ON THE IDEA OF LEGISLATION

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In continental European writing much attention has been devoted to the legislative power, its scope and varieties, its distribution between the highest governmental organs and the forms in which it is exercised. Comparatively little, however, has been written about what a law is and what legislation really means. In so far as the question of the meaning of legislation has been treated at all in modern jurisprudence, the discussion has mainly concerned the tenability of the idea of the binding force of laws and of the ideological concepts used by the legislator, such as rights and duties, ownership, guilt, negligence, etc. It is not the aim of this study to make any new contributions to this discussion. It is concerned only to throw light on the concept of legislation and on the actual effect of legal enactments; on the other hand no critical analysis of customary ideological concepts will be undertaken.

It should be pointed out here that the term "law" or its equivalent "legal enactment" is used in this paper in a wide sense and covers all such general legal rules fixed in linguistic form as emanate from the highest governmental agencies.

1. *The ideas behind the method of legal enactments.* It is a precondition of an ordered community that the actions of people shall be controlled through influences exerted by various instruments. Among these instruments legislation occupies an important place. The legal system, however, also contains directives in other forms, such as judgments, administrative decisions, and contracts. Beyond the judicial sphere, moreover, there are many influence-exerting instruments which are as important as legislation; here we need only refer to education, home influences, and propaganda. The conduct of human beings is furthermore determined not only through deliberately exerted influence but also by norms less consciously developed and accepted, such as custom and morality.

In all civilized countries legislation is recognized as an indispensable method of controlling the conduct of citizens in order to ensure peace in the community and otherwise to promote the common good. To many, no doubt, the method does not always appear attractive, and the question can be discussed whether it is in general the best way of achieving a desired result. To the common man, who seldom comes in direct contact with the law, it may seem that in many cases it would be perfectly possible to get along well enough with time-honoured custom, common decency and propaganda based on convincing arguments. Experience has shown, however, that legislation cannot be avoided and that legal enactments are an essential part of the very framework of the social structure. It is another matter that the conduct of the citizens cannot be determined by legal enactments alone and that legislation must be supplemented by other forms of influence which are in part extra-legal.

We cannot clearly distinguish legislation from other methods of determining people's conduct unless we examine its underlying ideas. Its distinctive features appear most vividly if we compare legal enactments with customs on the one hand and individual commands on the other. A custom develops unconsciously and is regarded as a permanently enduring norm, whereas an individual command—issued, for example, by a military or civilian superior—is an instrument that is consciously used for bringing about a certain effect and is of significance only in the given situation. Legal enactments contain elements of both custom and command. However, at the same time they differ from each. A legal enactment, like a command, is a method for exercising deliberate influence and at the same time is regarded, like custom, as a persisting norm; on the other hand, unlike custom it has not developed unconsciously and it does not like a command lose its function when a concrete situation ceases to exist. These distinctive features receive ideological expression in the conception of the legal enactment being in existence or in force.

A study of the modes of expression used in legislative decisions gives clear indications of the ideology behind the method of legal enactments. A law is not a propaganda phrase which is thrown out for whatever effect it can produce. It is something very much more stable. A legal enactment comes into force at a certain time and remains in force until it is repealed. Between these dates the enactment is deemed to exist. What then does this existence

mean? It cannot only be a question of an existence on paper. It is true that our ability to imagine the existence of a legal enactment is facilitated by the fact that there is an original copy of the enactment and that the text is printed in an official bulletin, which is distributed to all courts and governmental agencies and is carefully kept by them for future reference. But the existence of the legal enactment is not synonymous with the existence of the printed copies; a statute which has been repealed still survives on paper. The existence of the enactment is of an ideal character; it is considered to exist not in the world of the senses but on an abstract, purely "legal" plane. Sometimes the conception of the existence of an enactment takes on a somewhat complicated structure. Thus it may occur that the most important provisions of an enactment cannot be applied until they have been put into force by a special decision made with the support of an authorization in the enactment. On the other hand, it may occur that certain provisions in an enactment can be applied even before the enactment as a whole has entered into force or after the enactment has ceased to be valid.

