *Cahiers internationaux de Sociologie* XV (1953) 1, pp. 53–63.

¹² Cf., by the author, *Lectures on the Paradigms of Legal Thinking* (1999) [note 1], passim. Reviewed in *Acta Juridica Hungarica* 42 (2001) 1–2, p. 131 {& <<http://springer.om.hu/content/q4990gr0c7kbeeqe/fulltext.pdf>>} as well as by Eduardo Silva-Romero in *Archives de Philosophie du Droit* 47 (2003), pp. 491–496.

emphasised language and law as basic agents of mediation (the one because of the very possibility of social interaction and the other for its frame-working regulation), that is, as the things having the sole function to mediate amongst whatever complexes. This implies the recognition that language and law are not to assert, but to mediate amongst, the values and interests in which they themselves are represented by those complexes to be mediated amongst themselves. Accordingly, what language and law may still feature as their own values and interests are instrumental at the most—intended either to facilitate mediation as such or to enhance its cultural level and demanding character.¹³

Social practices and uses (presupposing co-operation and, thereby, also inter-subjectivity by their nature) raise, unavoidably for their theoretical explanation, the question once formulated by classical English philosophising as the dilemma of the separation and/or unity of ‘body’ and ‘soul’.¹⁴ For, considering either the formal reconstruction of language (as SAUSSURE achieved¹⁵) or the simultaneously differing aspects of law (as revealed by both the clash between Kelsen and Ehrlich in their antagonising search for the law’s final criterion¹⁶ and Pound’s sociologism having once made a distinction between ‘law in books’ and ‘law in action’¹⁷), analysis requires a presumption of some construction (or constructed structure) of the subject, albeit it is widely known that its actual operation (or the actual way it is operated) will always break it through.¹⁸ Or, as the situation reflects neither a ‘body’ simply

¹³ This same LUKÁCSian conclusion has been reached and grounded in another context as well, showing that not even the great catch-words of politics & law—like ‘democracy’, ‘parliamentarism’, ‘rule of law’, or ‘human rights’—can be taken as final and absolute, unquestionable values in themselves: they may degenerate themselves and turn into alienating forces or instruments as well. See, by the author, ‘Buts et moyens en droit’ in *Giovanni Paolo II Le vie della giustizia: Itinerari per il terzo millennio* (Omaggio dei giuristi a Sua Santità nel XXV anno di pontificato) a cura di Aldo Loiodice & Massimo Vari (Roma: Bardi Editore & Libreria Editrice Vaticana 2003), pp. 71–75 and ‘Goals and Means in Law’ in <<http://www.thomasinternational.org/projects/step/conferences/20050712budapest/varga1.htm>>.

¹⁴ For its topical dilemma, cf. <http://en.wikipedia.org/wiki/Mind-body_dichotomy> and <[http://en.wikipedia.org/wiki/Dualism-\(philosophy_of_mind\)](http://en.wikipedia.org/wiki/Dualism-(philosophy_of_mind))>, as well as <<http://www.britannica.com/EBchecked/topic/377923/metaphysics/15815/The-soul-mind-and-body>>.

See also Martial Guérout *Descartes selon l'ordre des raisons* I–II (Paris: Aubier 1953) [Philosophie de l'esprit] & (Paris: Aubier-Montaigne 1968) [Analyse et raisons 8–9] {*Descartes' Philosophy* Interpreted According to the Order or Reasons, I–II, trans. Roger Ariew (Minneapolis: University of Minnesota Press 1985–1985)}, and, as applied to law, William A. Conklin *The Phenomenology of Modern Legal Discourse* The Judicial Production and the Disclosure of Suffering (Aldershot, etc.: Ashgate 1998) xii + 285 pp., especially on p. 123.

¹⁵ Ferdinand de Saussure *Cours de linguistique générale* publ. Charles Bally (Lausanne & Paris 1916) 336 pp. {*Course in General Linguistics* trans. Wade Baskin (London: Peter Owen 1960) xvi + 240 pp.}.

¹⁶ Cf. Stanley L. Paulson *Hans Kelsen und die Rechtssoziologie* Auseinandersetzungen mit Hermann U. Kantorowicz, Eugen Ehrlich und Max Weber (Aalen: Scientia-Verlag 1992).

¹⁷ Roscoe Pound ‘Law in Books and Law in Action’ *American Law Review* 44 (1910) 1, pp. 12–26.

¹⁸ For the problem’s early formulation, cf., by the author, ‘Quelques questions méthodologiques de la formation des concepts en sciences juridiques’ in *Archives de Philosophie du Droit* XVIII (Paris: Sirey 1973), pp. 205–241 & *Algunas cuestiones metodológicas de la formación de los conceptos en ciencias jurídicas* trad. Hortensia Adrianza de Casas (Maracaibo: Instituto de Filosofía del Derecho LUZ 1982) 38 pp. [Cuaderno de trabajo 32].

complemented (or animated) by its 'soul', nor a construction that is ready-made in itself, which, subsequently, can also be committed to movement or operation as it pleases. For motionless, dead language and law, as part of a freely erected imagination, can at most be an issue of pure abstraction. For that which is not functioning has no ontological existence either. Conversely expressed, that which is functioning and, therefore, has ontological existence will necessarily display some incongruencies between ideality and actuality. Otherwise speaking, practical operation is (and cannot be other than) a kind of reconventionalisation that will sublate [*aufheben*; *Aufhebung*] its own antecedence(s) at all times. This is equal to saying that, by incessantly preserving and transcending (i.e., again, sublating) that which is just a necessary given [*un donné*] in relation to itself,¹⁹ any such operation will continuously make (in)novations as well, according—as adapted—to its own timely (changing) needs.

LUKÁCS once draw a conclusion (by reinterpreting the debate between MARX and LASSALLE on the nature of the very reception of Roman law²⁰) according to which it is the ontological perspective that is primordial vis-à-vis the relevance of any purely epistemological approach. Or, one who acts is driven at any time by his or her specifically individual conditions under the push of his or her recognition of pressing interests. Consequently, just because ideology/ideologisation is part of human societal existence, this ideology/ideologisation is not simply an either true or false form of consciousness but one of the organic and necessary components of the ontology of social existence.²¹ In short, the way in which we think is part of what we truly are. Our working consciousness is also a co-actor in our actions. Accordingly, the so-called juristic world-view [*juristische Weltanschauung*/*Weltbild*], taken as the deontology of the legal profession,²² is

¹⁹ For the pair of words 'le donné [ce qui est donné]' and 'le construit [ce qui est construit]', see François Gény *Méthode d'interprétation et sources en droit privé positif* I–II (Paris: Librairie Générale de Droit et de Jurisprudence 1899) xxv + 446 pp., particularly at p. 422.

