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INTRODUCTORY REMARKS TO THE STUDY OF THE THEORY OF LAW IN MICHAEL POLANYI'S THOUGHT

In a letter written on 15 August, 1968, to Carl J. Friedrich, Polanyi wrote these revealing words on the role the law had played in the formation of his theory of knowledge: "You will see that I maintain that the law was rightly conceived and correctly applied. I say this by appealing to the principle that 'hard cases make bad law'. I think this illustrates the difference between justice and law which you insist upon. The injunction of juries to disregard conceivable doubts but to accept any reasonable doubts, contains in nut-shell the whole program of 'Personal Knowledge'"¹.

I think such a statement rightly evokes our attention to Polanyi's conception of law. Those who are intimate with the whole of Polanyi's oeuvre know well that his interests spread out over a wide range of sciences, and fragments and elements of a theory of law almost unexpectedly appear in various places in his books and essays. Yet, it is also well-known that he had never published any paper solely devoted to this issue. The reasons for this will be discussed later; here it suffices to mention that a reconstructive re-interpretation of Polanyi's conception of law based on fragments of papers, notes, and letters, which I had the opportunity to study in the Regenstein Library in the University of Chicago, has to provoke some shift in the interpretation both of his social theory and theory of knowledge and can contribute to a better understanding of them. This is a major task to be undertaken in the future; in this paper I can present only some preliminary settings of the problem. (It may be recalled that Carl J. Friedrich, to whom Polanyi addressed the letter cited above, had already embarked upon this task in an essay published in "Intellect and Hope"².)

As a starting point, I address the question why Polanyi introduced the issue of law into his intellectual orientation at the turn of 1940s.

¹ Letter to C.C. Friedrich, 15th August 1967. *Michel Polanyi Papers, Special Collections, J. Regenstein Library, University of Chicago, Box 7, Folder 3.* (Henceforth manuscripts are referred by the abbreviations B. and F.)

² S. Friedrich, C.J., *Man the Measure: Personal Knowledge and the Quest for Natural Law*; in: *Intellect and Hope* (Ed. by Langford, Th.A. and Poteat, W.H.), Duke University Press, Durham, 1968, pp. 91-110.

In the second half of the 1930s, Polanyi repeatedly analyzed the reality of economics in the Soviet Union in order to be able to identify the very essence of a planned economy. To accomplish this goal, he seemingly felt it to be necessary not to confine himself to economics but also to work on philosophical concepts. Some fragmentary manuscripts on faith, truth and reason drafted³ in 1937 can be considered merely traces of this undertaking. "The Contempt of Freedom" also provides us with a little evidence of his philosophical endeavour. It established a transitory completion of his efforts to launch criticism of a planned economy and of science and, thereby, to defend independent science and a free society. As Polanyi argues in the Preface to "The Contempt of Freedom," a historical period was over when the war broke out, and he assigned only historical significance to his published writings. But he also recognized new possibilities for the struggle for the unification of the cause of liberty with social progress. When Polanyi emphatically declares, in connection with liberty, that its future fighters "must now give it all their hearts and gifted minds, to make it again a conquering faith"⁴, this invitation, then, is addressed first of all to himself.

Conversely, he developed further, at this time, the main ideas that resulted in a book-plan entitled "The Struggle of Man in Society". Although his book remained in manuscript form, the sketch of seven chapters packed with a wide range of examples and arguments provides us with insight into his determined efforts to set up a conceptual framework more appropriate than the one arrived at in "The Contempt of Freedom"⁵. It might be said that while its essays presented us with a rather "negative" critique of planning and of totalitarian society, "The Struggle of Man in Society" offered fitting evidence for the mastery of liberalism over totalitarianism. The manuscript involved proves that Polanyi managed to develop concepts by the help of which he could elaborate the particular, all-encompassing principles of social integration for a free society which convergently guarantee both order and freedom.

Such an undertaking cannot be carried out, unless one goes beyond the scope of economics. Polanyi was aware of this. Consequently, he situated the problem on the more abstract level of the theory of action. In his quest for an ordering principle suitable for a free society, he had already experimented with the concept of the proverbial "invisible hand" of A. Smith⁶ in 1938. Polanyi's entertaining this notion showed him that the "invisible hand" could bring about the gratification of material needs in accord with the common good in at least the domain of economics. Undoubtedly, the Smithian concept served Polanyi as a pattern that can be transposed to other spheres of society. Yet he was also aware that this pattern might not be applicable beyond economics without incurring some modifications.

