

LAW'S RELATION TO POLITICS AND SOCIOLOGY

Author: Lucreția DOGARU*

Abstract: *A significant relation is established between law and the science of politics, the latter considered as a general theory of the political. This relation is centred on the concept of political power. Therefore we can state that there is a very relevant connection between law and kratology (the science of power).*

Keywords: *Politics, Sociology, Legal Science, Kratology.*

JEL Classification: *K 00*

1. Law's relation to political sciences¹

A significant relation is established between law and the science of politics, the latter considered as a general theory of the political. This relation is centred on the concept of political power. Therefore we can state that there is a very relevant connection between law and kratology (the science of power).

1.1. The relation between politics² and law

The relationships between the politics sciences and the legal ones are determined by the relation between politics and law. For a long time this relation followed the institutionalised vision, which, by supporting the tight bound between the political and the legal, led to what is known as “legal imperialism”, namely to the minimizing of the political in its relation to law. On the other hand, certain political practices, those specific to undemocratic, dictatorial and totalitarian regimes, have developed what we can called “political imperialism” which considers that the holders of the political power could be above law.

Indisputably, under a democratic regime, the presence of law is a must for the exercise of political power, in the sense of observing legal norms, both for the decision span (on the level of political decision) and for the process of applying the adopted legal decisions (the fulfilment of legal norms).

* Dr., Associate Professor, “Petru Maior” University of Târgu-Mureș, Romania.

¹ Politics can be defined as the whole of purposes promoted by certain groups, categories or local communities in an organized way, according to their interests, as well as all the means and methods for promoting and defending those interests.

² Details in Dumitru Lepădatu, *Politologie (The Science of Politics)*, Part I, Ed. Hyperion, XXI, București, 1993.

The process of making norms is preceded by intense political activities, by public political debates which often contribute to the clarifying of the legal options. Law also represents an efficient instrument of politics, as it often settles certain political problems, acknowledges or bans certain political institutions. Nevertheless the political and legal areas are not identical, as many political acts stay aside law. At the same time a certain controlling system for the way of performing the political is legally legitimized through law.

1.2. The relation between the science of politics and law

The science of politics is the general theory of the political. Through its specific concepts, methods and techniques, the science of politics interprets the political with its specific and particularities. The analysis through the science of politics resorts to the general sociological theory, to branches of sociology (political, mass-media, institutions sociology), as well as to the legal sciences, to the general theory of law, to the science of state.

The institutional and organizational perspective promoted by the science of politics in its discourse on the political considers also the normative character in the structure and the function of political institutions, namely it covers their content and legal form.

1.3. The relation between kratology and law

Defined as “the science of power”, kratology is closely related to the legal sciences from the cognitive point of view, and it considers the main concepts shared by both: power, authority, legitimacy, legality.

The discourse of kratology includes the conceptual and even the methodological acquisitions specific to legal sciences in approaching the phenomenon of political power.

1.4. The relation between the science of state and law

The science of state is a branch of the sociology of politics whose object of study is the fundamental institution of the political power – *the state*.

Considered as the form of “institutions”, the state has the key role in the functional structure and mechanisms of political power. For the last decades the state has become a central concept in the discourse of the science of politics, as well as in the sociological and legal discourse, especially because of its new meaning rendered by its relation to the “state of law” and to the civil society.

Therefore the science of state cannot base its analysis of the state related phenomena only by acquiring certain paradigms of the legal sciences as, what is more, the “institution of institutes” requires a multiple and interdisciplinary approach.

2. The Relation between law and sociology³

2.1. General Aspects

The relation between law and sociology is an issue with a relatively long history. Most thinkers who reflected on social life, on the relation between individuals and society, on the way of organising the society couldn't ignore the norms, codes and models of action and behaviour.

³ For a detailed study see Virgil Măgureanu, *Studii de sociologie politică (Studies of Political Sociology)*, Ed. Albatros, București, 1997, pp. 15-45, as well as Ovidiu Trăzna, *Probleme de sociologie politică (Problems of Political Sociology)*, București, 1975; about the juridical sociology see Sofia Popescu, *Legal Sociology (Sociologia juridică)* Ed. Lumina lex, București, 2001.

