

The importance of a healthy constitutional state from a psychoanalytical perspective

Abstract:

Psychoanalytical instruments and knowledge considering „walls within“ can support the daily work of the legal practice on a personal and social level, showing that peace and justice are not so far away from each other.

When it comes to the role of the constitutional state and law in general “Justice” is quickly highlighted. But why does the role of law as a phenomenon of peace barely feature in public discourse? The competence to resolve conflicts peacefully is a great step in the history of cooperation.

Key assumptions:

- 1) The modern constitutional state is a fundamental condition for peaceful living in society and creates a climate that enables individual and social cultural development. A well-functioning jurisdiction is beside legislature and executive one of the three pillars of the state.
- 2) Jurisdiction makes a valuable contribution to civil replacing violence by the rule of law. The resolution of a legal conflict is a feature of human progress and carries the spirit of peace. Where a sacrifice was made in the past, the disputing parties nowadays can find a peaceful solution.
- 3) On an individual level it can be observed that internal conflicts - „walls within“ - and legal conflicts are often linked. Emotions can be seen as drivers of an external conflict heading to a legal dispute.

Psychoanalytical theory:

Sigmund Freud has contributed fundamental reflections on the role of law for cultural development and for the community. With the introduction of a court system, a legal order, a set of instruments was created for the first time to end blood revenge. Without the peacemaking power of law and without a functioning judicial system, man would not have been able to free himself from the clutches of blood revenge and lead his life in peace. That is why law is a phenomenon of peace.

In his essays on "The Discomfort in Culture" and "Why War?" Freud elaborates on the importance of jurisdiction. Without law, living together would be threatened by regression and the individual would not be able to unfold but would be in an ongoing internal and external defensive struggle. From a Freudian perspective, law is a superego, valid for everyone, a set of rules that is indispensable for all of us in civil society. Law is the solid pillar for being able to balance conflicts without violence.

Core argument:

The peacemaking role of jurisprudence is a pillar for individual and socio-cultural development. The jurisdiction has its "protecting hands" over all legal acts - between the state and its citizens, but also between citizens without the participation of the state. Clearly, jurisprudence does not find an answer to conflicts, but it has developed transparent and sanctioned instructions for action to be applied. Under the protection of a well-functioning constitutional state internal conflicts „walls within“ can be detected, accepted and analyzed. In such a scenario defensive mechanisms against the otherness are split off and then "civilised" in court. However a substitution of internal conflicts cannot be taken over by jurisdiction but should be considered as a valuable motive when it comes to legal disputes.