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ACTA UNIVERSITATIS SZEGEDIENSIS  
DE ATTILA JÓZSEF NOMINATAE

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ACTA JURIDICA ET POLITICA

Tomus XX.

Fasciculus 6.

**GYÖRGY ANTALFFY**

**IGNÁC PAPP**

**BÉLA POPOVICS**

**Lectures on the history of political and legal  
thinking**

1975 FEB 26



SZEGED

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Redigunt

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Szerkeszti

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Kiadja

*A Szegedi József Attila Tudományegyetem Állam- és Jogtudományi Kara  
(Szeged, Lenin krt. 54.)*

Kiadványunk rövidítése

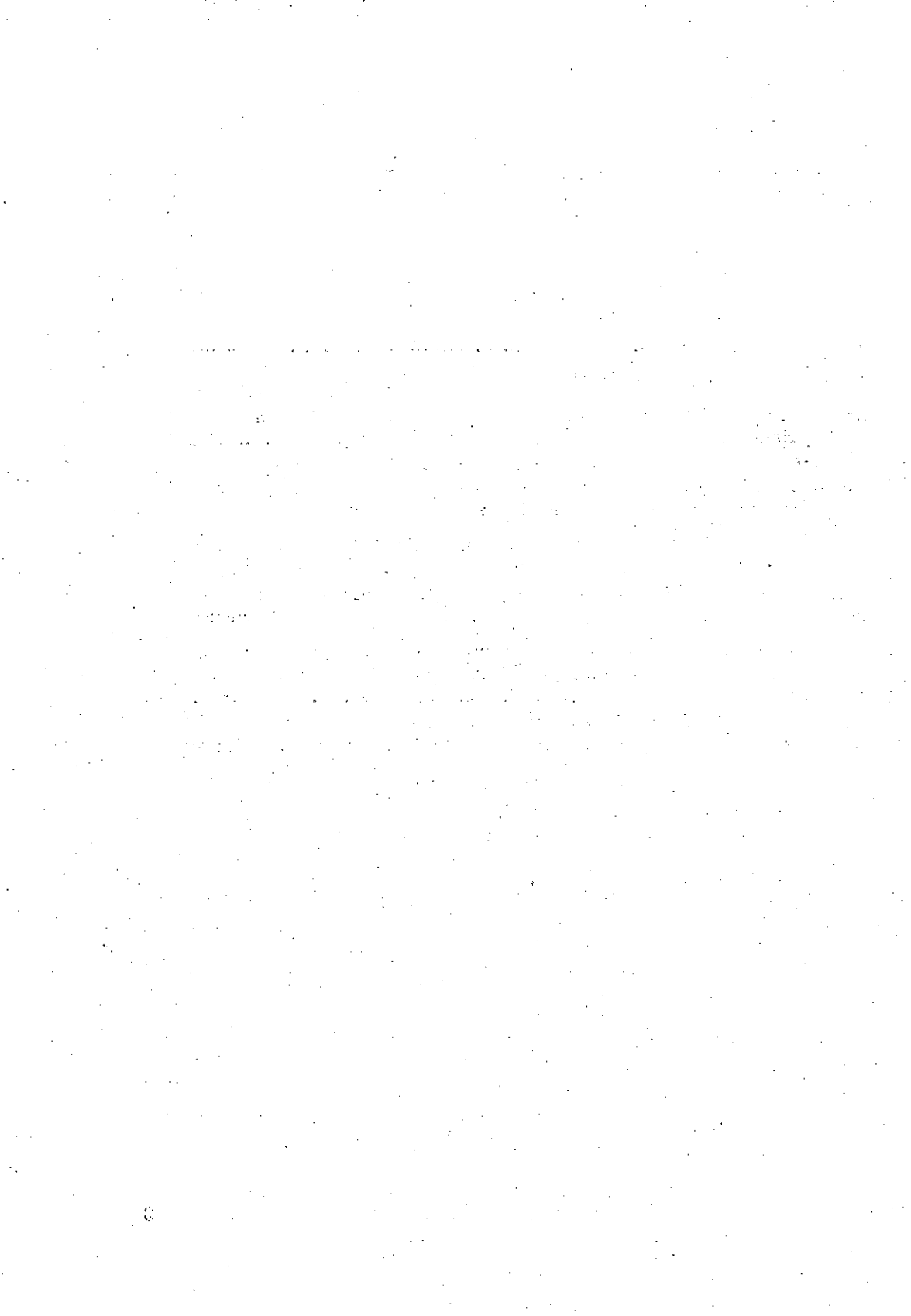
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"Man is a born free,  
and everywhere you  
find him in chains."  
(Jean Jacques Rousseau)

## PREFACE

Our paper does not assert a right to be a monograph. Therefore, it could not broaden more the framework of its subject-matter, being not able to apply in their entirety either the methods or the systematization demanded by a monograph.

Our work has been created in the course of the research and educational activity displayed in our institute. In respect of the latter one, we had started — just owing to the more and more general use of manipulation — from the principle approved by us that a human or a disciple is not a vessel to be filled up but a torch to be inflamed.