It should be added that the presumed existence or validity of an enactment cannot be identified with the circumstance that the enactment is actually being applied. On the contrary, the application of the law is a consequence of its presumed existence and the law is considered to be in force even though there may never be occasion to apply it. It is another matter that the idea of the validity of the enactment is only of practical utility and only has a prospect of being generally accepted if the citizens, and above all the courts and other agencies, have such an attitude towards it that the legislators can expect that the enactment will by and large be obeyed.

It seems probable that the generally prevailing idea that a statutory enactment has an existence of its own is historically connected with the conception of a constant, customary law binding on all, which has sometimes been identified with a natural legal order. An enactment lays claim to the same sanctity that is accorded to a norm of customary law recognized by all. So long as it is in force, it is to be regarded as self-evident and beyond discussion and not as some fragile human achievement. The ceremonious and impersonal form in which it is cast conceals from the general public the procedure which has led up to the issuing of the enactment. A veil of respectability is drawn over struggles

for power, oppositions of interest, and compromises. When the enactment has been issued and has entered into force it is the enactment itself which is deemed to bind courts, authorities and citizens, not the forces which lie behind it. If the enactment is to enjoy the self-evident sanctity to which it lays claim there must be a general disposition among the citizens to accept without further ado norms which have been enacted as laws; moreover, it is necessary that the contents of the enactment should not be too flagrantly opposed to general ideas of justice.

The idea that a legal enactment has an existence of its own does not, however, mean that the enactment exists in the same way as does a presumed absolute legal norm. On the contrary, the existence of the enactment is in a certain sense conceived of as being connected with time and space. The enactment is created through a definite action undertaken at a certain time and in a certain place and it applies during a certain period of time, even though its termination is not as a rule fixed in advance. Its validity is furthermore restricted to a definite spatial area, as a rule the territory of the legislating state. This connection with time and space does not, however, mean that the enactment is not conceived of as existing on a purely abstract plane. The concept "a law" is characterized by an inner tension between the ideal existence of the enactment and its attachment to time and space.

For most people, certainly, the real meaning of the concept "a law" is a matter only of assumption and dim understanding. On closer reflection, however, it would probably be conceded that broadly speaking the concept has the ideological content stated above. The often dimly apprehended but always assumed idea of the existence or validity of a legal enactment is of decisive importance for the effectiveness of legislative activity. It also, however, has the effect that for large numbers of people it obscures their view of the context of reality of which the enactment forms a part. It has already been pointed out that from the point of view of the general public the idea of the existence of an enactment overshadows any thoughts they may have of the procedure by which the enactment came into existence. In what follows it will be shown that the same conception from the point of view of the legislative organs may in certain cases obscure their view of the actual effect of the enactment.

2. *The actual effect of enactments.* Control of people's behaviour can be conceived of as taking place either as a result of instructions in each particular case or by the setting up of general norms. The latter method is a practical necessity in any well-developed organization, but this does not mean that the setting up of norms cannot be supplemented by concrete instructions and constant supervision by those in authority. In a modern state with its thoroughgoing distribution of functions, however, there will always, broadly speaking, be certain organs for legislating and other organs for administering the laws and supervising their actual application. Once an enactment has been issued the legislating organs have done their work; it is for other agencies to ensure that its norms will actually be applied.

The restricted role of the legislative organs, in combination with the conception that through the legal enactment there is created an abstract norm which thereafter enjoys an independent existence, may easily lead to the idea that the legislators accomplish great things merely through their decisions. This idea is, however, largely an illusion. The legislators would be powerless if there did not exist machinery ready to be put in operation at their command. The legislative decision presumes the existence of such machinery and the legislators rely upon its efficiency. First and foremost it is necessary that the enactment shall be published, so that it will become known to those who will be affected by it. Then, it is necessary to presume a general disposition to abide by the laws, above all among judges and officials. Last but not least, it must be presumed that there is a sufficiently well developed organization of courts, governmental agencies and public institutions which can guarantee the implementation of the enactment.