³ B. 25, F. 11.

⁴ Polanyi, M., *The Contempt of Freedom. The Russian Experiment and After*. Arno Press. New York, 1975 (First edition: 1940), p. vi.

⁵ B. 26, F. 2.

⁶ "It has forceably stated..." B. 26, F. 1, p. 3.

Furthermore, the market *per se* and alone had never able in history to resolve the problem of social integration. Once he realized this, Polanyi had to devise a concept which would be more general in its validity and apply not only to economics but to the whole of society.

I suppose that such considerations made Polanyi introduce the concept of growth in "The Struggle of Man in Society" at the turn of 40s. Polanyi defines growth as an occurrence through which a very large number of changes take place, each of which is due to the action of an individual, and is profitable to this individual, and the aggregate of these distinct actions of individuals offer the opportunity to the community to improve. To growth Polanyi contrasts the construction (i.e., town-planning) that needs an organiser who necessarily steps in. It seems that Polanyi was bent on identifying growth with the organising principle of a free society, while identifying construction with totalitarianism. But this thesis is not clearly developed, since Polanyi realized that the authority he attached to construction appears within growth, too. This is unavoidable, since the problem is attacked on the level of the general theory of action. That is why Polanyi ushered in two subsidiary concepts, sectionalism and competitive leadership. In the realm of growth, individuals are grouped in various sections within the space of which each is treated as a professional without regard to the rest of his life. However, Polanyi asserts that in every section there appear "influentials", "leaders", i.e., competent authorities, to which the individuals joining the section are to submit. The crucial point of the whole machinery (that must not be omitted) is that the leaders within (and between, of course) a given section permanently rival each other. This is the **competitive leadership** that prevents a free society from the "immediate domination of totalitarianism"⁷.

At this stage, we have to isolate two important elements of Polanyi's argument. The first is the assumption that each section "sets its standards"⁸, and there are "moral obligations" to which the competing actors have to conform. Thus there are two kinds of norm that are hierarchically settled. On the top of the sectional system there are moral standards and moral obligations. On a lower level there are "professional" standards set up by the actors themselves. These two kinds of standards are antecedents of two revealing concepts, "guiding ideas" and "professional standards", which appear later in Polanyi's thought.

The second important element is Polanyi's statement that "the system good is not institutionally represented"⁹. The message is clear, If the competing leaders and the whole system were not able to attain **unintentionally** the public good without intervention of an institutionalized central authority, the totalitarian claim to represent the supreme good of society better than could the liberal, would be true.

⁷ B.26, F. 2, p.48.

⁸ *Ibid.*, p.45.

⁹ *Ibid.*, p.45..

We face here the emergence of the "normativity" problem in Polanyi's thought. Sooner or later Polanyi **conceptually** had to take into consideration the field in which individuals were **really** relating to standards and moral obligations. Indeed, Polanyi set out to analyze, already in the middle of 1941, human behavior regarding standards, rules, maxims and guiding principles. He bequeathed to us several attempts made in May and June to clarify the very essence of law and the role it played in the making of society.

To make more comprehensible the content of these fragments, I would refer back to a passage in "The Contempt of Freedom", for it embryonically implies the three aspects of law that Polanyi later elaborated. These aspects can serve as guiding lines to our interpretation.

"There are two alternative methods ordering human affairs: Planning and Supervision... In an ordered Society every activity which affects the community is either subordinated to an authoritative scheme, or is, on the contrary, stimulated to individual manifestations under the protection of public supervision. As long as certain guiding principles - of truth, of justice, of religious faith, of decency and equity - are being cultivated, and as long as commerce is protected, the sphere of supervision will predominate and planning will be limited to isolated patches and streaks. Conversely, if comprehensive planning were to prevail, this would imply the abolition of both the cultivation of guiding principles and the pursuit of commerce, with all liberties inherent in these forms of life"¹⁰.