²⁰ KARL MARX's letter to FERDINAND LASSALLE in Berlin (22 July 1861) in Karl Marx & Friedrich Engels *Werke* 30 (Berlin[-East]: Dietz Verlag 1964), p. 614 and trans. in Marx & Engels *Collected Works* 41 (Moscow: Progress Publishers, London: Lawrence & Wishart, as well as New York: International Publishers 1985), p. 316 {& <http://www.marxists.org/archive/marx/works/1861/letters/61_07_22.htm>}.

²¹ See, e.g., by the author, 'The Relative Autonomy of Formal Rational Structures in Law: An Essay in the Marxist Theory of Law' *Eastern Africa Law Review* A Journal of Law and Development [Nairobi] 8 (1976) 3, pp. 245–260.

²² Friedrich Engels & Karl Kautsky 'Juristen-Sozialismus' [*Die Neue Zeit* Wochenschrift der deutsche Sozialdemokratie 1887/2, pp. 49 et seq.] in Karl Marx & Friedrich Engels *Werke* 21 (Berlin[-East]: Dietz Verlag 1962), pp. 491–509 {& <http://www.mlwerke.de/me/me32/me21_491.htm>}.

Cf. E. Laskine 'Die Entwicklung des Juristischen Sozialismus' *Archiv für die Geschichte des Sozialismus und der Arbeiterbewegung* (1913), pp. 17–70 and M. Sbriccoli 'Elementi per una bibliografia del socialismo giuridico' *Quaderni Fiorentini per la storia del pensiero giuridico moderno* (1974–1975), pp. 876–1035. Cf. also Karl A. Mollnau *Vom Aberglauben der juristischen Weltanschauung* (Berlin[-East]: Akademie-Verlag 1974 {& reprint (Frankfurt am Main: Verlag Marxistische Blätter 1975)}) 73 pp. and Piers Beirne 'Introduction to »Juridical Socialism«' *Politics & Society* 7 (1977) 2, pp. 199–201.

not some accidental and external complementation to law but is one of the original factors of what can be truly termed as the law's social existence,²³ whether it is, as said to be prevalent in ENGELS' time, for instance, the case of European continental normativism, or the Anglo-Saxon pragmatic casualism of the case-law method²⁴ (if we limit our exemplification to these legal traditions).²⁵

Self-organising and self-performing homogenisations are being built unceasingly by the partial complexes upon the heterogeneity of everyday practice. It is analysis of the judicial process as a particular reality-(re)construction that has allowed the present author to arrive recently at the ontologising reformulation of a *u t o p o i e t i c t h e o r y*,²⁶ originally proposed in Chile as an explanation for the biological reproduction of cells and, then, generalised as a methodological tool for macro-sociological theory as well.²⁷ We can draw as a conclusion from the theory the following: that which is alleged to qualify as following social patterns is reproduction and production at the

²³ This is the reason that classical comparative law, conceived of as the mere extension of national legal positivisms themselves, is to be transcended—or, at least, to be complemented—by the comparative investigation of legal cultures and the judicial mind. Cf. *Comparative Legal Cultures* ed. Csaba Varga (Aldershot, Hong Kong, Singapore, Sydney: Dartmouth & New York: The New York University Press 1992) xxiv + 614 pp. [The International Library of Essays in Law & Legal Theory, Legal Cultures 1], as well as, by the author, 'Comparative Legal Cultures? Renewal by Transforming into a Genuine Discipline' *Acta Juridica Hungarica* 48 (2007) 2, pp. 95–113 {& <<http://akademaii.om.hu/content/gk485p7w8q5652x3/fulltext.pdf>>}.}

²⁴ As to the differing logics at work in them, cf., by the author, 'Rule and/or Norm, or the Conceptualisability and Logifiability of Law' in *Effizienz von e-Lösungen in Staat und Gesellschaft Aktuelle Fragen der Rechtsinformatik* (Tagungsband der 8. Internationalen Rechtsinformatik Symposions, IRIS 2005) hrsg. Erich Schweighofer, Doris Liebwald, Silvia Angeneder & Thomas Menzel (Stuttgart, München, Hannover, Berlin, Weimar, Dresden: Richard Boorberg Verlag 2005), pp. 58–65 & 'Differing Mentalities of Civil Law and Common Law? The Issue of Logic in Law' *Acta Juridica Hungarica* 48 (2007) 4, pp. 401–410 {& <<http://akademaii.om.hu/content/b0m8x67227572219/fulltext.pdf>>}.}

²⁵ Cf., by the author, 'Legal Traditions? In Search for Families and Cultures of Law' in *Legal Theory / Teoría del derecho Legal Positivism and Conceptual Analysis / Postivismo jurídico y análisis conceptual: Proceedings of the 22nd IVR World Congress Granada 2005, I*, ed. José Juan Moreso (Stuttgart: Steiner 2007), pp. 181–193 [ARSP Beiheft 106] {& [as a national report presented at the World Congress of the International Academy of Comparative Law] in <<http://www2.law.uu.nl/priv/AIDC/PDF%20files/IA/IA%20-%20Hungary.pdf>> & *Acta Juridica Hungarica* 46 (2005) 3–4, pp. 177–197 & <<http://www.akademaii.com/content/f4q29175h0174r11/fulltext.pdf>>}.}

²⁶ To my surprise, Benseler already signalled the tendency of an autopoietic reconstruction in the way I had interpreted the LUKÁCSIAN Ontology (note 9), with which, in fact, I had got acquainted during my research at the Australian National University Research School of Social Sciences in 1987, and which I formulated the first time in my 'Judicial Reproduction of the Law in an Autopoietical System?' {[abstract] in *Law, Culture, Science and Technology In Furtherance of Cross-cultural Understanding* (Kobe 1987), pp. 200–202} in *Technischer Imperativ und Legitimationskrise des Rechts* ed. Werner Krawietz, Antonio A. Martino & Kenneth I. Winston (Berlin: Duncker & Humblot 1991), pp. 305–313 [Rechtstheorie, Beiheft 11] {& *Acta Juridica Academiae Scientiarum Hungaricae* XXXII (1990) 1–2, pp. 144–151}, and developed into a coherent theory in my *Lectures* [first Hungarian edition 1996, cf. note 1].