To a very great extent legislation is based on the tacit assumption that the machinery referred to above exists and is in working order. As a rule, facilities for publication and a disposition to abide by the laws are taken for granted. And often the legislators do not consider the possibility that a new enactment may place increased demands on the judicial and administrative systems. In other cases, especially where it proves necessary to expand the administrative organization, the enactment must be supplemented with a financial appropriation in order that the necessary resources may be created for the implementation of the law.

It is in fact an extremely complicated instrument that the legislators use when, through the medium of language, they try to achieve important practical results. The whole of the involved chain of causation between the legal enactment itself and its more or less successful results can only be surveyed in very broad outlines by the legislators. Of course the latter must start out from certain calculations about the probable effects of the enactment and the possibility of realizing its aims, and such calculations are also made during the period of preparation of the enactment. These prior calculations are, however, as a rule, concerned only with special questions which are of importance in the drafting of a particular bill. The common questions which concern the preconditions for the execution of enactments in general are seldom closely illuminated and they are therefore, even from the legislators' point of view, largely concealed in obscurity. These questions constitute important tasks for sociological research. Here only a few of the relevant problems will be touched upon.

How is a knowledge of new enactments disseminated among the citizens who will be affected by them? Is the dissemination effective and can one really maintain the fiction that every individual is under an obligation to know the law? The publication in an official bulletin does not reach very far; it can be assumed to be fairly effective only as regards courts, governmental agencies and others who receive such bulletins. Otherwise it is necessary to rely on a secondhand knowledge spread in various ways, and owing to the continually growing quantity of enactments the knowledge of an enactment can only be of very limited extent in the case of each individual. It can be supposed that an individual is in a position to acquaint himself with the main features of those legal rules which apply to his main occupation. With regard to special rules of law with which the individual comes into contact only rarely, the most efficient source of knowledge consists of information from governmental agencies or from enterprises which the individual uses in a particular contingency. For the great majority of citizens only a quantitatively small part of the contents of the laws is common knowledge. To some extent it is here a matter of norms which accord with the general sense of justice and which are obeyed owing to custom and upbringing rather than to direct knowledge of the contents of the laws; among these are certain central rules of private and criminal law. Some of the common stock of knowledge tends to be of a more *ad*

hoc character, and knowledge of this is disseminated largely by the press and the radio and through conversations between individuals; among these are for example traffic rules and customs regulations. None of the methods of dissemination mentioned is fully effective and it must be assumed that people's knowledge of the contents of the laws is rather incomplete and sometimes distorted.

Another important question concerns the necessary conditions for a law's actually being obeyed, in so far as its contents are known. To what extent is obedience to the law influenced by the sense of justice or the political convictions of different groups of the community? And what role is played on the one hand by the individual's spontaneous feeling of social solidarity and on the other hand by the fear of legal sanctions which are more or less consistently and efficiently applied? These problems, which are of the greatest importance for the efficacy of the laws, are still largely unexamined.

A third question which will be considered concerns the attitude of the officials who have to apply the laws. The ideal situation would of course be that where every judge and every official had a thorough knowledge of all the laws he had to apply as well as a vivid sense of the aim and function of these laws and preferably also a long experience of their application; moreover, he should be in a position to examine every matter thoroughly and devote careful attention to it. How far is this ideal realized in practice? And to what extent does it happen that a matter is dealt with in a detached and indifferent spirit but with a formal correctness that will forestall the complaints of a superior officer? What role is played in this connection by a professional mentality and by working conditions which are dependent on the quantity of matters coming in for consideration and the flood of new enactments? These questions, the answering of which is of essential importance for a proper understanding of the effect of legislation, can here only be adumbrated.