In our paper we are emphasizing some thinkers or more exactly some historic periods that, as primary ones, we deem as characteristic enough to illuminate the formation and development of the political and legal doctrines and, possibly, to elaborate the theme more fully, as a result of our further investigations.

Marxist science goes far to acknowledge that in the long process of culture and civilization reflecting both continuity and interruptions there have been produced values, even in the long past ages. A study of these values cannot be avoided if we want to understand Past and Present and frame Future. In that we are meeting Goethe according to whom "we need to sum up at least three thousand years for understanding the reality of to-day". And we are reminded of the same by the sometime British politician, Macdonald who told that history was always written for rendering us help to follow abruptly the way of progress and not in hundred years.

Our aim has been, after analysing a number of political and legal doctrines, to emphasize what may at present "mean" something different from its meaning some decades before or may say something else to our own days than supposed, and possibly suggested, by earlier scholars. We have laid stress upon regarding Marxism, free from any dogmatism, as a method, applying it, like this, as a guide to action.

It is frequently mentioned by classical scholars that the question of structure of the State was first raised by a Greek philosopher, and the question was answered brilliantly by several Greek scholars. These answers are important, delightful ones but if the matter in hand is the structure of the present State it remains questionable what our "politics" can begin with the problems raised and answered by the Greeks. At any rate, we have obtained from the "replies" of the Greeks and of others not only some awareness of life but experiences, science, exchange of working method, as well and — together with these — essentially also some continuance that is philosophically a part of

the change, the revolutionary change, too, if regarding the history of the whole of Mankind.

We are aware of the presence of Man: "zoon politikon", "homo politicus", "homo oeconomicus", "homo technicus" in raising these questions, formulating these suppositions, performing our investigations, collecting evidences, drawing the conclusions, understanding or misunderstanding the results. We must take that, too, into consideration. And we know Robert Burns's celebrated lines that are so characteristic of his age:

"But human bodies are sic fools,  
For a 'their colleges an' schools,  
That when nae real ills perplex them,  
They mak enow themsel's to vex them;  
An' aye the less they hae to sturt them,  
In like proportion, less will hurt them." (The two Dogs)

Belief and optimism of the scholar and seeker after truth helped and obliged us to accomplish our work. It is shown by the Basic Literature, providing as we do hope an outlook to the world, how immense the material of knowledge and learning is to which we are wanting to furnish but a modest contribution.



## INTRODUCTION

### SUBJECT-MATTER AND METHODS OF POLITICAL AND LEGAL THINKING

Politics and law were born after the disintegration of the tribal system. The evolution of both social phenomena was associated with the creation of a power mechanism segregated from society. And the segregated power mechanism emerged from society as the outcome of the intrinsic contradictions of society, the birth of private property and the concomitant establishment of classes. The segregated mechanism, or, in other words, the State, is the product of historical necessity and not of the error or malice of Man. There was need for the State to ensure the further evolution of society, its progress, i.e. the evolution for which there was no chance within the clan organization of society. Consequently the State came into being on the stage of history as a matter of necessity.

Together with the State also the law was born, as a peculiar set of rules giving expression to the will of the ruling class, rules whose observance was in the last resort guaranteed by the mechanism segregated from society, viz. the State.

The State as a segregated organizational system, and the law as a specific system of norms or rules produced the relevant political and legal opinions. A political opinion is any opinion expressing the relation of the contending classes to the State, i.e. the political power. On the other hand, a legal opinion is any opinion of society which expresses the methods and forms in which the antagonistic classes organize power. Since State and law as institutions are jointly present in society, the political and legal views or opinions are closely interrelated.

The technical term "politics" is used in literature, in theory as well as in practice in a variety of senses. There are doctrines, and for our part we adhere to these in the first place, according to which the term "politics" is synonymous with the term "State". In this sense we identify the term "politics" with that of "State". Consequently, when the political views of certain thinkers are analyzed, primary stress is laid on their views and ideas of the State. These views may refer to the origin of the State, the organization of the State and the structure of this organization. These views may as well refer to the functions of the State, its sovereignty, its alienation, the relations of the State and society, economy, ideology, the individual, democracy, the relations of the political parties and also to the withering away of the State. However, the term "politics" applies not only to the State, or to its organization and activities, but to all social organizations and their activities which have as their goal the maintenance and the change of the political power (here the term "policy" would be more appropriate). The central category of politics and also

of policy is power. Apart from the fact that there is also a general definition of power in current use and that this category, i.e. power may be applied also to other social phenomena, by political power we understand power which in a definite society, e.g. in a capitalist, yet even socialist society, has a privileged opportunity to settle and control the relations of the social classes, social strata, or social groups opposing one another, or professing conflicting interests. Hence the sovereign power enforced by its agencies constitutes a species of the political power. Consequently policy manifesting itself in association with the State is nothing else but an activity aimed at the acquisition of political power and its organization, and further a conscious activity related to the structure, guidance and operation of sovereign power. Political ideas are more or less concepts cast into a system, concepts on whose pattern political activities take place. One also has to be aware of a difference between the organization of society and the political organizations of the State, although the political element is present in both, yet manifests itself in a different manner.