In these sentences we can see the formation of Polanyi's basic tenet about the intrinsic correlation between science and other sphere of thought. In any free society each sphere is controlled by a guiding principle, and though they are distinct in substance, all function in the same manner, since through their cultivation by individuals the order of the sphere is ensured. The function of any guiding idea is the same: to structure and order the human activity under the principle aimed at by the individuals. This brings about the structural and functioned kinship between science and law.

Another passage reveals two other aspects of Polanyi's concern with law. He says: "When, for example, legal justice is administered, the state provides the machinery of police, of the courts and prisons, and also sanctions legal procedure and lays down the law to be applied; but it rigorously guards the decision of the courts from public inference. The courts are sole masters of their conscience and interpretations under the law which they are required to apply, and as they make their decisions, these are instantly added as amplifications, valid throughout the land, to the law which they have just been devised"¹¹.

Polanyi is here circumscribing the scope of the machinery proper to the law (in terms of both amplifying the valid law and making new law). The reference to the conscience of the

¹⁰ Polanyi, M., *The Contempt of Freedom*. *Ibid.* edition, p.39.

¹¹ *Ibid.*, pp. 37-38.

judges emphasizes the latter's relation to moral standards which they are bound to respect. This implies that judicial procedure has a substantial element in common with scientific discovery, which I will soon discuss.

The third aspect of our interpretation is Polanyi's hint that the State, which provides the warrant for law-making and prevents the public from intervening with the the court's decision-making, situates the law within the social context.

In this paper I intend to deal only with the first two aspects, and only mention that the third interpretative dimension comprises Polanyi's sharp attack on the Marxist theory of law (which might well be the subject of an other essay).

Let us turn back to the manuscripts touching on law of May and June of 1941. Polanyi had hitherto paid little attention to the law. In the book-plan mentioned above ("The Struggle of Man in Society") there was no trace of it. However, more than a year later, manuscripts conceived in the middle of 1941 bear witness to Polanyi's mastery of several "classic" works of English jurisprudence, namely, those of H.S. Maine, Dicey, Tanney, Hobbes, Bentham and countless others. Polanyi deeply comprehended the themes, concepts and theories of law, and the manuscripts testify to his creative power in integrating them within the framework of his own emerging social theory. Let us take a look at it.

I argued above that Polanyi had striven to uncover certain guiding principles, effective both in nature and society, which would make free society ordered. We have seen how much effort he made in "The Struggle of Man in Society" to grasp one of these principles in the concept of **growth**. We have also seen that he had begun to perceive some kinship between law and science in the "Contempt of Freedom". I am convinced that this conjectured kinship between science and law drove him to analyse the very substance of the law. However, the manuscript presents us with no account of law regarding this essential kinship. The reason might be that at that time Polanyi had not yet taken the concept of order from Köhler. This must have occurred sometime between June and October or so, for the distinction of two kinds of order in Köhler's fashion appears first in a lecture plan drafted on 7 October¹². In this piece, growth and construction are first replaced by corporate and dynamic order. This is a turning point in Polanyi's intellectual advancement, since he had been preserving the two kinds of order throughout the 50s up to "The Logic of Liberty". Though they were substituted in "Personal Knowledge" for a new distinction made between the administration of civic and of individual culture, Polányi had never abandoned the use of the concept of dynamic order to describe the actual function of the administration of individual culture, i.e. in "Personal Knowledge".

Mutual adjustment as the real functioning of dynamic order and of corporate order is the concept that Polanyi had been thirsting for and wrestling with since the middle of the 30s.

^{12/} *The Liberal Conception of Freedom*. B.26, F.8.

We have already seen his laborious experimentation with growth and construction. Thus we can imagine how much his coming across these concepts must have caused him intellectual relief, an event comparable to the experience Montesquieu reported to us in the preface of "L'esprit des lois". Montesquieu said he had repeatedly lost his willingness to continue his work up to the instant when he suddenly hit upon his guiding ideas (remember: Polanyi also uses this term) and, from then on, the whole of his subject-matter, previously chaotic, became settled, and every piece of thought found its proper place in the space of his theory. It must have happened similarly to Polanyi, sometime between June and October of 1941. Let us listen to the words of his joyous experience of the discovery of his own "guiding ideas".