What has been said is probably sufficient to show that the carrying into effect of a law is dependent on entirely different factors from the legislative decision itself. The legislators can bring a law into being even if they do not devote any thought to these factors but only concern themselves with bringing certain legal norms into existence. But the practical results of their decisions depend less on the decision itself than on the machinery which

they use and on whose efficiency they consciously or unconsciously rely.

3. *The use of legal ideological concepts.* If we start from the assumption that legislation is an instrument for controlling human behaviour, the contents of enactments must have some relation to social reality. It is natural to find this relation by using the dual concept norm and reality. The task of the laws is to create norms which express social reality or, more precisely, to say how people should act in certain given circumstances. Both the circumstances and the prescribed pattern of behaviour should be capable of being expressed through references to well-known facts with the quality of being real; the only specifically legal feature in a legal rule should then be the word "shall" or some expression with the same meaning. Legal language, however, is not so simple; it frequently uses terms which do not refer to facts which can be observed by scientific methods. Sometimes these terms are generally used in human intercourse and appear as self-evident even though they do not denote anything existing in the world of the senses but only have meaning when they are used in a social context. But often the terms are somewhat complicated and specifically legal in character and they then appear as being difficult for the general public to understand.

The legal element in the content of legal rules is thus not confined to the word "shall" or similar imperative expressions. Legal language is full of terms the meaning of which cannot be fully explained by reference to external facts, for example right of ownership, real estate, company, marriage, contract, damages, penalty, application, prohibition, permission. It is true that these terms are always connected in some way with an external fact: a person, a thing, a written document, and so on. But what the terms are designed to denote is always something different from and something more than this external fact. What this other thing is cannot be understood by regarding the matter from a purely scientific angle. The terms here referred to are expressions of a social, in part specifically legal ideology.

The use of ideological concepts in legal language has two advantages. To some extent it links up with generally accepted ways of thought; this, however, only applies to the less complicated concepts. Moreover, it enables legal rules to be assembled into a system without the necessity of repetitions and references. Theo-

retically, it would be possible at least to some extent to do away with the ideological concepts in the enactment and to rewrite it in such a way that it did not contain any specifically legal terms other than the word "shall" and in general referred only to external facts; but such a recasting would entail an intolerable lengthiness and diffuseness in the wording of the law. It might also be possible to exchange the ideological concepts for arbitrarily chosen symbols which would link together different provisions; but this would scarcely make the enactment easier to understand.

The ideological concepts in an enactment are partly taken from an already formed mental context and are partly conscious new creations of the legislator. The most elementary concepts are much older than any written enactment: among these are such concepts as the right of ownership, purchase, inheritance, and marriage. These concepts are apprehended by people in general as self-evident and unproblematic but in actual fact can only be understood as elements of a certain social order. In such a simple rule as "Thou shalt not steal" the word "steal" has a comprehensible meaning only against the background of a fully developed property-owning society of which the rule itself is a necessary part. Concepts of this type, which have firm roots in the general way of thinking and which probably are not arbitrary products of the imagination but the results of elementary socio-psychological processes, are used by legislators to a very large extent. At the same time as the enactment is in this way linked with customary ways of thought, legislation often gives the concepts a more precise content and sometimes also changes their meaning, as a result of which they are more or less transformed into legal technical terms.

Those concepts which have been created through conscious constructions by the legislators are mainly of the character of technical legal terms. The conceptions which may be attached to such terms as "joint stock company" or "patent" are hardly natural growths of a kind clear to all; a clear conception of the meaning or perhaps rather the function of the terms is only achieved by studying the complex of legal rules in which they are used. As a whole it can be said of many juridical terms that they can only by devious ways be traced from concepts which form part of the conceptual world of ordinary people, and that they can best be understood by persons who through habit have become familiar with the legal conceptual world and who do not trouble

themselves too much about how this can be related to the ways of thought of ordinary people or to scientific conceptions.