Law, too, as a technical term has received a variety of interpretations in both literature and also in the course of historical evolution. In the course of history the term "law" was bisected in certain periods: as a matter of fact there was talk of natural law and also of positive law. Positive law in all cases meant a system of rules created by certain agencies of the State. On the other hand, natural law was a system of rules which had its place above the statutory system of rules. Here the term "law" denotes a certain system of rules of conduct required and enforced by the State, or, actually, by the ruling class, i.e. a system called into life and, in the last resort, enforced by the State, and which in all cases gives an expression to the interests or the will of the ruling class. Hence when we analyze the views of certain thinkers about the law, we shall in the first place study their opinions on the origin, system, division, structure, creation and application of the law, on its effects and operation, on its relations to the person, to democracy, to morals, on the relations between legality and legal order, on political and legal consciousness, and on the withering away of the law. It is beyond doubt that the doctrines exposed by the same thinkers in connexion with the principal problems of the particular branches of law come under the same heading, and so also e.g. the opinions formed of the constitution, ideas associated with property and commerce, and even the doctrines developed of penalty, i.e. the principal problems of the administration of justice, etc.

Also the theoreticians of the bourgeois countries try to analyze the principal political views and legal doctrines, turning up in the course of history, within the framework of the various disciplines. These analyses are distinguished by a number of peculiarities. They set out first of all from the concept that the political views and legal doctrines have priority over the underlying economic conditions, i.e. that the ideas determine the social, economic and class relations, or, in other words, the ideas are independent of the given social and economic conditions. Furthermore, these analyses when reviewing the ideas of the great political and legal thinkers, have recourse to the so-called method of positivist epitomization, i.e. they merely describe the various political views and legal doctrines of these thinkers, and refuse to take up a position in respect of them. Further it is a characteristic trait of these bourgeois analyses that they follow what is called the teleological method, i.e. they deal with thinkers of old in a sense doing justice to the interests of the

given ruling classes, i.e. they lay stress on the opinions which conform to the interests of the given ruling class. Thus these analyses peter out in an abstract treatment of the various ideas and doctrines, in an emphasis laid on the eternity of certain ideas. This method manifests itself in the circumstance that new ideas are ignored and only the changed conditions are recognized. To these conditions they attribute peculiarities which revive the ideas of old. Bourgeois theoreticians further proclaim that only great personalities, the so-called stratum of the élite, are capable of carrying political ideas, or of grasping and applying them, and that only this stratum has the faculty of identifying itself with these political values.

The Marxist approach to the political and legal doctrines rejects the ideas of the bourgeois theoreticians here reviewed. Still it considers the study of the fruits of earlier human, i.e. political and legal thinking important, for the very reason because a study of the history of ideas will display the struggle of the old and the new in the sphere of social phenomena, and shows the path to a scientific concept of State and law. Marxist scientific activity in the analysis of the historically determined class opinions and doctrines of State and law sets out from the ways in which these opinions reflect the changes taking place in the underlying social and economic structure. i.e. in the course of a scientific analysis the Marxist approach emphasizes that the political and legal ideas so developed are seemingly independent of any material activity or economic base; however, in reality these ideas are created by Man, and he creates in an ideological structure the conflicts manifesting themselves in the underlying economic structure, or existing in it, or, in other words, the class, stratum and group conflicts. This is the starting basis which will promote the proper valuation of the various political doctrines and opinions. Naturally, also other methods of approach will have to be defined, methods which are indispensable for the appraisal of the opinions of certain political and legal thinkers. It cannot be argued e.g. that the political and legal doctrines once born are influenced by earlier mental materials. These doctrines are further affected also by the personality of those calling into life political and legal doctrines, and even by ideas which have emerged in other countries.

#### BASIC LITERATURE

*Antalfy György—Halász Pál*: A politikai és jogi tanok története a marxizmus megjelenéséig. Budapest, 1961.; *Ballagi Géza*: A politikai irodalom Magyarországon 1825-ig. Budapest, 1888.; *Bequart, Georges*: Les doctrines et nos malheurs. Paris, 1970.; *Bluntschli, J. C.*: Die Lehre vom moderne Staat. I. Allgemeine Staatslehre, 1875.; II. Allgemeinen Staatsrecht, 1875.; III. Politik, 1876.; *Bluntschli, J. C.*: Geschichte des allgemeinen Staatsrecht und der Politik. Seit dem 16. Jahrhundert bis zur Gegenwart. München, 1864.; *Bourdeau, G.*: Méthode de la science politique. Paris, 1959.; *Dunham, B.*: Hősök és eretnekek. A gondolkodás politikai történetéből. Budapest, 1968.; *Ebenstein, W.*: Great political Thinkers. From Plato to the Present. New York, 1951.; *Horváth Pál—Csizmadia Andor—Sarlós Márton*: Egyetemes állam- és jogtörténet. Vol. 1—2. Budapest, 1961—1962.; *Egyetemes filozófiatörténet*. Budapest, 1963.; *Fasso, G.*: Storia della filosofia del diritto. I. Antichità e Medioevo., II. L'età moderna. Bo-