²⁷ FRANCISCO J. VARELA & HUMBERTO R. MATURANA in life sciences, and NIKLAS LUHMANN & GUNTHER TEUBNER in socio-legal theorising. Cf., by the author, 'Judicial Reproduction of the Law in an Autopoietical System?' in *Technischer Imperativ und Legitimationskrise des Rechts* ed. Werner Krawietz, Antonio A. Martino & Kenneth I. Winston (Berlin: Duncker & Humblot 1991), pp. 305–313 [Rechtstheorie, Beiheft 11] & *Acta Juridica Academiae Scientiarum Hungaricae* XXXII (1990) 1–2, pp. 144–151.

same time, that is, an individual combination of preservation and (in)novation up to the point all of it is recognised solely as an exemplary pattern-following by the *hic et nunc* social environment, and, thereby, it is also authenticated as one of the feasible instances of the reconventionalisation of the underlying convention. Or, this is to say that it is “within the canon”, which is hardly anything other than the timely outcome of the self-reconventionalising practice itself.

It can also be seen that there is a particular case of double talk in law, which is necessary if an action pertaining to social heterogeneity is to be performed within, as complying with all the added requirements of, social homogeneity. Accordingly, actual decision making can only be modelled by a logic of problem solving, with relatively open possibilities and within a relatively open referential frame, upon which the law’s proper logic of justification only builds as added to and projected onto the former, phase by phase and only after the fact, as a kind of feedback testing how the genuine fulfilment has been controlled. All this runs contrary to the stance legal theories mostly often take—legal theories that, dreaming about some mechanicity in pattern-following, are only able and willing to report on the implementation of the law’s textuality, that is, its mere and direct realisation in (or transposition into) practice.²⁸ Again, the judicial decision is envisioned as a result conclusively drawn and derived from the letters and the very context of the law (in a manner similar to the inner necessity of, let’s say, chemical extraction)—consequently, insofar as whatever ‘right answer’ is or must be reached,²⁹ there must be one result without alternatives—, albeit there are no in-built necessities here.³⁰ LUKÁCS may have been of the same opinion since he simply designated the settling of the conflict of involved interests through the law’s own system of fulfilment [*Verfüllungssystem*] as mere manipulation, admitting that ontological description remains some striking distance from the intimacy and intricacy of any characterisation (or acceptable reconstruction) from within.

For, comprehension [*Verständnis*] is again an autopoietical process itself within the general scheme of any hermeneutic process (unless we think of the possibility of a Robinsonian being, single and without social memory, which

²⁸ Cf., by the author, *Theory of the Judicial Process The Establishment of Facts* (Budapest: Akadémiai Kiadó 1995) vii + 249 pp. and ‘What is to Come after Legal Positivism is Over? Debates Revolving around the Topic of »The Judicial Establishment of Facts«’ in *Theorie des Rechts und der Gesellschaft* Festschrift für Werner Krawietz zum 70. Geburtstag, hrsg. Manuel Atienza, Enrico Pattaro, Martin Schulte, Boris Topornin & Dieter Wyduckel (Berlin: Duncker & Humblot 2003), pp. 657–676.

²⁹ Cf., as a first orientation, <http://en.wikipedia.org/wiki/Ronald_Dworkin>, para. 3–4 and, e.g., David Conter *The Legal Philosophy of Ronald Dworkin* No Right Answer ({microfilm [McGill-University]} 1980) vi + 275 pp. [Thesis (M.A.)]

³⁰ Cf., by the author, ‘An Investigation into the Nature of the Judicial Process’ in *Auf dem Weg zur Idee der Gerechtigkeit* Gedenkschrift für Ilmar Tammelo, hrsg. Raimund Jakob, Lothar Philipps, Erich Schweighofer & Csaba Varga (Münster, etc.: LIT Verlag 2009), pp. 177–184.

LUKÁCS had already excluded). That is, comprehension will reach its given form and content in the form that will result from the social game³¹ (and from all that is its just-so-being [the LUKÁCSian *Gerade-So-Sein*]), as it just happens to occur to the given audience (PERELMAN).³² As to the social games of both the heterogeneous and the homogenised fields of action, within which the social interaction of “having a meaning and giving a meaning”³³ is also to take place, as a point of principle everyone may take part in them; moreover, everyone may actually contribute to shaping them (even if this usually proves to be the prime burden and privilege—and also the responsibility—of the professionals with specific competences in modern societies). There is no doubt that, in the final analysis, the whole process will lead to the exact result that is still defensible in and for the given environment as the actual resolution of the conflict of interests involved. This is so because this is the solution that can yet be—while aware of the commonly shared predispositions—successfully conventionalised, that is, recognised and acknowledged in the given medium, as the instance of pattern-following individually actualised *hic et nunc*. Accordingly, the personal responsibility of the decision maker (and, in the ultimate analysis, as we have already seen, that of all of us in the given society) is acutely prevalent in each case here as well. In fact, we are all accountable independently for the fact that, by transferring our responsibility to the quasi-automatic self-operation of our reified structures, we are not used to making it ascribable to us in person.

This is so because we all are genuine actors of social games, not simply imputed puppet entities.

In the ontology of natural and social beings as well, there are no genuine separations, only distinctions or differentiations made in (and for the sake of) analysis. This is why not even homogenisations are truly self-propelling: they are nurtured—mostly and far too weightily—in and by social heterogeneity. Just as professional languages draw inspiration from everyday language uses and from the society’s general culture,³⁴ and as professionals themselves always prove to be undivided humans in the fullness (possessing all the *facultases*) of

³¹ As developed from the WITTGENSTEINIAN notion of *Sprachspiel*. Cf., e.g., <<http://en.wikipedia.org/wiki/Language-game>> and Lois Shawer *On Wittgenstein’s Concept of a Language Game* in <<http://users.sfo.com/~rathbone/word.htm>> as well as Michael Luntley *Wittgenstein Meaning and Judgment* (Malden, MA: Blackwell 2003) viii + 187 pp.

³² Chaïm Perelman *L’empire rhétorique* Rhétorique et argumentation (Paris: Vrin 1997) 194 pp. [Bibliothèque des textes philosophiques] on p. 36 {*The Realm of Rhetoric* trans. William Kluback, introd. Carroll C. Arnold (Notre Dame: University of Notre Dame Press 1982) xx + 185 pp.}. Cf. also, e.g., George C. Christie *The Notion of an Ideal Audience in Legal Argument* (Dordrecht & Boston: Kluwer Academic Publishers 2000) x + 223 pp. [*L’auditoire universelle dans l’argumentation juridique* trad. Guy Haarscher (Brussels: Bruylant 2005) 275 pp. [Penser le Droit 3]].