The explanation of the use of legal ideological concepts in enactments lies essentially in the constant interplay between legislation and the practical day-to-day administration of justice. Long before laws began to be written, legal ideological concepts were applied in social life. The legislators had to link up with these concepts and pay regard to the social realities connected with them. As a result of legislation time-honoured concepts have been made more precise and have partly acquired a new content; new concepts have also been created. In its turn legislation has left traces on social life; concrete legal relations of various kinds have been created in accordance with enactments. New laws have linked up with these legal relations and have affected social life in new directions. Legislation can build upon existing legal institutions or can demolish them, but it cannot disregard them. At the same time as social life is developed through the progress of legislative activity, layer upon layer is added to the growing edifice of juridical concepts. It is not surprising that the results should be something which to the uninitiated seems like a conceptual world closed in upon itself. Nevertheless it seems to be an incontestable fact that legal ideological concepts and the terms in which these are expressed are a necessary connecting link between the laws and social life.

4. *The legislative power and the existing legal order.* The distribution of the legislative power among the highest organs of the state and the forms in which it is exercised are regulated in Sweden through certain provisions in the Constitution of 1809, which distinguish between various kinds of laws according to their content. The uninitiated might perhaps expect that these provisions would refer directly to social reality and that the various spheres of legislation would thus be determined by references to different branches of human activity. This, however, is not the case; legislative competence is determined mainly by the use of legal ideological concepts, the meaning of which can only be understood against the background of the legal order as a whole.

According to a not unusual conception the constitution is the ultimate basis of the entire legal order. All other laws, it is supposed, derive their binding force from the provisions in the constitution concerning the legislative power. From this way of re-

garding the matter it might seem as if the constitutional provisions concerning the legislative power must have a fully independent meaning which ought to be capable of being established quite without regard to the contents of those laws which derive their force from the constitutional provisions mentioned. It ought, strictly speaking, to be possible to write a constitution which disregarded preceding legislation and regulated the legislative competence in accordance with entirely new and rational principles.

Such a conception, however, is illusory. A constitution can never build up the law of the land from the beginning. Each new constitution inherits an existing legal order which can be modified but not at one stroke demolished and replaced by a new one. The rules on legislative competence can, it is true, be altered radically in a new constitution, but this does not mean that in their formulation the existing legal order can be disregarded and that they can be framed as if it were a question of building up a legal system from the very foundations. Legislation does not take place in a vacuum but always constitutes a process of building upon an already formed system of rules. The content of a legislative enactment appears clearly only against the background of the existing legal order. What the constitutional rules concerning the legislative power regulate is thus the power to extend an existing set of legal rules by adding new rules.

In formulating constitutional rules concerning legislative competence it is therefore not possible to disregard the question of what a new enactment means in relation to the legal situation previously prevailing. A new enactment can amend or repeal an old one; it can create compulsion where previously there existed freedom, and vice versa; it can deprive the citizens of existing privileges or give them new ones. Whenever it has been a question of determining the possibility of effecting such amendments of the legal system through legislation, legal ideological concepts have to a large extent guided the fathers of the constitution. Here above all two ways of thought have been employed. One is that an existing complex of rules with a certain ideological content can be amended or supplemented only in accordance with a certain procedure. The other is that certain existing legal positions (rights and liberties) can be modified only in accordance with a certain procedure. In so far as such ways of thought have been determinative for the fathers of the constitution, the legislative competence will be determined with the aid of concepts the

concrete meaning of which can be established only through an investigation of the legal situation prevailing at each particular point of time. The constitutional provisions concerning the legislative power in that case are, strictly speaking, without any independent content; they acquire a definite meaning only when compared with the legal order as a whole. The relation between a proposed piece of legislation and the previously prevailing legal situation must be established before it can be decided to what constitutional provision the legislative measure should be referred.