logna, 1966, 1968.; *A filozófia története* Vol. 1—6. Szerkesztette: Dinnyik, M. A.—Jovcsuk, T. Fordította: Hazai Lujza. Budapest, 1960—1970.; *Gramsci, Antonio*: Elementi di politica. A cura di Mario Spinelli. Roma, 1964.; *Gumplowicz, L.*: Allgemeines Staatsrecht. 1897.; *Gumplowicz, L.*: Geschichte der Staatstheorien. Berlin, 1905.; *Гришин, В. А.*: Маркс и современные методы исторического исследования. „Вопросы философии” № 3. 1958. (Moscow); *Grzybowski, Konstanty*: Historia doktryn politycznych i prawnych. Od państwa niewolniczego do rewolucyj burżuazyjnych. Warszawa, 1967.; *Gyeborin, A. M.*: Az újkor társadalmi és politikai tanai. Fordította: Józsa Péter. Budapest, 1962.; *Horváth Pál*: A kelet- és közép-európai népek jogfejlődésének főbb irányai. Budapest, 1968.; *Imbert, I.—Morel, H.—Dupuy, R.-J.*: La pensée politique. Paris, 1970.; *Janet, P.*: Histoire des doctrines politiques. Paris.; *Kock, Gottfried*: Beiträge zur Geschichte der politischen Ideen und der Regierungspraxis. Vol. I—II. Berlin, 1896.; *Koranyi, K.*: Powszechna historia państwa i prawa. Vol. I—III. Warszawa, 1951.; *Kusý, M.*: Filozofia politiky. K niektorým filozofickým otázkam politického riadenia spoločnosti. Bratislava, 1966.; *Lukács György*: Történelem és osztálytudat. Budapest, 1971.; *Lukić, D. Radomir*: Političko teorija države. Beograd, 1962.; *Matter*: Histoire des doctrines morales et politiques des trois derniers siècles. Paris, 1836.; *Mátyás Antal*: A polgári közgazdaságtan rövid története a marxizmus létrejötte előtt. Budapest, 1961.; *Mosca, Gaetano—Bouthoul, Gaston*: Histoire des doctrines politiques. Depuis l'antiquité. Paris, 1969.; *Nordon, Pierre*: Histoire des doctrines politiques en Grande-Bretagne. Paris, 1966.; *Politics through literature*. Ed. by Henry M. Holland. Englewood Cliffs, Prentice Hall, 1968.; *Prélot, Marcel*: Histoire des idées politiques. Paris, 1960.; *Sabine, G. H.* History of Political Theory. London, 1954.; *Seidler, G. L.*: Politikai gondolkodás az ókorban és a középkorban. Szerkesztette: Popovics Béla és Kállay István. Fordította: Zsembery Teréz. Budapest, 1967.; *Stahl*: Die Staatslehre und die Prinzipien des Staatsrechts. 1832.; *Szabó Imre*: A burzsoá állam- és jogbölcselet Magyarországon, Budapest, 1955.; *Tendances principales de la recherche dans les sciences sociales et humaines*. Première parti: Sciences sociales. Paris, Mouton Unesco, 1970.; *Touchard, Jean*: Histoire des idées politiques. Vol. I—II. Paris, 1959.; *Vajs, Albert—Kandić, Ljubica*: Opšta istorija države i prava. 2. izd. Beograd, 1969.; *Widgery, Alban, G.*: Les grands doctrines de l'histoire. Paris, 1967.

## PART ONE

### PRINCIPAL TRAITS OF POLITICAL AND LEGAL THINKING IN THE SLAVE AND FEUDAL SOCIETIES

1. Confucius; Han Fey; Lao-tze; Kautilya; Hammurabi; Hoseah; Ezekiel. —
2. Aristotle; Platon. — 3. Cicero. — 4. St. Augustine; St. Thomas Aquinas; Martin Luther; Thomas Muenzer. — Basic Literature.

[1.] Doctrines of State and law first developed in the Orient of Old. The political and legal doctrines of the ancient Orient displayed the various aspects and phases of the evolution of the given social systems. In China, doctrines on politics and law developed in particular in the period of the Tchou Dynasty. Namely in this period the forces of production began to grow vigorously, the introduction of the use of iron tools brought about an extensive fermentation in economic life. This led to the evolution of trade, commodity and financial relations. In the last resort these developments brought about the union of the many principalities, and eventually were responsible for the fall of the Dynasty of the Tchou. In the feudal system built up in the period of this dynasty, numerous political and legal doctrines were born. In the state mechanism segregated from society, the doctrines of Confucius were adopted. Confucius (born in 541 B.C.) and his followers proclaimed that the ruling class could not maintain its power unless it relied on a civil service, the administrative organization, trained in the traditions of the past. They further taught that only civil servants recruited from among the nobility were capable of guiding the ignorant masses. They tried to guide and improve the ignorant masses by the idealization of the past. In this idealization of the past, the family had an important function. This ideology professed the idea of the humility and the passive obedience of the people and gave expression to it in the following notion: "power is equal to the wind, the people to the grass, and if the wind blows, the grass (the people) will have to bow." The ideas of Confucius and his followers were opposed by Kwan-tchong and Han-fey. Their doctrines, too, sprang up as the products of the developing commodity and money economy. Namely commodity and money economy insisted on the protection of private property, and at the same time on a uniform legal system, reinforced by an efficient civil service and strong sovereign power. Han-fey attacked the adoration of the past, and did not make the values of the system dependent on the ethical qualities of the ruler and his officials. He believed that principal sources of a good system lay in the political and legal institutions. However, in this concept the functions of the ruler were thrust to the background. Han-fey and his followers set out from the notion that the legal provision was the mainstay of order. On the other hand a legal provision was good only in so far as it expressed various ideals. So e.g. the legal provision should give expression and guarantee the prevalence of the ideal of justice, or express and guarantee the ideal of penalty and reward. Consequently the State could operate even independently of the personal abilities of the ruler because the legal rule, through the ideals guaranteed by it, could cause the