³³ Chaïm Perelman ‘Avoir un sens et donner un sens’ *Logique et Analyse* (1962), No. 5, pp. 235–250.

³⁴ And *vice versa*, as traffic in two senses. Cf., by the author, ‘Law and its Doctrinal Study (On Legal Dogmatics)’ *Acta Juridica Hungarica* 49 (2008) 3, pp. 253–274 {& <<http://akademiai.om.hu/content/g352w44h21258427/fulltext.pdf>>}.

their personal being,³⁵ that which is known as the *Ausdifferenzierung des Rechts* (LUHMANN)³⁶—standing for the LUKÁCSian legal homogenisation—can and shall only be materialised in practice as reflected through our everyday considerations, that is, in their interest, moreover, merely in order to implement them to the optimum feasible degree.

Accordingly, in itself reification is hardly more than humanly targeted instrumentalisation, and alienation is just its already pathologised outcome in all-social dimensions, as a kind of degeneration due to a lack of purposefully conscious control.

For constraints as purely external powers can only prevail in micro-contexts and at a personal level. Their eventual over-expansion, exerted either intellectually, morally or otherwise, creates, as an exclusive interpretation, the idea that they have been successfully used in an excessively weighty ideological form. Or, in another formulation, this is to say that—properly speaking—there are no genuine constraints at a societal level, only states of affairs—including states of minds, that is, the former’s ideologisation—that may call for and urge reconsideration, by opening perspectives to re-assertion or change, or even sounding a socially generalisable cry for reform or revolution, as the case may be.

In sum, we are unavoidably responsible for ourselves and for our human destiny, including, of course, the hows and whys in, as well as the autonomy by, which we operate our constructs, humanly made for humans’ freely selectable best use.³⁷

3. The Ontology of Social Being as Applied to Law

Applying the general statements and terms of this summary to law proper, we can arrive at conclusions that may reveal some of the lasting features of the legacy of the LUKÁCSian type of social science reconstruction of constructs like law, allowing us to draw further generalisations with respect to the ontological status of various kinds of human-made constructs.

³⁵ Cf., by the author, ‘Theory and Practice in Law: On the Magical Role of Legal Technique’ *Acta Juridica Hungarica* 47 (2006) 4, pp. 351–372 {& <<http://www.akademiai.com/content/j4k2u58xk7rj6541/fulltext.pdf>>} and ‘Law, Understanding of Law, Application of Law’ *Acta Juridica Hungarica* 51 (2010) 2, pp. 20–32 & <<http://akademiai.com.hu/content/05w03576k7113704/fulltext.pdf>>.

³⁶ Niklas Luhmann *Ausdifferenzierung des Rechts* Beiträge zur Rechtssoziologie und Rechtstheorie (Frankfurt am Main: Suhrkamp 1981) 456 pp.

³⁷ For further issues and developments by the author, cf. ‘The Concept of Law in Lukács’ Ontology’ *Rechtstheorie* [Berlin] 10 (1979) 2, pp. 321–337, ‘Towards a Sociological Concept of Law: An Analysis of Lukács’ Ontology’ *International Journal of the Sociology of Law* 9 (1981) 2, pp. 157–176 & ‘The Place of Law in Lukács’ Ontology’ in *Hungarian Studies on György Lukács* II, ed. László Illés, Farkas József, Miklós Szabolcsi & István Szerdahelyi (Budapest: Akadémiai Kiadó 1993), pp. 563–577 & ‘O espaço do direito na ontologia de Lukács’ [trad. Sérgio Coutinho] *Novos Rumos* [Instituto Astrojildo Pereira, São Paulo] 18 (2003), No. 39, pp. 4–17 {& <http://www.institutoastrojildopereira.org.br/novosrumos/artigo_show.asp?var_artigo=59>}.

As seen above,³⁸ social existence is an irreversible and unbroken process. In this process, all that comes about will leave its mark. That is to say, it will be built as a new component in those conditions under which the mutual effect of the individual complexes as well as the self-reproduction of the total complex will take place.

Language and law are complexes destined to nothing but mediation. As such, neither of them holds its *raison d'être* in and by itself. Yet, in order to fulfil their mediatory function, they are expected to develop relative autonomy.

Seen from a historical perspective, the state has always been taking steps to monopolise gradually law, acquiring an exclusive rule over law. The *Etatisation* of law (by making it directly dependent on the state) is most emphasised as thoroughly completed in the arrangements that separate making the law [*Rechtssetzung; création du droit*] from administering justice [*Rechtsanwendung; application du droit*] in a formal way, both notionally and institutionally. In European history, this has been achieved by the development of created, written and formally enacted norm structures, intended to embody the law exclusively.³⁹ This is the scheme whereby the idea of *ius* has been reduced to the mere factuality of the *lex* enacted, i.e., of what has actually been promulgated by the temporary legislator in a procedurally due form.⁴⁰ At the same time, however, such a scheme presumes law-making to have been lifted to almost limitless all-mightiness, to a freely fillable space of regulatory power. As a consequence, the *lex* will remain the exclusive genuine actor on the legal field, the sole creator of which can be considered at all relevant—and in which sense—in law. Thereby, law-making is sharply contrasted to law-application, which latter is downgraded to a merely executive role. As a consequence, the justice to be administered will necessarily degenerate into mere formal rule-conformism.

As expressed by Kelsen's *Pure Theory of Law*—which empties methodically from the law's field anything not distinctively legally posited, so that the genuinely legal determination of the law's construction and operation can be clearly seen—lawyers' professional approach to the law, alongside theoreticians' exclusively conclusive treatment of law, will be exhausted by two principles, pertaining to the law's construction and operation, respectively. According to these,

³⁸ For the next paragraphs, see, by the author, 'Towards the Ontological Foundation of Law (Some Theses on the Basis of Lukács' Ontology)' *Rivista Internazionale di Filosofia del Diritto* [Roma] LX (1983) 1, pp. 127–142 & in *Filosofía del Derecho y Problemas de Filosofía Social X*, coord. José Luis Curiel B. (México: Universidad Nacional Autónoma de México 1984), pp. 203–216 [Instituto de Investigaciones Jurídicas, Serie G, Estudios doctrinales, 81] {& <<http://www.bibliojuridica.org/libros/3/1051/20.pdf>>}.