Ever since Antiquity, thinkers of the same value as *Aristotle* have had great contributions in defining man as a social entity vital to human being's existence. . In writings of a great cognitive, axiological and normative value such as *Michomahic Politics and Ethics*, Aristotle approached the problem of man and society starting from the premise that it is natural for the man to incorporate the sociality instinct. That is why he defined human being as “*zoon politikon*” (man of the citadel, citizen), namely the political being, able to express and distinguish himself only in a structural environment organised on the basis of principles, values and norms. It was Aristotle who defined the role of the state as a way of society organising and functioning, as well as the role of legal norms which are to regulate the relations between the members of the citadel. Politics is for him one of the most virtuous pursuits, as its final purpose is *the Good* (moral, social and political value) and in this respect he said “*The best of the Good*”, namely *the Public Good* or the general interest.

Later the followers of natural law and of the “social contract” (Grotius, Thomasius, J.J. Rousseau) marked not only the sociological thinking but also the legal one.

The theory of natural law, although mostly inspired from the Aristotelian thinking, constituted the sociological basis of law. Later on, one of the founders of modern sociology, *Emile Durkheim* defined “sociological facts” as things (external to the individual, coercive) and the legal norms were included in their category.

Also the German sociologist *Max Weber* tried to define the political in relation to a table of values and norms. Thus he talked about “the ethics of persuasions” and “the ethics of responsibilities”. The first belongs to the pure, abstract and profoundly individualized moral, while “the ethics of responsibilities” belongs to “the man with political vocation”.

2.2. *Legal Regulation – essential part of social regulation*

As a global science, sociology includes in its discourse *the social regulation*.

From this point of view the legal norms, law as such, belong to the area of sociology. In deciphering legal regulation through its integration in the social regulation, sociology has to resort to legal sciences whose discourse gives the specific and the particularities of law norms.

Another connective element between sociology and law is that the behaviour sociology, including that of the deviated behaviour considers the way members of society comply with legal values and norms as an integrated part of the social and human world.

Sociology studies the genesis of social and legal norms as well; it relates law's values to the general social values. It is interested by the way in which the actual needs and requirements of society impose legal norms according to regulating imperatives.

The sociological discourse cannot ignore the legal discourse and, the same way, the analysis and the deciphering of legal norms cannot be complete unless considering the sociological significances. Actually it is not accidental that an important position among the branches of sociology is held by the *legal sociology*, a special sociological science that analyses legal phenomena under their social aspect.

2.3. *Legal sociology⁴ and law*

⁴ For details about the object and characteristics of legal sociology see Juan Arnaud, in *Critique de la raison juridique. Ou va la sociologie du chit*, Paris, Librairie generale de Droit et de Jurisprudence, 1981, as well as Jean Carbonnier in *Sociologie juridique*, Paris, Presses Universitaires de France, 1978

As it is well known, the object of sociology is represented by the study of human communities and inter-human relationships within these communities, as well as human behaviour within the social frame of human groups and communities.

From this point of view, the legal sociology has as object of study the human, individual, group and social values, norms and behaviour in specific and direct relation to law.

Among the gnosiological and pragmatic *objectives of legal sociology* we can mention:

- the analysis and the description of social genesis of law norms, of their branch and position in the social life;
- the sociological content and the legal character of law norms;
- the analysis of human, social and individual behaviour in the light of law;
- the way social institutions are regulated by adequate, functional and efficient legal norms;
- the critical analysis of performing law norms in society.

A particular importance for the legal sociology is represented by the analysis of institutions and legal systems, of its integration in the society, of the relations with the citizens. The sociology of the institutions incorporates the legal structures as social institutions.

The legal axiology (the theory of legal values) and the legal culture represent in turn other important issues approached by the legal sociology

The phenomenon of power generated by legal norms represents another chapter of legal sociology. This is accomplished by institutionalization and by legal norms, the only ones conferring legitimacy and authority to the power.