He maintains henceforth "that the proper field of dynamic order is vast, and that this order has to play a dominant part in society", and that "freedom must be upheld for the sake of maintaining this pervading dominant medium of dynamic order in society"¹³. Thus, the finally-devised notion of dynamic order highlights the structural and functional kinship between law and science. To demonstrate this, I quote a rather lengthy passage from the manuscript:

"The whole development of literature, art and science, of custom and law, in fact the entire progress of our cultural heritage is achieved by a co-operation based on the mutual adjustment of the participants. Take the administration of law and consider the individual judge sitting in court and deciding a case. While pondering his decision, he refers consciously to dozens of precedents and unconsciously to many more. Innumerable other judges have sat before him and decided according to law, precedent, equity and convenience, as he will have to decide now himself. He has to establish lines of communication between himself and those judges of the past, in order to discover how they would have considered the various aspect of the case now before him. And beyond that he will sense the social medium as a whole, the entire contemporary trend of opinions and values. Not until he will have established all these bearings of his case, will his decision be mature; not until he will have faithfully submitted to their directives, will his decision be the right one. The tide of influence starts flowing backwards.

"Then as soon as he has taken his decision, it joins the galaxy of precedent, forming a new particle of law and custom, which affects to some slight extent the interpretation of all past law and custom on which it is based.

"Thus all judges sitting in court throughout the times take part in the same dynamic order of the administration of justice, by which is accomplished the development of law and custom.

"In the evolution of science we see every single scientist faced with the result and opinions of all other scientists, dead and living; as summed up in recent work, in current publications

^{13/} *Ibid.*, pp. 7, 8.

^{14/} *Ibid.*, pp. 5-6.

and discussions. The scientist differs from the judge in that he is not given his case to decide, but has to select his own problem for investigation"¹⁴.

These are very important statements that I will be applying in the interpretation; here it suffices to emphasize the key concept of dynamic order that sets up the intrinsic kinship between science and law. This revealed kinship arguably led Polanyi to investigate the law. I think he had hoped to discover, besides science, another field which operates on the same working principle, and which could serve as a novel argument for claiming the independence of science. This can be accounted for by another part of the text: "Each intellectual and moral dynamic system has its own ideals which it is its task to cultivate. All the decisions in court, extending over centuries, form a joint system of law because they are all guided by similar ideas of justice, reason and humanity; all the scientific statements of discoveries through the centuries form a system of science, because they have all been guided by similar ideas of scientific truth"¹⁵.

The structural and functional kinship for which I am arguing can be elucidated clearly enough by these sentences. Both law and science have their own guiding ideas (law: justice, reason, humanity; science: truth) which are immanently working on the same line, i.e., through "an indefinite number of independent individual initiatives ... These numerous individual creative acts can form an ordered whole only by virtue of the fact that they are based on common concepts, common standards of what is right and wrong, true or untrue"¹⁶. Thus Polanyi is trying to provide good evidence that mutual adjustment as the actual function of dynamic order must make its way throughout the whole of a free society and that all major domains of social existence must be imbued by the spirit of mutual adjustment.

I consider all this to be the undeniable and substantial tenet of the "message" of Polanyi's social theory. I am laying stress upon it all the more, since B. de Jouvenel, in his essay published in "The Logic of Personal Knowledge", took the liberty to assume that the ordering principle of the Republic of Science, i.e., the mutual adjustment of scientists with respect to their moral obligation to be faithful to truth, stood opposed to the rest of society, i.e., civil society. Accordingly, de Jouvenel claimed against Polanyi himself, that civil society operated on a principle which runs diametrically to that of the Republic of Science, since the former seeks to persist at any rate beyond good and bad. Therefore, he reproaches

^{15/} *Ibid.*, p. 13.

^{16/} *Ibid.*, p. 13.

^{17/} S. Jouvenel, B. de, "The Republic of Science"; in: *The Logic of Personal Knowledge. Essays presented to Michael Polanyi on his Seventieth Birthday. The Free Press. Glenco, 1961, pp. 141-141. After having presented this paper at the Polanyi Conference held in August last year in Budapest, I was given the book of Richard Allen, whose position on this issue is close to that of de Jouvenel. Allen, R. Polanyi. The Claridge Press, London 1990, pp. 74-75.*

Polanyi for having expanded the model valid uniquely in science to the field of economics, law, etc.¹⁷