State to function appropriately. Hence the doctrines of Han-fey had as their end the further growth of the commodity and money relations, and thereby the suppression of feudalism. It was by no means purely accidental that this doctrine analyzed the legal rules in detail from the aspects of their logical peculiarities and structure. Thus Han-fey and his followers tackled the problems of the abstract nature of the normativity of the law. Han-fey was in favour of a central power and believed that the huge centralized Chinese Empire should be governed in a bureaucratic manner, i.e. with the aid of legal norms or provisions, and by a staff of civil servants.

The theory of Han-fey and his followers was readily embraced by King Tcheng. King Tcheng, or otherwise called the First Yellow Ruler, made efforts for a complete unification of the State. He liquidated the feudal principalities and organized thirty-six administrative regions in their place. He issued a large number of decrees and in the name of the State insisted on their absolute observance. The decrees and the statutory provisions set out from the idea that Man has two properties. The first property of Man is the totality of invariable properties, while the second is the totality of the acquired properties. As Han-fey pointed out that an adequate legal system was capable of shaping the acquired properties of Man. I.e. the legal system was capable of reinforcing in Man the sense of discipline, duty and obedience. He set out from the thesis that the penalties were the principal guarantees of a proper conduct of Man. He also taught that the laws had to be adjusted continually to the changing social conditions, i.e. that the laws did not exist from time immemorial. Besides Han-fey, also Ma-tse struggled against the doctrines of Confucius. He rejected the cult of the ancestors, as in his opinion this meant an excessive burden on the indigent classes. He thought that human relations should be based on love rather than on obscure doctrines.

Already in this period Lao-tse disagreed with the doctrines of Han-fey. He believed that the interference of the State with the life of society violated the underlying idea exposed in the principle of Tao, i.e. the concept of non-action. According to his teaching, the legal provisions carried with themselves also their violation, and so the legal provisions would produce disillusionment, sorrow, disquiet in society; on the other hand, the ruler must not interfere with the affairs of the people. This thesis he expressed in the Book of the Path and Virtue as follows:

"The sharp weapons of the State  
Must not be brandished to the people."

From this logically followed his notion of an ideal ruler: A good ruler is the man who is capable of enforcing his will without violence, who is lenient to the people and does not turn against the evil actively.

In the era of the Han Dynasty, between 206. B.C. and 220 A.D., again Confucianism became the official ideology of the State. Confucius was deified officially. Since King Tcheng had the books of Confucius burned, the theses attributed to him had undergone a metamorphosis. In this period, Confucianism manifested itself already as a doctrine directed against feudalism, and thus it became the tool for laying the foundations of the bureaucratic order of the State, as the official doctrine. In 220 A.D. the Han Dynasty fell, and the teachings of Buddhism began to spread in China.