³⁹ Cf., by the author, *Codification as a Socio-historical Phenomenon* (Budapest: Akadémiai Kiadó 1991) viii + 391 pp. and 'Codification at the Threshold of the Third Millennium' *Acta Juridica Hungarica* 47 (2006) 2, pp. 89–117 {& <<http://www.akademiai.com/content/cv56l91505t7k36q/fulltext.pdf>>}.

⁴⁰ Cf., by the author, *Lectures...* [note 1], passim.

validity is a function of the law having been properly enacted, and legality is a function of norms and facts in any legal process becoming subordinated, or drawn in conclusion, within a logified normative scheme.⁴¹

As to its nature, the norm structure developed by the over-dominant state is a teleological projection that fails to formulate the underlying target that is socially desirable to reach.⁴² In order to guarantee unequivocality by excluding mere questionability, it formulates the instrumental behaviour defined by the legislator as the target itself that is to be reached. This is the means by which the law stipulates the *Tatsache*—the aggregate of those facts that may constitute a case in law⁴³—so that average social attitudes can be planned in advance and effectively reached through prescribing/proscribing (i.e., sanctioning in a positive/negative manner) properly selected instrumental behaviours.

Accordingly, law is expected to fulfil its mediatory function by asserting its own relative autonomy at the same time. That is, it has to realise the necessary social targets, transformed into legal ones, by meeting the requirements of its own system. Hence, it follows that a definite Janus-facedness, i.e., the practice of double talk, will become a necessary corollary of lawyers' activity. For, what they do is, in fact and according to LUKÁCS, firstly, to transfigure real conflicts of interests into conflicts within the law, and then, secondly, to refine even these into apparent or quasi-conflicts, that is, into instances of a genuine application of law—while they seem to operate effectively and exclusively with legal

⁴¹ Cf., by the author, 'Heterogeneity and Validity of Law: Outlines of an Ontological Reconstruction' in *Rechtsgeltung* hrsg. Csaba Varga & Ota Weinberger (Stuttgart: Franz Steiner Verlag Wiesbaden 1986), pp. 88–100 [Archiv für Rechts- und Sozialphilosophie, Beiheft 27] and 'Validity' *Acta Juridica Hungarica* 41 (2000) 3–4, pp. 155–166 {& <<http://www.ingentaconnect.com/content/klu/ajuh/2000/00000041/F0020003/00383612>>}. Further on, see also, by the author, 'Hans Kelsens Rechtsanwendungslehre: Entwicklung, Mehrdeutigkeiten, offene Probleme, Perspektiven' *Archiv für Rechts- und Sozialphilosophie* LXXVI (1990) 3, pp. 348–366 & 'Kelsen's Theory of Law-application: Evolution, Ambiguities, Open Questions' *Acta Juridica Hungarica* 36 (1994) 1–2, pp. 3–27.

⁴² Cf., by the author, 'The Preamble: A Question of Jurisprudence' *Acta Juridica Academiae Scientiarum Hungaricae* XII (1971) 1–2, pp. 101–128 and 'Die ministerielle Begründung in rechtsphilosophischer Sicht' *Rechtstheorie* 12 (1981) 1, pp. 95–115.

⁴³ According to the definition by Rudolf Eisler *Wörterbuch der philosophischen Begriffe* (1904) in <<http://www.textlog.de/5224.html>>, „*Tatsache* (zuerst bei HERDER) ist das, was durch das Denken sicher als Erfahrungsinhalt, als Bestandteil der gesetzlichen Ordnung der Dinge und Ereignisse feststeht. Die »Tatsachen« als solche sind nicht einfach »gegeben«, sondern müssen erst auf Grund der Erfahrung methodisch-denkend gesetzt, konstatiert werden.“ As Franz Gschnither *Allgemeiner Teil des bürgerlichen Rechts* 2. neuarbeitete Aufl. von Christoph Faistenberger, Sabine Engel & Heinz Barta (Wien & New York: Springer 1992), 21 A 1–3 in <http://books.google.hu/books?id=d9DTGBiPOwC&pg=PA447&lpg=PA447&dq=%22juristische+tatsache%22&source=bl&ots=u1AC29212f&sig=mwqOdNY6PUiySBtYnWt-OHyOeE&B_i4St-ik9WNsAachOG3BQ&sa=X&oi=book_result&ct=result&resnum=6#v=onepage&q=%22juristische%20tatsache%22&f=false> develops its legal context, „1. Rechtssätze bestehn aus *Tatbestand* und *Rechtsfolge* (Gesetzesbefehl); aus Sein (abstrakter Tatbestand) und Sollen (abstrakte Rechtsfolge). 2. Damit die Rechtsfolge eintritt, muß die *konkrete* Sachlage, der Sachverhalt (der 'Fall') unter den *abstrakten* Tatbestand *subsumiert* werden können, dh. geprüft werden, ob der Sachverhalt die Merkmale des Tatbestandes erfüllt. 3. Eine *Tatsache*, die allein oder zusammen mit andern eine Rechtswirkung herbeiführt, ist eine *juristische Tatsache*.“

enactments according to a logical scheme. Therefore, again, what they do in actual practice is to manipulate the selection of both the “relevant facts” and the “pertinent norms”, i.e., their labelling accompanied by their interpretation and qualification, so that the judicial decision can eventually imply a responsible social decision under the facade of mere logic. This is to mean that logic is hardly more than a form of expression in the whole operation here, and by no means is the ruling medium to reach the decision that is due.

The same conclusion holds for the whys and hows of the conceptualisation of law as well. For, intellectual operations in law (involving conceptualisation, of course) are directed at other aims than mere cognition. In the final account, all they do is to serve a pragmatic destination, that is, the standardisation of practice:⁴⁴ to classify diverse occurrences, instances and configurations of real life situations by pigeonholing them into a given, finite number of cases as worded and defined by the law. Its perfected—notional—formalism is the qualification that allows us to consider a given case as constituting a construable combination of selected norms that must be achieved completely, up to the formal identification of the former with the latter, and without exception, hesitation or any of the ambivalence characteristic of a life lived through, that is, without dialectics—with respect to the legal consequences that are to be meted out in the name of and as the provision of the law when the decision is already made.

Or, the law’s self-closing into its own conceptual formalism is crowned by the fact that the self-justification of law—including the manner in which to produce and canonise in practice the conditions needed for its valid construction and legally viable operation—will remain an internal question within the sphere of law, made (consciously and artificially) unavailable to any external intervention.⁴⁵

Henceforth, reification and alienation serve as master examples offered by law while embodying sensitive issues themselves, especially if we consider the fact that the LUKÁCSian ontology may be seen as well, as the culmination of messages heralded for the future that are locked in their proper understanding.

