CHAPTER TWO

LAW, LANGUAGE, AND IDENTITY

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When we speak of identity, we usually mean affiliation to some community with which a person identifies himself. Identity is the quality of belonging to that community, and it is made evident through various markers. Among the latter, language holds a special place. Language is a means of making contact within the community and thereby becomes the basic way for the creation and maintenance of that community. In some cultures, the language has been raised to cult status and has become something far more important than just a means of communication. This holds true for traditional societies but also for modern ones. Just as an example we can cite the words used to designate a foreigner: such as “barbarian”, derived from the Greek word “βαρβάρος”, or the Slavic word “нémets” (“немец” < mute). They both refer to such a person’s inability to speak our language, which is looked upon as an inability to speak any language at all, for only our language is the real one. Thus, a foreigner is basically denied the status of an authentic human being. Hence, language becomes the criterion of belonging not only to a specific community, but also to humankind in general.

The fundamental, major values the culture is built upon are another basic marker of identity. These values create a shared way of thinking among the people belonging to a community. Values also serve as a basis for building certain social ties and norms, which provide a basis for the solidarity sustaining the community. Abiding by these norms is not only compulsory, but it represents an indivisible part of the quality of affiliation to a community of any kind (a community based on kinship, a tribal, local, national, or religious community). Identity is normative. It represents the sum of characteristics that indicate what someone is and define him as such. A definition1 is essentially a

1 The word “definition” (“определение”) is derived from “boundary” (“предел”) and means literally “setting a boundary”; it is an exact loan translation into Bulgarian
normative delimitation meant to show the essence of a phenomenon. The definition reveals the enduring characteristics of what is defined and sets it in a stable position. Thus, we find that every identity is normative or, in other words, conservative, inasmuch as it determines and shows the permanent and continuing state of the phenomenon. An identity that was not enduring and continuing at least for a while would be meaningless, inasmuch as something in a constant state of change could not be defined, not be identified. Obviously, due its constant mutation, such a thing would be losing its characteristics as soon as it got defined, and the definition would thus prove untimely.

Here we come to an essential trait of the normative in a civilisation or culture and their social structures. The normative function of culture is precisely what builds and preserves the community, while the function of development renews it and supplies it with a perspective towards the future. Law is an essential part of the normative sphere, of the system of normative regulation of a society. In the present study, we do not aim to clarify the character of law and its essential characteristics, but I would like to point out some aspects of them that need to be considered in order to achieve the tasks of the study.

Law arose as a sacral phenomenon inseparable from religion, and remained such for thousands of years. Further, on in this study I shall adduce some concrete evidence of this. Here I shall only point out that in our times law is highly, and intentionally, desacralised (at times needlessly so), yet retains some features of its previous condition. This is particularly evident in the theory of natural law, which is so close to the divine law. We can discover such elements of past sacrality in many features of law activity (meaning both justice and various forms of jurisdiction and legislation or creation of law in general), which is highly ritualised and emotionally charged. Thus, law proves to be linked to the faith of people, to their gods; hence, it appears as one of the chief values of society. It is a value in itself, a good, and is obeyed precisely because it is a good. In saying this, I do not deny the importance of repressive penalties as a preventive motive against eventual infraction of the law: compared with other normative systems, repression is most evident in law. Morals and other such norms also have at

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of the Latin word “definitio” (directly adopted into English); thus the essence of a thing is made evident by distinguishing it from similar things and phenomena.

2 Cf. a book specially dealing with these issues by the late N. Nenovsky, Law and Values (Nenovski, Pravo i tsennosti, Sofia, 1983), p. 91 ff; and esp. p. 100 ff.