India was the cradle of Buddhism, at about 500 B.C. Before Buddhism, Brahmanism ruled in India. It expressed the ideology of the caste of priests standing above the "unclean", and within this ideology it developed its political and legal doctrines. In point of fact, Brahmanism was the means of the sanctioning and preservation of the caste-system in India. In order to sanction the caste-system, Brahmanism proclaimed theses according to which the priests sprang forth from the mouth of primitive man, the knights from his arms, the common people from his hips, and the "unclean" from his soles. Brahmanism guaranteed the dominant role for the caste of the priests. The priests ensured their dominant rule by training. The priests were recruited from the sons of the first three castes. For ten years they were taught by priests and even after the completion of their studies, they remained under the supervision of priests throughout their lives. Unlike Brahmanism, Buddhism displayed the doctrines of the caste of the knights, i.e. the military aristocracy. Strictly speaking, Buddhism tried to reform Brahmanism as a teaching of religious origin. Buddhism owed its birth to the lively trade and the developing industry. In fact the caste-system clogged on economic development. Hence the opinions of the merchants, i.e. the ideas of the common people found an expression in the circles of the knights. Unlike Brahmanism, Buddhism emphasized that not everybody must practice asceticism (i.e. nobody had to abandon the family at a definite age). Accordingly everybody must take care of his own salvation. In addition, Buddhism recognized the order of hermits and monks, and everybody could join this order. Although Buddhism carried on a struggle against Brahmanism and gave expression to the endeavours of the knights and merchants, and also of certain layers of the common people, still with its ideal of passivity it paralyzed the masses. In fact Buddhism taught that the acme of wisdom was despise of life and indifference to all things. Beyond doubt this doctrine was not directed towards an abolition of the caste-system. It continued to reinforce the power of the priests and knights, as the economically ruling classes, in particular their power over the "unclean". It reinforced it also by sending the Buddhist monks into the fold to teach the people to indifference. Indian political and legal doctrines found an expression in the various Indian epical poems, so in the Mahabharata and the Ramayana. Still these doctrines turned up also in Manu's Code, which was edited by the Brahmin Kautilya. According to Kautilya, the State was composed of seven elements. The first of the elements was the king, further elements were the ministers, the territory, the capital, the Treasury, the army and the international alliances. The genesis of a political organization in a definite territory was due to a corruption of the customs and habits of men, i.e. "men have been seized by the desire of possession, they have extended their arms towards the strange, have become the slaves of passions, did not know what they must do and what they must not, they could not distinguish permitted and forbidden acts, have failed to discover a difference between sin and virtue, the good and the evil, in one word, between the forbidden and the permitted". The epics and the law-books praised power, because the ruling classes considered the power of the king to be the safeguard of order, and proclaimed unconditional obedience of the subjects. The principles of human coexistence were summed up in the so-called Trivarga. The Trivarga in fact combines three systems of norms. These included the legal norms, the norms of customary law, and religious duties. The second system of norms implied the norms governing the

practical activities of man, i.e. the system of norms controlling economic activities, artistic endeavours and efforts directed towards the achievement of definite targets. Of the systems of norms, the first had the greatest significance. It was called the Dharma.

The epical poems and Manu's Code clearly revealed the relations between State and law. They made it clear that the ruler could not wield power unless he had disposal of the treasury and the army: "The treasury relies on violence; the law rests on violence." The State must be headed by an inexorable man of action, who while safeguarding the interests of the State could even infringe the laws. According to Kautilya, the good ruler was one who consulted the wisest men, who was considerate, wellbalanced, who acted consistently and quickly, who kept a watch on dangers. The epics and Manu's Code made the happiness of society dependent on the maintenance of the caste-system. The upper three castes approved the caste-system, although there was altercation among them. Still this did not affect the caste-system which was attached to the history of the Aryans in India.

Babylon was a theocracy. In the middle of the 18<sup>th</sup> century B.C. Hammurabi succeeded to the throne. He united the former Sumerian city states, and appointed lieutenants to govern them. He took care of an efficient administrative system—a treasury and an army. He promulgated several laws and considered these laws as being of divine origin. The laws were engraved in a two metre high diorite block. Hammurabi entrusted the priests with the maintenance of legal order. He considered these laws unchangeable. It cannot be argued that the teaching of the divine origin of the laws was in harmony with the doctrines proclaiming the divine origin of the ruler and his power. The king was considered the elect of god. The rulers took utmost care of the demonstration of the legality of their power and of its legal confirmation. The Sun-god Shamash watched over law and justice. The ruling king was believed to be one who was capable of acting as intermediary between god and man. The secular power of the king coalesced the divine power, the political power with the religious power. This found expression in the thesis that an opposition to the royal command, i.e. disobedience to the legal provision, was qualified as blasphemy. It was held that man was the shadow of god, the slave was the shadow of man, and the king was the equal of god. Thus the inequality of society and the exploitation of the slaves were sanctioned. The oppressed classes expressed their bitterness in several religious songs, called into doubt the wisdom of the gods, and complained of the indifference of the gods.

The political and legal doctrines of the Jews were given expression in the various books of the Bible. These doctrines were intertwined with religious elements. The king was believed to be the anointed of the God Yahve, i.e. his son. The Jews considered themselves the chosen people of God, a thesis which was capable of welding them together. They thought that all other peoples were living in blindness and they were called to be faithful to their god. The idea of Messianism developed among them in their struggles with their enemies and in response to the special economic and political conditions. They firmly believed that God would send to them the Saviour, who would restore the power of the kingdom of the Jews. Unlike the earlier political and legal opinions they believed that God would govern directly, a circumstance which weakened the royal power. The Jewish people took the field for the rights of the people through its prophets and in their struggle came into conflict with



royal power. e.g. Moses in Book Two took a stand for the people and insisted on a special treatment of Jewish slaves. The prophet Amos criticized the way of living of the propertied class, the prophet Hoseah condemned the kings, Jeremiah protected the poor against the oppression of power and arbitrariness. The ruling classes pitted their own prophets against those of the people. Among these Esekiel was the most prominent. In Messianism, or in its political and legal theses, the conflict between the popular elements and the aristocracy, the priests and the king found an expression. In fact Messianism reflected the class warfare of the age. It tried to give expression to the social and political demands of the indigent classes, on the one hand, and propertied classes on the other.