⁴⁴ The issue of whether or not norm propositions are themselves descriptive statements with a truth value capable of being proven or falsified used to be a test of the universality of the LENINist reflection theory—standing for the epistemologisation of ontology itself—in Central Europe’s communist MARXism in the 1950s and 1960s. For its criticism by the present author (in a paper whose publication was prohibited during the period), see ‘A magatartási szabály és az objektív igazság kérdése’ [Rule of behaviour and the question of objective truth, 1964] in his *Útkeresés Kísérletek – kéziratban* [Searching for a path Unpublished essays] (Budapest: Szent István Társulat 2001) 167 pp. [Jogfilozófiák], pp. 4–18.

⁴⁵ For the whole scheme as ultimately summarised, cf., by the author, ‘Judicial Black-box and the Rule of Law in the Context of European Unification and Globalisation’ *Acta Juridica Hungarica* 49 (2008) 4, pp. 469–482 {& <<http://akademiai.om.hu/content/kt486242ww35wr47/fulltext.pdf>> }.

For,⁴⁶ objectification, reification and alienation are all heterogeneous categories that by no means overlap, albeit they are historically embedded in the same process: objectification may have a stimulating effect on reification, and reification, on alienation. The reason for all this is rooted in the very nature of the social being as an irreversibly progressing process, shaped by all its contributing components, that themselves are increasingly socialised and mediated. The process is enhanced by the fact that man-made second nature—involving a variety of *disanthropomorphising tendencies*⁴⁷ in its intellectual processing and ideologisation, too—is increasingly coming to the fore in this process. Law as construct and law as practical operation, i.e., the social force of law itself, operated within the framework of its socio-professional deontology, are just key instances of it.

Reification constitutes an objectified functioning of the objectifications of social being, and/or the reflection of this functioning as an objectified one. Or, reification is the completion of objectifications, arranged as items within a self-organising systemic network. Reified functioning and its reified view conform exactly to the demands of formal rationality, which are especially strong and self-serving in public administration and the administration of justice. For, there is a socio-political and economic claim to construct and operate an impersonal, quick and safe machinery, which is prepared in such a way as to be suitable to foresee and standardise each and every eventuality. This is why law has evolved in the social total complex as a specifically heterogeneous partial complex, with a strong tendency towards becoming independent, autotelic and self-organising according to its own laws and rules.⁴⁸ And reified law produces just the ideology that best suits the law's operation according to its postulates, normative and ideological at the same time. Or, one could also say that the reified operation of reified structures needs and also produces reified consciousness. Accordingly, the *juristische Weltanschauung/Weltbild* taken as the deontology of the legal profession—perceiving a determination by the law in the whole formation and net of relationships in society if these are legally arranged—can indeed be seen as the adequate reflection of a system which is turned upside-down. As a

⁴⁶ For the next paragraphs, see, by the author, 'Chose juridique et réification en droit: contribution à la théorie marxiste sur la base de l'Ontologie de Lukács' in *Archives de Philosophie du Droit* 25 (Paris: Sirey 1980), pp. 385–411 & '»Thing« and Reification in Law' in his *The Place of Law...* [note 9], Appendix, pp. 160–184.

⁴⁷ E.g., LUKÁCS tells about "disanthropomorphising thought apparatuses" [„desanthropomorphisierende Gedankenapparaturen"]—in Georg Lukács *Die wichtigsten Problemkomplexe* [in Manuskript at Lukács Archives and Library, M/120], p. 922—for which law provides a prime exemplification.

⁴⁸ Cf., by the author, 'La question de la rationalité formelle en droit: Essai d'interprétation de l'Ontologie de l'être social de Lukács' in *Archives de Philosophie du Droit* 23 (Paris: Sirey 1978), pp. 213–236 as well as 'Rationality and the Objectification of Law' *Rivista Internazionale di Filosofia del Diritto* LVI (1979) 4, pp. 676–701.

consequence, our act of unmasking its purely ideological character would both precondition and result in the unmasking of the law's aspirations to acquire autonomy.⁴⁹

Law as a reified structure never produces the phenomenon of *a l i e n a t i o n* by itself. The total motion of the social total complex is needed to provoke such an effect; and no social arrangement is truly exempt from the chance it may materialise. It must be recalled at the same time, however, that such an explanation needs an ontological framework and totality approach within it, as there are no factors in isolation or merely neutral as to other factors that could alone produce that effect. To remain as an exemplification by the law's technicalities, any objectification building into the network of other objectifications will, for instance, through continuous interaction amongst them, only reinforce the system of objectifications itself. Going further, it is also evident that even tendencies not in themselves alienated may tend to create or strengthen alienation (or the subjective impact of alienated states) in the increasingly more differentiated total motion of the social total complex. As LUKÁCS explicates it,

“[i]f modes of social conduct, »innocent« in themselves from the point of view of alienation, penetrate everyday life deeply, they will increase the influencing force of modes of conduct which already have a direct effect in this direction; on the other hand, the more their life relations are abstractedly reified and the less they recognise these as concrete and spontaneous process-like relations, the easier people will fall prey to alienation tendencies and the more spontaneously and defencelessly will they be attracted to them [...]. For the more man's everyday life produces alienating forms and life-situations, the easier will the man in the street adjust spiritually and without moral resistance to them as to his »natural surrounding«, and the resistance of average people to really alienating reifications will thereby weaken, although not of necessity in principle.”⁵⁰

⁴⁹ Accordingly, LUKÁCS' predominant identification of reification as “of purely ideological nature in reality” [„in Wirklichkeit rein ideologischen Beschaffenheit” in his MS *idem.*, pp. 161–162] is in contrast to his basic view of its thoroughly ontological [*seinhaftige*] function and functioning.

⁵⁰ *Idem.*, p. 298. [„einerseits verstärken vom Standpunkt der Entfremdung an sich »unschuldige« gesellschaftliche Verhaltensarten, wenn sie tief ins Alltagsleben eindringen, die Durchschlagskraft jener, die bereits direkt in dieser Hinsicht wirken, andererseits werden die Einzelmenschen desto leichter von Entfremdungstendenzen erfaßbar — man könnte sagen: inklinieren desto spontaner und widerstandunfähiger auf diese —, je mehr ihre Lebensbeziehungen abstrahierend verdinglicht und nicht als konkret, spontan prozeßhaft wahrgenommen werden [...]. Denn je mehr das Alltagsleben der Menschen — vorläufig noch im bisher angegebenen Sinn — verdinglichende Lebensformen und Lebenssituationen schafft, desto leichter wird der Mensch des Alltagslebens sich diesen ohne geistig-moralischen Widerstand als »Naturgegebenheiten«, geistig anpassen, und dadurch kann im Durchschnitt — ohne prinzipiell notwendig zu sein — ein abgeschwächter Widerstand gegen echte, entfremdende Verdinglichungen entstehen.”]