I cannot agree with this interpretation. It seems to me that B. de Jouvenel read the text of the conviviality chapter of "Personal Knowledge" in a somewhat superficial way, and missed Polanyi's insistence on the fact that the institutions of civil society (group loyalty, property) rely "ultimately on coefficients that are essentially at variance with the universal intent of intellectual and moral standards", and "moral rules are therefore an instrument of civic power in the hands of those who administer moral culture, and morality is allied to custom and law. Men form society to the extent to which their lives are ordered by the same morality, custom and law, which jointly constitute the mores of their society". Moreover, "to happy people its civic culture is its civic home", which means a really existing "intertwining of civic exigencies with the ideals of morality". Thus, on the one hand, Polanyi is asserting that moral standards are rendered valid in the various fields of civil society. On the other hand, he is fully aware of the fact that the "final" principles of civic institutions are not universal, unlike those of science, since they comprise particular aims of individuals for property and group loyalty which can be distorted (say, for "unhappy" people) into the submission of thought "to local patriotism, economic interest"¹⁸. One can say that Polanyi senses the dangers to be more extensive than does B. de Jouvenel, since Polanyi sees the possible distortion not only in the permanent endeavour to persist by and within civil society, but in the realm of the economy, too. In spite of this, he wants moral standards, as "ought-to-be", to be put in effect in civil society which can be reality even in the case of "happy people".

We have highlighted this point in Polanyi's teaching in connection with law, for East European societies are nowadays wrestling with the problem of the rudimentary state of civil society, which problem it owes to the missing moral standard. Generations have grown up with the attitude which scorned any sound moral claim by maintaining that moral considerations are but a cloak for concealed material interests. (The fact that the party and its ideologists proclaimed moral rules derived from the interest of the "international working class", or else, that there were Marxist theorists, like G. Lukács and A. Heller, who set out to elaborate a Marxist ethics, did not alter this comprehensive attitude of contempt for the moral.) This weak moral basis of civil society is the main reason for the new democratic institutions in Eastern Europe putting up a poor show.

In my interpretation, I have proceeded so far by keeping in mind the mature form of Polanyi's thought as discerned mostly in "Personal Knowledge". I assume, as a methodological principle, that concepts conceived earlier in time, as germs of thought, can be more easily comprehended and explained when the interpreter already knows their richer forms with all their bearings and orientations. This holds for Polanyi's theory of law, but *cum grano salis*. If we look for the reason, we can resolve the riddle by comparing the manuscript version with the published one. After a thorough study of the manuscripts, I got

^{18/} Polanyi, M. *Personal Knowledge*. University of Chicago Press. Chicago 1962, pp. 215-216.

^{19/} *The Law*. B.33, F.2.

the impression that Polanyi had expressed his ideas in print more concisely than they were formulated in the manuscript. For instance, the paragraph I am about to quote is but a shrunken summing up of a large chapter entitled "the law"¹⁹, which amounts to about 14,000 words that were destined to be an integral part of a book that Polanyi planned to complete in 1942.²⁰ It is very interesting and, perhaps, presents us with evidence of the significance that Polanyi ascribed to law, that when Polanyi began to work on the planned book entitled "The Structure of Freedom", he started with the chapter on law.

Thus we have to modify the methodological thesis set forth above, in light of Polanyi's concise stylistic manner in his manuscripts, with the thought of the French Historian F. Braudel, that not only the present explains the past, but the past also explains the present.²¹ Therefore, it might be said that without taking into account Polanyi's theory of law as exhibited in his manuscripts, one can hardly attain complete understanding of his references to law in "Personal Knowledge" and other places in his oeuvre.

To illustrate this, I take a long passage from "Personal Knowledge" and then present an extract of the chapter on law from "The Structure of Freedom". By doing so I am turning to the second aspect of this interpretation.