If a study of the political and legal views of ancient Egypt is made, their theocratical character will be obvious first of all. These views believed that the ruler, the Pharaoh was a god "who never dies, only reposes above the eternal horizon". The Pharaoh was at the same time the high-priest, the supreme commander of the army, and the supreme judge. In Egyptian political and legal doctrine, the Pharaoh was the gods' equal, moreover even of superior order. Efforts were made in order that the cult of the Pharaoh might strike root in the people. The subjects had to prostrate themselves before him, and kiss his footsteps. It may justly be said that the pharaohs consciously based their power on violence and terror, and also that the civil servants were led by mercilessness. This system of doctrines considered the lowest strata of society wholly worthless and made their happiness dependent on the mercy of those holding power. For the propagation of submission and its reinforcement, the priests worked out a special system. This was in the interest of the ruling classes, as in Egypt often revolts of slaves and peasants broke out against the propertied classes. Many a dynasty was overthrown by these revolts. However, the suppressed slaves and have-nots had a foreseeing ideology, the so-called hedonism, whose doctrines were summed up in the so-called song of the Harp-player, in the 15<sup>th</sup> century B.C. era. "Hedonism" taught careless life, and also that the slaves should seek their salvation from the burdens of a humiliating life in death, i.e. by throwing off the yokes of the theocratical system. The oppressed wanted to discover a desired genuine equality in death.

[2.] When the social and economic conditions of ancient Greece are made subject of a study, the disintegration of the clan organization should be mentioned first of all. The disintegration of the Greek clan organization set in simultaneously with the development of private ownership and concomitant of it was the segregation of the wealthy and the indigent. The first period of Greek history, the period when still patriarchal tribal relations were predominant, has been designated as the "heroic age". What was characteristic of the social conditions of ancient Greece was the birth of the many small city states, the *polis*, and the proliferation of particularism. In the Greek city states, the class of the wealthy split up into several layers in the wake of the growth of Greek industry and trade. In Greek society the non-propertied belonged to the mass of slaves. Certain layers of the ruling classes soon became impoverished. A picture of the impoverishment within the ruling classes was drawn by Hesiod in his work "Toils and Days". The views of the rich, i.e. the nobility, was described by Homer in his Iliad and Odyssey. Ultimately the Greek population was split up into landowners, wealthy artisans and merchants, and rural poverty. In addition there was a huge mass of slaves.

In the history of the growth of the Greek city states special stress has to be laid on Athens. In Athens social and economic conditions developed which permitted, moreover, insisted on, the formation of a variety of legal and political opinions. This does not mean as if in the other Greek city states no political and legal doctrines had sprung up. In fact the evolution of the state organism, i.e. of an organism segregated from society, took place in every Greek polis and an explanation of the essence and structure of this organism became inevitable. Several doctrines of politics and law appeared. e.g. in Ephesos, where Heraclite preached political opinions and views of law which favoured the interests of the wealthy. In Abdera, Democrite expounded his doctrines.

The evolution of Greek society presents a continual struggle between aristocratic and democratic ideas in the theory of State and law.

About 500 B.C., momentous changes took place in ancient Greece. From this time onwards Athens firmly established her economic and political position, in particular in the wake of her victory in the war against the Persians. In consequence of this victory a system of economic and political dependence was established between Athens and a number of Greek city states. The organizational basis of this dependence was the so-called Maritime Alliance. Far-reaching changes took place in Athens proper, where the rule of the aristocratic clans was superseded by democracy, whose characteristic feature was that except the slaves every freeborn citizen had a say in government and the management of the affairs of the State. In this age the doctrines on politics and law were embodied by the teachings of a number of thinkers, so by the ideas of the sophists, e.g. Protagoras, and by those of Socrates and Platon. Considerable influence was exercised on public opinion by the cynicists. In the years following the Peloponnesian war the power of Athens began to decline, and only in the closing years of the 4<sup>th</sup> century B.C. did Athens enter a new phase of economic development. Amidst the economic revival, Aristotle made his appearance in the history of political and legal thinking.

Aristotle was born in Stogiros in Thrace, in 384 B.C., and died in 322 in voluntary exile. Aristotle, whom Engels called the "most universal brain", studied at the Academy of Platon from 367 B.C. onwards, and then later he himself began to teach. Marx wrote that Aristotle was the first who subjected the form of value, with many other forms of thinking together with social and natural forms, to an analysis. His most prominent works are Politics, Metaphysics, Organon, Poetics, and the State of Athens. In 335 B.C. Aristotle founded a school in Athens, called Lykeion. Its members under his leadership took a stand against the Platonic ideas and believed in the need for an empirical collection of data and their processing. Aristotle set out from the thesis that for the creation of general notions it was necessary to examine the single objects.

In his investigations of State and law, Aristotle tried to give a reply to the question of the origin of the State. In this investigation he set out from the theses that Man is by nature a political being, i.e. a "*zoon politikon*". Man strives for social coexistence, and as the outcome of his efforts established a number of ties and created several organizations. Among the organizations, the family was the first. With the growth of the family, also cooperation among men began to develop. From the need of the exchange of goods, or barter, and the union of the various families, the village, or settlement came into being.