Well, modern formal law⁵¹ is a reified construct whose operation is also reified and reifying at the same time. On the other hand, the deontology of legal practitioners as much as the legal theories usually advanced by professors of law are founded upon disanthropomorphised schemes, able to exert disanthropomorphising effects themselves. This is why the chance of alienation is at the very root and heart of modern formal law, independent of whether or not there is, in addition, an express or tacit political will to transform the law's construction and/or operation into an added means (or medium or agent) of social alienation. This is the sense LUKÁCS may have meant when he also stated that although—and certainly—alienation is not “a superhistorically general »*condition humaine*«”—albeit it has ever been “a phenomenon always clearly and concretely describable in social terms”—, nevertheless, “[i]n a certain sense, one may say that the whole history of mankind is also the history of human alienation ever since a certain degree of the division of labour (most probably since pre-slavery times).”⁵² Moreover, as he continued in an analytical context, instead of being partial, individual, or simply occasional and contingent,

“alienation can never be an isolated, self-contained phenomenon, but an element of the economic and social evolution at any time and subjectively that of the ideological reactions to the state, direction of movement, etc. of the society as a whole.”⁵³

Accordingly, again, searching for the genuine specificity of LUKÁCS' ultimate message, we arrive at the realisation that the ontological treatment of sociality in general and the totality approach at its foundation in particular do already advance their only feasible path. Namely, alienation—too—has both its origin and its deepening and multiplying effect in the interaction of various social complexes, in the form of a series of objective and subjective factors working in these complexes, in such a way that the process itself, as much as its outcome, can only be explained by the relative positions their components in action

⁵¹ Cf., by the author, ‘Moderne Staatlichkeit und modernes formales Rechts’ *Acta Juridica Academiae Scientiarum Hungaricae* 26 (1984) 1–2, pp. 235–241 and ‘The Basic Settings of Modern Formal Law’ in *European Legal Cultures* ed. Volkmar Gessner, Armin Hoeland & Csaba Varga (Aldershot, Brookfield USA, Singapore, Sydney: Dartmouth 1996) xviii + 567 pp. [Tempus Textbook Series on European Law and European Legal Cultures 1], introduction to Part II: »The European Legal Mind«, pp. 89–103.

⁵² [„eine allgemeine überhistorische »condition humaine«” „das gesellschaftlich stets klar und konkret umschreibbare Phänomenon” „In bestimmtem Sinn könnte man sagen, daß die ganze Menschheitsgeschichte von einer bestimmten Höhe der Arbeitsteilung (wahrscheinlich schon von der der Sklaverei) auch die der menschlichen Entfremdung ist.”] Lukács *Die wichtigsten Problemkomplexe* [MS], p. 15 and p. 573.

⁵³ [„die Entfremdung niemals etwas Isoliertes, Aufsichselbstgestelltes sein kann, sondern objektiv ein Moment der jeweiligen ökonomisch-sozialen Entwicklung, subjektiv ebenfalls ein Moment der ideologischen Reaktionen der Menschen auf Stand, Bewegungsrichtung etc. der Gesamtgesellschaft ist, muß natürlich auch hier festgehalten bleiben.”] *Idem.*, p. 755.

occupy in the social total complex, and never in isolation, never *per se*. Because totality in social being means total interconnections with an endless series of all-encompassing, uninterrupted feedback and with relative balance achieved at each time. Or, strictly formulated, alienation can only be the outcome produced by some definite total effect. And this is independent of our chance of hoping to be in the position at some time in a later stage to specify and describe some components and mechanisms retrospectively, ones that may have excelled in contributing—far too weightily—to the overall result.

This means, all in all, that objectification, reification and alienation are the possibilities in succession in which the problem of technics, thematised with dramatic overtones since the late 19th century, also can be interpreted at all. These, then, are not the embodiments of fatality itself but the potential human self-affirmatory emancipation in mastering mankind's final destiny, using what is available and feasible, without degenerating into states that are themselves to become both alienated and alienating.

4. *Gattungswesen* and Alienation

I guess that all kinds of “artificial human construction”⁵⁴ are susceptible to growing into an independent power with the tendency to multiply societal life and development in either direction. This is why MARXISM (hypothesising historically formed human nature or *Gattungswesen*) does not differ basically from the social teachings of the Church in their respective platforms,⁵⁵ both drawing a clear dividing line between ultimate values, foundational in and by themselves and, therefore, taken axiomatically as valid for, e.g., a given culture or historical epoch, on the one hand, and anything else instrumentally developed, whose valuable *raison d'être* needs a particular justification from case to case in each occurrence, on the other.

Of course, alienating tendencies may prevail in the field of and through the noblest catch-words and embodiments of our civilisational achievements as well. For instance, in Hungary, during the recent transition from communist dictatorship to the rule of law, the law's past annihilation and political

⁵⁴ '[K]ünstliche menschliche Konstruktionen' is the term used by Georg Klaus *Einführung in die formale Logik* (Berlin[-East]: VEB Deutscher Verlag der Wissenschaften 1958) xii + 391 pp. on p. 72 to refer to such apparent propositions as norm-enactments that, because of their purely praxis-bound nature, have no directly cognitive contents and—consequently—cannot be taken as either true or false.

⁵⁵ See note 13 and, e.g., Henri de Lubac, SJ *Le Drame de l'humanisme athée* (Paris: Spes 1950) 415 pp. {*The Drama of Atheist Humanism* trans. Edith M. Riley [1950], Anne Eglund Nash & Mark Sebanc (San Francisco: Ignatius Press 1995) 539 pp.} as referred to by, e.g., Susan K. Wood *Spiritual Exegesis and the Church in the Theology of Henri de Lubac* (Edinburgh & Grand Rapids, Michigan: Eerdmans 1998) ix + 182 pp., especially at p. 136.

relativisation has simply been replaced by a new attitude mixing adoration of the new law's very wording with its absolutisation, an outcome that has already pushed the entire transition process to a dead end by granting easily convertible benefits exclusively supporting the survival of the past dictatorship's communist *nomenklatura*,⁵⁶ so that they could in the meantime change their totalitarian cloth to democratic legitimacy.⁵⁷ Accordingly, even the rule of law as an ideal can be corrupted if turned into a force of destruction—by the simple gesture of over-expanding it.⁵⁸ And the list of examples could be continued to a great length.