"The constitution of a free society expresses its acknowledgement of these passions and standards" (i. e., intellectual passions and standards.) "Its government bows in advance to the moral consensus freely arrived at by its citizens, not because they so decide, but because they are deemed competent to decide rightly, as the authentic spokesmen of the social conscience. I know that it runs counter to current legal positivism, which refuses to qualify in any way the ultimate authority of the 'basic norm'" (Polanyi here refers to Kelsen's "pure theory of law") "of a given legal structure. Let me add therefore, that reforms of law are in fact merely components of social reform. The laying down of new coercive rules proceeds within a medium of voluntary informal changes: changes in manners of intercourse, in family customs, in moral rules. Moreover, the law itself is being changed informally through new judicial interrelations; great new institutions are founded privately and the whole network of existing contractual relations renewed voluntarily, in a thousand ways... There can be no doubt that these broader changes of civic culture, which form the dominant matrix of legislative reform, are determined by a process of thought guided by its own standards and prompted by its own passions."²²

Do not disregard the important fact that Polanyi is here speaking not about routine law-findings but about those which bring about legislative reform uniquely characteristic to Anglo-Saxon common law. Considering this we can discriminate three arguments which bear on the intrinsic kinship between law-finding and scientific discovery, and then cite parts of some manuscripts which throw more light on the text of "Personal Knowledge".

^{20/} *The Structure of Freedom*. B.27, F. 5,6,7,8.

^{21/} Braudel, F., *Écrits sur l'histoire*, Gallimar., Paris, 1964.

^{22/} Polanyi, M. *Personal Knowledge*, p. 223.

Firstly, Polanyi emphasizes the existence of a "basic norm", which consists in his assumption of a moral consensus freely arrived at by citizens enabling judges to decide rightly. This moral consensus underlying the legal procedure provides the *sine qua non* for the right law. It takes place by constituting the law itself through "new judicial interpretations" of precedent cases. Under the subtitle "tradition" he goes on to clarify this crucial point: "Common Law is founded on precedent. In deciding a case today courts will follow the example of other courts which have decided similar cases in the past, for in these actions they see embodied the rules of law"²³. As the rule of law is embodied in the action and not in the interpretation of the judge himself involved, each successive judge is put in the same situation as the scientist who searches for a hidden reality. Both submit to "maxims", to leading ideas. In the manuscript of 1941, "The Liberal Conception of Freedom", Polanyi has already said that judicial decisions "are all guided by similar ideals of justice, reason and humanity"²⁴. Judge and scientist must both observe these guiding ideas within their practical activity.

There is another coinciding between scientific discovery and law-finding by a judge's observation of precedents. In looking for the proper case he enters into the machinery of a historical mutual adjustment. As "each scientist watches over an area comprising his own field" and by doing so forms "a whole network of lines",²⁵ so do the judges sitting in court, and assimilate all precedent decisions made by judges in the past.

The third point to be mentioned is the difference between judge and scientist that should not be neglected. Polanyi points out that the scientist "is not given his case to decide, but has to select his own problem for investigation."²⁶ Yet, this third distinctive element of activity of the scientist and judge also has a common feature, since the judge's inquiry into the real facts relevant to the law runs parallel to the scientist's experience and establishes the close connection between law-finding and discovery. Polanyi plausibly claims this in the following: "There must be some quite general principles in operation which guide the re-interpretation of positive law. In that respect science is the only parallel of law, since it enjoys an equal reputation for the inviolability and rigour of the rules which it establishes, and the revolutionary progress the doctrine of which is expressed by its rules."²⁷

I now turn to the chapter on "The Law" of "The Structure of Freedom", drafted between 26 February and 17 March in 1942, that provides the most detailed picture of Polanyi's theory of law. For my purposes in this paper, I concentrate only on one theme rich in theorems and analyses of the various aspects of law. This is the structured relationship between "leading ideas", "standards" of any kind in any domain of thought, about which Polanyi had little concern in "Personal Knowledge" beyond establishing the actor's observation of these standards or ideas. He did not discriminate the mediating levels between actors and ideas. Yet, in the manuscript involved, he does this, and, at the same time, presents us with a

23. *Ibid.*, p. 54.

24. *The Liberal Conception of Freedom*. B.26, F.8, p.13.

25. Polanyi, M., *Personal Knowledge*. p. 217.

26. *The Liberal Conception of Freedom*. B.26, F.8, p.6.

27. *Science as a procedure of objective enquiry*. 16th November, 1943. B.39, F.12, p.3.

comparison between law and science with regard to their structural and functional similarities.