What has been said may be illustrated by some examples from Swedish constitutional rules concerning the legislative power. According to Article 87: 1 of the Constitution of 1809 the "general civil and criminal law" shall be enacted by the King and the Riksdag jointly. Behind the expression quoted there obviously lies the idea that certain central parts of the legal order which concern the legal relations between individuals, punishment for the graver crimes, and judicial procedure in civil and criminal cases should be accorded a particular sanctity and a certain degree of impregnability and that therefore the rules in this sphere should only be amended or supplemented with the consent of the Riksdag. At the time when the Constitution was enacted the rules referred to corresponded, broadly speaking, to the contents of the Code of 1734. In contrast to these comparatively impregnable rules were mentioned the "laws and statutes relating to the general economy of the realm" mentioned in Article 89, the contents of which were determined not by legal principles but by regard to social considerations and which therefore could be enacted by the King alone. This division of the laws, which it has not been possible wholly to maintain in the subsequent legal development, is probably founded on natural-law conceptions.

The idea that certain legal positions can be modified only in accordance with a stated procedure has also been expressed in the Constitution of 1809. Thus, taxes can be decided upon only by the Riksdag and other levies only with the consent of the Riksdag. The provision in Article 16 which contains a concise "declaration of rights" of partly medieval origin places certain limits—the nature of which has admittedly often been discussed—to the possibility of encroaching on the liberty of the individual through legislation. And the provision in Article 87: 1 on the enactment of "general civil law" has come to be applied not only to legislation concerning the reciprocal legal relationships

of individuals but also to legislation which in the public interest encroaches upon privileges of the individual which are otherwise protected by the civil law. In these cases, also, it is probable that conceptions of natural law have influenced the regulation of the legislative power.

Thus the basic provisions on the legislative procedure in the constitution determine the legislative competence with the aid of legal ideological concepts which probably originated in natural-law conceptions concerning sacrosanct parts of the legal order and legal privileges which were in principle impregnable. These concepts acquire a concrete meaning only if we apply them to the legal situation prevailing at any given point of time. The constitutional provisions concerning legislation, therefore, cannot be said to have an independent meaning which can be determined *in abstracto* independently of the legal order as a whole.

It may be asked whether it would not be possible to link the legislative provisions to the existing legal order in a more direct way without the intermediation of such general ideological concepts as are now used. This, indeed, has already to some extent occurred as a result of special provisions in the Constitution of 1809 concerning legislation on certain specifically stated spheres, e.g. concerning the naturalization of aliens or the administration of the National Bank. By way of objection to a more general use of this method it may, however, be mentioned that it is impossible to foresee, when framing a constitution, all the subjects of legislation which may arise in the future. The general legislative provisions, which are based on vague legal ideological concepts, will certainly never be superfluous. The legislative provisions would, however, gain in clarity if to a greater extent than now they were linked to specifically stated parts of the legal order. Such a specialization of the legislative provisions would, in so far as it could be carried out, give clearer expression to the indispensable condition that the legislative competence cannot be determined independently of the prevailing legal situation.

5. *The sanctions for the maintenance of the laws.* In the foregoing it has been emphasized that the effectiveness of legislation depends on a number of factors, *inter alia* the publication of the laws, the general law-abidingness of the people and the existence of a satisfactory judicial and administrative organization. To survey the whole of the complicated social mechanism which gives legisla-

tion its practical effect would with our present basis of knowledge be attended with considerable difficulties. Among the factors which help to ensure the observance of the laws one can, however, distinguish some which are of a legal character. To take account of these factors alone would, it is true, be to simplify the causal context. The efficiency of legislation is dependent not only on the sanctions wielded by courts and authorities. But these sanctions, as experience has shown, play a considerable part and they are certainly necessary for the maintenance of the laws. The legislative bodies always count on the existence of sanctions, even if these are not always expressly mentioned in the enactments. A connection between primary and secondary, material and procedural rules is often directly established in the enactment; and when the enactment is silent such a connection is construed by legal practice or doctrine. For the jurist it is natural constantly to ask himself in what legal forms the maintenance of a primary rule is intended to be guaranteed. It is not until the form of the sanctions is known that from a juridical point of view there can be clarity about the way in which a certain primary rule functions. But it must be established that an insight into the connection between primary rules and sanctions only gives a schematic and simplified picture of the real causal context. Sanctions are not only something which is factual; they also themselves form part of the legal order and have been formulated through legislation under the influence of legal ideological concepts.

