

THE BACKSLIDING OF THE RULE OF LAW – A SOCIAL PERSPECTIVE

As with all living things, legal principles are neither ready-made nor instantly created. Being part of civilization, they grow and mature through decades and centuries of tradition and evolution, as part and parcel of the social process which, operating in a human context, has its advances as well as its set-backs. The concept of the Rule of Law is no exception. Related fundamentally to the prevalence of the might of the law as opposed to the law of might, its success lies not so much in its recognition as in its operation. Its effectiveness in any given society is thus the measure of its status, and, as to this, history, as ever, is the wisest counsel of instruction.

In Europe today, we pride ourselves of having reached a very high standard of the Rule of Law, achieved through the promotion within the European Union of those fundamental values which constitute the essence of European civilization and which the Rule of Law aims at protecting. We must not, however, forget that this is largely due to the parallel establishment of peace, a peace for the first time enjoyed by the peoples of Europe for three quarters of a century. War, founded on force and leading to the imposition of the stronger, is the utter negation of law and its rule. Even so, war has many faces. From ancient times Plato demonstrated that social dissension effectively renders a city at war within itself, a war far more dangerous than that with an external enemy because it is bound to lead to its collapse. In Solon's days, Athens was in this state of internal war due to extreme social and political inequality and injustice, for there lie the causes of every crisis in the Rule of Law. One aspect of this condition is the antagonism that results among competing sectional and other interests, leading to their pursuance without regard to due processes. Another aspect is the consequent disrespect for the laws as expressed in widespread criminality, to which must be added the contemporary form of terrorism. Still another aspect is the abuse and exploitation of positions of power, leading to loss of confidence in the law and its institutions. And we must always remember that a constant correlative of the Rule of Law is *ενομιία*, that is, the quality and respect of the laws themselves as good laws, for the ultimate force of the laws lies not in their sanctions but in their justice and observance.

All societies in European countries today are more or less in such a state. Plato, again, warned that extreme wealth and extreme poverty are the greatest dangers for society. Wealth and poverty may be relative terms and we may be past the times of the extremities of poverty that once was, but, nevertheless, today the gap between the rich and the poor is such that there is no effective equilibrium. This is largely due to the ever-increasing measures of modern economic units and the concentration of economic power. Most peoples' share of participation in this source of wealth is limited to the employment aspect, whereas their prospects of investing in it is severely hampered by the loss of confidence in the soundness and stability of the entire economic market system. The free market system, which forms an essential part of the European Union platform, must be restored to its human proportions if it is to secure the individual's more general involvement and share in the production and distribution of wealth. This is why Aristotle advocated the promotion of a large middle class as the certain guarantee of social stability

and respect for the laws. Such a class, being concerned as much with the improvement of its state as with its maintainance, has a vested interest in social and legal peace and thus constitutes a strong substratum in the cause of the Rule of Law. We are, of course, past the days of such radical social reforms as Lycourgos' redistribution of land in Sparta and Solon's abolition of debts in Athens, but the laws cannot but constantly be conditioned in terms of their ultimate subject – the individual. It is his interests and position in society that must be the object of the law and its justification, and this presupposes the measure of substantive equality which is at the root of free society. Not so much, therefore, social welfare laws, as laws to promote the individual as **the** social and economic unit of the commonwealth should be the aim. The concentration of economic power in large and impersonal concerns is as inimical to financial freedom as it is to social equality and personal welfare. President Harry Truman expressed the idea when he said that one thousand townships of 7.000 citizens each are a thousand times better than one city of 7.000.000, pointing out that unemployment, social strife, criminality, indeed social problems generally, are the result of the concentration of production, wealth and population. Unless, therefore, these causes of society's illness, which carries with it a crisis in the social dimension of the Rule of Law, are recognised and removed by being broken down to human dimensions, no relieving medicines can be effective in its cure.

A contemporary feature of social strife is to be found in the movement of populations. The principle of free movement of persons of the European Union has enabled such movement, as has the interaction between European countries and their former colonies, and, more recently, the immigration trends mostly from the Near and Middle East and from Africa. The result has been a reshaping of societal images, carrying with it surges of nationalistic phobia and prejudice and leading to a crisis of traditional fundamental values and to consequent conflict. Forgetting the inscription of the Statue of Liberty and that the greatness and strength of America was the result of the massive influx and mixing of a multitude of races, the European Union seems unable to rise to the occasion and face the crisis with a single voice and by reference to its own principles. The consequence may well be a loss of faith in the identity of the Union itself and a move toward disintegration rather than further integration. The European Union may, of course, be paying the price for its fast expansion at the expense of homogenous absorption, but, granted the expansion, it owes a duty to itself to respond to this challenge to its own premises and find ways of reconciling the resolution of a humanitarian matter with its own effective operation.

Criminality there always was and always will be, as an aspect of the weakness of human nature. Nevertheless, it amounts a challenge to the Rule of Law when it becomes so extensive and uncontrollable as to render the law effectively impotent. Europe may not be in such a state, as happens in many other countries, but it does face a situation of increased tendency towards criminality, mostly in the area of financial gain and particularly through organized crime under the guise of legality. It is in this direction that the defences of the Rule of Law must be turned, proceeding on the parallel roads of, on the one hand improving social conditions through the elevation of educational and welfare standards, and, on the other hand, relentlessly fighting organized crime with utter determination and vigour. This applies also to that ultimate form of criminality, terrorism,

which is the entire denial not only of law but of humanity itself. Terrorism has itself chosen to set Europe at war with it, and Europe will never be safe from this mortal threat without total commitment to its destruction.

A constant and grave threat to the Rule of Law is corruption. It is no use having the best laws if the laws are not effective against those very persons that are entrusted with their administration. Corruption in public places has always been one of the features of the state in whatever form of government, and modern democracy is no exception. Aristotle defined the three essentials for the holders of public office as capacity for the work involved, goodwill towards the laws, and virtue, virtue being, one might well say, the most important. Alas, the weaknesses that govern human nature, greed and selfishness among them, do pass by those in public positions, and we are far from the Athenian curator who, upon leaving office, left in the treasury twice the amount of money that he found upon assuming his duties. Rather, the prospect of profit being more easily available and in larger measures in the public sphere, particularly in the conditions of the size and complexity of the operation of the modern state, abuse and corruption are often to be seen and often concealed. It is to this serious leak in the Rule of Law that efforts should be concentrated if confidence in our democratic system is to be restored and maintained, otherwise Anacharsis will always be right in pointing out to Solon that his laws, though excellent, were like a net which could hold light things falling but not heavy ones. Constant vigilance in the form of stringent checks is, therefore, required as to securing the integrity of public officers, for their corruption involves not only the financial aspect but, more important, the moral aspect which relates to public trust in the commonwealth itself.

The Rule of Law does not operate in abstractum. Being the foundation of law-abiding society, its success is relative to the level of civilization of any given society in which it professes to operate. In Europe we are most fortunate in being the heirs of its venerable tradition, going back to Ancient Greece where even the gods were under the law, as testified by Ares' trial for murder before the court summoned at the hill which has since then given its name to the highest court in Greece to the present day – Areios Pagos. But the stronger the tradition the greater the responsibility. Europe's self-respect is to be shown in its ability to maintain the respect for those values that constitute its civilization.