Polanyi argues that there exists a pyramid of law, the two uppermost levels of which are the principle of equity and the general maxims of Natural Law. "The former in itself is a mere instinct towards regularization... Combined, however, with certain just and fruitful ideas about proper human relationships, the instinct of regularization attains the rank of leading ideal of humanity... The legal maxims on which equity rests, such as *pacta sunt servanda*, *suum cuique reddere*, *volenti non fit iniuria*, *caveat emptor*, and the like, would never have been formulated but for the desire of lawyers to discover some guidance in their search for an equitable system... Again these legal maxims hang together with similar rules in quite different fields... Each of them evokes a whole group of ethical and practical rules of a kindred nature.

"Below the level of Natural Law we find the major titles of the positive law as embodied in modern codes and books of law. Here are the various classes of properties and contracts. To each apply certain principles of law which comprise a large number of more specific rules situated logically at a level below them.

"At each of these levels referred to... systematic thought can move horizontally: working out distinctions and correlations so as to create a maximum of systematic order, guided by more general principles from above, and conditioned by the set of more concrete problems defined below. Again, none of these levels can exist in itself or reveal its significance in isolation from the others, yet it is essential to keep them distinct as medium of legal thought proceeding at various degrees of generalisation".²⁸

This lengthy passage is absolutely worthwhile to take into consideration, if we want to understand better the paragraph in the chapter on conviviality in "Personal Knowledge", where Polanyi briefly refers to the Kelsenian "basic norm" as "ultimate authority". Beyond the concise description the relationship that exists between reformist law-finding and moral consensus freely arrived at by the citizens, the law in a broader sense as embedded in its social context makes its appearance in pyramid form. And on all its levels organised hierarchically several kinds of norms are in operation, while each particle of them taking effect are imbued with the leading ideas and maxims.

The two connecting paragraphs describe the similarity between law and science in their structure and function: "Natural Science is composed of similar levels as the legal system... The highest principle of science is the existence of uniformity in nature; a hypothesis expressing the expectation, that permanent order can be discovered. This corresponds to Equity in Law.

"Next below this principle are some widest surmises such as that of usefulness of organs and functions of a living being... And again one stage lower we have the largest specific scientific theorems such as the first and second law of thermodynamics... Each of these large generalisations has its numerous special divisions or specific forms on the next lower

^{28/} *The Law*. B.33, F.2, pp. 35, 36, 37.

^{29/} *Ibid.*, p. 37.

level; and so the pyramid broadens down further and further to the ultimate elements of observation and specific prediction".²⁹

Beyond this structural and functional kinship between law and science Polanyi went on to point out and analyze further parallels. He argues that the "family relationship between legal and scientific systems throws light on the foundation of legal validity", and he states that the claim to validity historically had gone through very similar periods. The successive validity claims in law were founded by customs, rationalistic rules (Natural Law), history, and sociology, to which correspond similar historical phases in the development of science. "We have here the three phases of jurisprudence, rationalism, historicism and sociology, reproduced as speculative science, positivism and pragmatism".³⁰

I could list many other places of "The Law" chapter of "The Structure of Freedom" left in manuscript in 1942, but I cannot do so in this paper. I only repeat my thesis mentioned above, that the study of the manuscripts on law surely contributes to the better understanding not only of the theory of law in itself, but also to the clarification of Polanyi's theory of knowledge and science.

Finally, some words about the reality of Polanyi's theory of law. It seems to me that, in the actual situation in Eastern Europe, the main lesson to be learned is Polanyi's tenet of considering the law as a system of ideas, like science, that can display a sound operation as if based on moral standards. Judges and lawyers should be aware of this fact, and what is more important is that the "legal consciousness" of citizens should be pervaded with this honest attitude even in the smallest business of everyday life. This lesson is to be insisted upon all the more, since in the teaching of the law the close connection between morality and law was obscured in the "socialist theory of law" in the recent decades of the history of Eastern European countries. In the last analysis the law was interpreted as being determined basically by the so-called "law politics," in its turn determined by the Party as having infallible knowledge of the "locomotor laws of history" and progress, and moral standards or Natural Law were proclaimed as derived from class interest or mere ideology. Though the independence of jurisprudence gained more and more acknowledgement in the administration of law in various domains and levels of the legal system in the period of "Spatsozialismus", this Marxist teaching became infiltrated into the mentality of lawyers and laymen and still manifests itself in the practical contempt of the rule of law.

That's why Polanyi's theory of law is still timely and deserves to be thoroughly studied.

^{30/} *Ibid.*, p. 40.