The sanctions for the maintenance of the laws can be assigned to two main groups, according to whether they are handled by courts or by administrative agencies. The judicial sanctions consist in judicial procedure, with its provision of certain instances, as well as in various forms of executive powers (execution of civil judgments and of penal sentences). The administrative sanctions consist in administrative procedure, including arrangements for appeals, as well as various compulsive measures and penalties such as enforcement of claims without a court judgment, imposition of fines, compulsion to performance, police action, disciplinary punishment and the withholding of certain benefits. It should be pointed out that the difference between courts and administrative agencies which has been more or less clearly carried through in positive law is probably ultimately based on legal ideological concepts according to which the courts have to apply legal

norms which are in principle unchangeable, whereas the administrative agencies have to take care of the public interest in accordance with the directives of the authorities.

One could conceive of a regulation of the legislative power based on the way in which a proposed legal rule was intended to be enforced. For example, it could be laid down that rules intended to be administered by courts should be decided upon in a certain way, rules intended to be enforced by administrative authorities in another way. The constitution could also state in more detail what kind of sanctions might be attached to legal rules coming into existence in one way or the other. Such a regulation of the legislative power would undoubtedly help to give both the legislative and the executive organs a proper idea of the legal effect of enactments.

The Swedish Constitution, however, does not place any decisive emphasis on the nature of the sanctions for the maintenance of rules of law; instead, what determines the distribution of the legislative powers is the type of the primary legal relations which are founded, amended or repealed as a result of a new enactment. A division of statutory rules according to their sanctions occurs in the Constitution only to a limited extent and as an indirect consequence of the division of the legislative enactments according to their primary content. The expression "general civil law" probably at the beginning referred to precisely such rules as can be applied by courts in civil cases between private individuals. And so-called administrative and economic enactments as well as tax statutes are, if one disregards the penal provisions contained in them, mainly intended to be applied by the administrative authorities. But the connection between the regulation of the legislative power and the sanctions for the maintenance of the laws scarcely extends further than this. In criminal cases the courts may apply enactments of practically all categories. And in civil cases they can sometimes apply provisions which have been issued by administrative agencies, at least in cases in which the Crown is a party; as examples of such provisions may be mentioned government regulations for salaries and pensions as well as by-laws, regulations and rates for public transport and communication agencies. On the other hand it is to be noted that a number of enactments which have been decided upon in accordance with the procedure laid down for the general civil law or otherwise have been adopted by the King and the Riksdag

jointly are intended to be applied by administrative authorities in the same way as so-called economic enactments.

Certainly it would not be practicable to adopt the form of the sanctions instead of the contents of the primary rules as a basis for the regulation of the legislative power. Provided that the enactments are obeyed, their social effects depend in the first place on the content of the primary rules and the sanctions must from the legislators' point of view appear as something secondary which can be regulated in connection with the main questions and in accordance with the same procedure as these. If the present Swedish rules on legislative competence, without amendment of their scope, were supplemented with directions concerning the sanctions attached to legal rules of various categories, the meaning of the legislative competence would be clarified on a number of points. In accordance with such a complementation, legal rules with different types of sanctions could probably be placed under one and the same authorization and this would enhance the clarity of the constitutional provisions without its being necessary to modify the present distribution of powers. It would be especially useful if it were possible in this way to obtain an answer to certain questions which at present are obscure. Thus, for example, it would be valuable to have established the extent to which enactments which have been issued in accordance with a procedure other than that laid down for the general civil law can be cited in court in civil cases, as well as the extent to which criminal penalties can be enacted by the King without the Riksdag. It is, however, possible that such a clarification of the legislative provisions would encounter obstacles in the difficulty of surveying the changing forms of legislation as well as in a disinclination to restrict in advance the freedom of action of the legislative organs.