This is the reason why legal philosophy must not—or at least should not—be detached from social theorising, arching over from anthropology and sociology to political scholarship. Under the aegis of philosophising in the most general terms, this is a cry for unifying social concerns, trying to harmonise between the efforts to erect a series of *Gesamtplan* [total plan], inclusive of all targeted social effects and their eventual by-effects as well, and living by the culture of local and personal responsibility—all of these assisted to do so by the principle of subsidiarity and by local and personal autonomies.

I abstracted my own message a decade ago, finishing the theoretical reconstruction of law as part of humanity's individual and social morality, in the next paragraph that closes this present address:

“We followed a path that led to law from the paradigms of legal thinking, and from the self-assertion of legal formalism to its overall cultural determination. Yet, our human yearnings peeked out from behind the illusory reference of our security and we could discover reliable, solid grounds only in the elusive continuity of our social practice. In the meantime it proved to be a process we had thought to have been present as a material entity and believed to be fully built up, but which proved to have been built continuously from acts in an uninterrupted series. What we have discovered about law is that it has always been inside of us, although we thought it to have been outside. We bear it in our culture despite our repeated and hasty

⁵⁶ Cf. <<http://infao5501.ag5.mpi-sb.mpg.de:8080/topx/archive?link=Wikipedia-Lip6-2/21999.xml&style=>>.

⁵⁷ Cf., among others, by the author, *Transition to Rule of Law* On the Democratic Transformation in Hungary (Budapest: ELTE “Comparative Legal Cultures” Project 1995) 190 pp. [Philosophiae Iuris] and *Transition? To Rule of Law? Constitutionalism and Transitional Justice Challenged in Central & Eastern Europe* (Pomáz: Kráter 2008) 292 pp. [PoLiSz series 7].

⁵⁸ See, within the framework of the Rule of Law's diverse understandings as typified in their application to various transitions since the ending of the Second World War, by the author, ‘Rule of Law, or the Dilemma of an Ethos: Gardening versus Mechanisation’ in *Rule of Law Promotion* Global Perspectives, Local Applications, ed. Per Bergling, Jenny Ederlőf & Veronica L. Taylor (Uppsala: Iustus Förlag 2008), pp. 213–230 {abstracted in <<http://drcsabavarga.wordpress.com/2008/12/25/rule-of-law-or-the-dilemma-of-an-ethos-to-be-gardened-or-mechanicised-abstract/>> & <<http://www.sisza.hu/cepsr/27n/27n.thml>>} and ‘Coming to Terms with the Past under the Rule of Law: Principles and Constitutional Assessments (A Case-study of Hungary)’, [abstract] in <<http://blog.yam.com/lawliu/article/21324160>>.

attempts to link it to materialities. We have identified ancient dilemmas as existent in our current debates as well. We have found long abandoned patterns again. We have discovered the realisations of common recognitions in those potentialities and directions in law that we believed to have been conceptually marked off once and for all. However, we have found an invitation to elaborate what has revealed itself as ready-to-take. Behind the mask, and in the backstage, the demand for our own initiation, play, role-undertaking and human responsibility has presented itself. We have become subjects from objects, indispensable actors from mere addressees. And, we can be convinced that, despite having a variety of civilisational overcoats, the culture of law is still exclusively inherent in us who experience it day by day. We bear it and shape it. Everything conventional in it is conventionalised by us. It does not have any further existence or effect beyond this. And with its existence inherent in us, we cannot convey the responsibility to be borne for it to somebody else either. It is ours in its totality so much that it cannot be torn out of our days or acts. It will, thus, turn into what we guard it to become. Therefore, we must take care of it at all times since we are, in many ways, taking care of our own.”⁵⁹

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In outlines, these are the theoretical recognitions organised by LUKÁCS into a systematic exposition within which I can perceive the scientific foundations for the most timely topic of *LUKÁCS and the Issue of Human Emancipation*—in so far and as much as it can be reconstructed at all from the posthumously published pages of *Zur Ontologie des gesellschaftlichen Seins*, one of the most developed syntheses of his oeuvre, which we can take as a last and lasting message.

⁵⁹ Varga *Lectures...* [note 1 {first Hungarian ed. in 1996}], ch. 7, p. 219 [in a corrected version].

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"The fundamental theme of the *Ontology*, for Varga [...] is the contrast between the epistemological approach (condemned as simplistic and leading to unmediated antinomies) and the ontological approach [...]. On this basis, Varga elevated what is in effect a historical and sociological approach to law [...]. It has to be comparative [...]. It has to describe the actual workings, regularities and effects of the legal system and not its preferred or projected principles."

EUGENE KAMENKA (Canberra) in *Rechtstheorie* 18 (1987), p. 521

"Using the method and categories of the *Ontology*, Varga presents law as [...] a dynamic, contradictory and complex process, which must fulfill the social need for a set of abstract, all-encompassing norms and respond to specific concrete needs not readily reducible to an abstract system. Varga shows that to achieve this, all administration of the law must homogenize and manipulate the heterogeneous cases with which it deals in order to attain conformity with both the stated legal norms and the dominant social imperatives. Concretely, law is determined by the dialectic of the formal system of legal norms (which codifies prescriptions embodying social needs) and the concrete practice of the law as manifested in the behavior of the citizenry and the organized activities of the branches of the state responsible for promulgating and enforcing laws."

PAUL BROWNE (Ottawa) in *Science & Society* 51 (1987) 3, 382–383

„Der Prozeß, in dem sich Recht bildet, ist aber nicht in erster Linie von »Gesetzgebung« bestimmt; vielmehr von der praktischen Rechtsanwendung, die ihrerseits die Gesetzgebung beeinflußt. Nicht Normwahrheit vor Wirklichkeitsrichtigkeit, sondern Dauersuche nach Kompromissen zwischen Möglichkeit und Wirklichkeit – man könnte auch sagen: Freiheit und Ordnung – bestimmen die Entwicklung. Varga sieht genau, daß [...] auch im Bereich des Rechts [...] autopoietisches Verhalten notwendig wird. Recht wirkt nicht nur auf die materielle Basis zurück; es wird mit ihr identisch."

FRANK BENSELER (Paderborn) in *Zeitschrift für Rechtssoziologie* 8 (1987) 2, p. 303

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