One desideratum which it should be easier to achieve is that the enactments themselves should always be formulated in such a way as to give a clear indication of the sanctions to be attached to the primary rules. If the attention of the legislators is mainly directed to the establishing of rights and obligations, there is a risk that the important question of the formulation of sanctions will not be sufficiently considered, and this may involve the enforcing courts and agencies in considerable difficulties. It is true that no very serious complaints against the clarity of the laws in this respect can be made so far as legislation in the field of private law, penal law, and procedural law is

concerned. The rules of private and criminal procedural law are of course directed to the general courts and with regard to rules of civil and criminal law it is as a rule evident that they are intended to be applied by general courts; it is therefore seldom necessary to state this specifically in the enactment.

But legislation in the sphere of public law in the limited sense does not always clearly indicate the intended form of the sanctions, and this can sometimes lead to difficulties in the applying of the law owing to the different types of sanctions which occur in this sphere. Here one can distinguish in rough outline different categories of legal rules the maintenance of which is guaranteed by different typical means. The constitutional norms which regulate the activities of the highest organs of the state, i.e. provisions embodied in the constitution itself, have ill-developed sanctions and are largely maintained through the goodwill of the organs concerned. The rules for the internal activity of the state organization are in general guaranteed mainly through the provisions concerning penalties for misdemeanours of state officials and disciplinary punishment of them; these sanctions contribute, moreover, to ensuring a correct application by the courts and agencies of other legal rules. Among the rules of public law which are directed to the general public, several different types can be distinguished. A feature common to most of them is that the individual can secure a review of the application of the rules by appealing to a higher authority. In other respects the sanctions take essentially different forms for rules which lay compulsion on the individual and for rules concerning central or local government performances to individuals. The former rules can, with considerable simplification, be divided into two groups, one concerned with tax matters and the other with matters of social order. Those tax rules which relate to action against an individual's property are generally carried out through executive measures based on an administrative decision and seldom through resort to a general court. The rules concerned with matters of social order typically have their sanctions in a threat of punishment and such administrative measures of compulsion as fines, compulsion to performance and police action; exceptionally, the use of compulsion has been entrusted to general courts. A category of rules which in recent times has acquired increasing importance concerns central or local government benefits and other performances to individuals in the form either of money (e.g. wages,

allowances and social assistance) or of services (e.g. transport, medical care and education). The sanctions for the maintenance of such rules may be formed in different ways. One possibility is that the individual's claim can be made only by appeal to a superior authority whereas his obligations are guaranteed through the threat of a withholding of performance on the part of the public authority. Another possibility is that both the central or local government and the individual may invoke the rules in a general court. It should be pointed out that the various types of sanctions are not infrequently combined in other ways than appear from the simplified grouping used above.

In so far as rules of public law are directed to the general public it is frequently not clear in which of the above-mentioned forms sanctions are intended to be applied. Sometimes provisions concerning appeal are lacking; in such cases it is usually assumed that appeal is possible unless the contrary is expressly stated. As regards such rules as apply compulsion to the individual the enactment does not always clearly indicate what measures of compulsion are to be used; in principle legal grounds ought to be demanded for any use of measures of compulsion on the part of the authorities, but with the present state of legislation such a demand cannot be consistently maintained and it is necessary to count on powers of compulsion based on customary law. Often the enactment does not give any answer to the question whether and in what way public law rules of compulsive character may affect the mutual legal relations of individuals. Can rules regarding building and public health be cited in cases between neighbours? And does the answer to this question depend on the form of legislation chosen or on the legislator's conception of the kind of rights and duties which the enactment is intended to create? And how is a contract to be rescinded when it is in conflict with a prohibitional norm or a price-regulating direction? A lack of clarity may also exist with regard to the relation between sanctions concerned with public order and sanctions concerned with tax laws.

Rules on central or local government performances to individuals also sometimes suffer from a lack of clarity with regard to the form of the sanctions. The agencies applying the law are not infrequently in a position where they have to try to read from the enactment whether the latter was intended to found legal claims between the public and the individual or not. If not, it seems to be in the nature of the matter that an action