According to Aristotle, the State was the community of highest order consisting of several villages or rural communities. He believed that the State was not the result of some sort of a contract, but the product of natural evolution. Hence in his notions the family preceded the State, which differed from the family qualitatively and quantitatively. Since the State was the natural form of coexistence, and as such eternal, Man could not live without the State. On continuing his analysis of the State, Aristotle meditated on its ends and functions. Of the ends and functions of the State, he said that the end of the creation of the State was self-preservation, its final end was the supreme good. According to the notion of Aristotle the State was created to guarantee the welfare of Man. As a matter of fact the end of human life was the achievement of happiness, whose content was welfare. Happiness was unimaginable and unachievable without the activities of the State. Therefore the organs of the State had to guarantee happiness and contented life, furthermore the citizens had to educate the collective of free citizens in the spirit of solidarity. Happiness as a moral goal meant that the State guaranteed appropriate leisure for the free, promoted the development of their physical properties, and exerted its influence that the free persons helped their friends. Hence friendship, i.e. righteousness, legality and equity appeared as great virtues in the notion of Aristotle of the end of the State. He also set forth that only a slave-holder could be happy within the State, as Aristotle recognized and justified slavery, and considered it the essential foundation of every State. Among the functions of the State, Aristotle mentioned autarky, the fostering of the religious cult, further the education of the free citizens and the definition of correct and incorrect conduct.

Aristotle analyzed the problems of the forms of government in detail. In his view, there were two forms of government, viz. a correct and an incorrect form of government. He made it clear that the "monarchic form which respected public interest was called a kingdom, the form of constitution which vested the few, yet more than one person with power, was aristocracy, finally when the people exercised the sovereign power for the public good, this is the given name common to all forms of constitution, viz. *politeia*". Besides the proper forms of government, Aristotle enumerates also the wrong forms of government, which regarded private interests, and not the common weal. Among these were tyranny, oligarchy and democracy. These were the degenerated forms of the proper forms of government, i.e. tyranny that of kingdom, oligarchy that of aristocracy, and democracy that of polity. On analyzing the forms of government, Aristotle combined them with the various categories of ethics. e.g. he believed that oligarchy guaranteed wealth, and democracy freedom. Aristotle recognized that in the description and definition of the forms of government, property had an important role. Consequently oligarchy was the rule of the propertied or wealthy classes, democracy that of the indigent. It was not essential therefore of how many persons the organization governing the State was composed; the decisive fact was which stratum of owners enjoyed protection of their interests by the various forms of government. Undoubtedly, by defining the forms of government on the ground of their relations to property, Aristotle rightly approached the gist of the problem.

Aristotle thought that of all forms of government defined by him, *politeia* was the best. In *politeia* he distinguished three groups of the population, viz.

the wealthiest, the middle class and the very poor. He believed that the domination of the middle strata had to be ensured, this being the most useful for the State and most interested in the continuity of the regime. What was characteristic of the middle class, wrote Aristotle, was moderation, cautious action; moderation was of fundamental importance in political activity. The temperate middle class could avoid extremes, and could put a brake on the excesses of the poor and the wealthy. With this statement Aristotle appeared as a partisan of the peace of classes and of compromise in the thinking on politics and law.

Strictly speaking, Aristotle adopted the views of Solon, who was active in Athens in the 6<sup>th</sup> century B.C. Solon was the first to give expression to the doctrine of a compromise. Solon stated that "I have conferred as many privileges on the people as were sufficient, I did not depress the esteem of the people, nor did I overrate it, and I tried to save those on whom money bestowed splendour and honour, from being humiliated by a base deed." "I protected the two parties with my strong shield, and never allowed that either should gain a victory over the other." It was the conscious end and endeavour of Solon to follow the idea of the golden mean, and of safeguarding of the equilibrium and harmony of society. Essentially the reforms of Solon reinforced the position of the wealthy classes and quietened the revolutionary tendencies of the poor.

Aristotle realized that the fundamental factor in the changes of the forms of government was the tendency directed towards the elimination or the consolidation of inequality, i.e. the contradictory character of society. On this understanding he wanted to establish a definite form of government permanently by helping the middle classes to power. He thought that the wealthy and the poor could be brought closer to each other, i.e. that as far as property was concerned, property of medium size was the best. He considered the form of government firmest where the owners of fortunes of medium size constituted the majority of the population. He believed that the slaveholders and the free men should join hands, because this joining of hands was the condition of a firm form of government. Thus the *politeia* would have to put into practice a moderate democracy, where solidarity in the affairs of the community would have been fundamental, irrespective of the financial position. He also thought of increasing the number of members of the middle classes, for where the middle classes were predominant, disruption among the citizens was of the rarest. Thus the risk of revolts or revolutions could be eliminated. Hence Aristotle pushed through the idea of a compromise consistently in his political and legal doctrines, of which he wrote: "Obviously, the golden mean is the best. This is the only one which does not lead to dissension; where there is proper moderation, dissension and disturbance are the rarest among the citizens. There are fewer disturbances in the great states, because there the middle classes are large. On the other hand, in the smaller states the population disintegrates more easily into two parties, so that a middle class does not even remain, and also there is, so to say, everybody either poor or rich." The doctrines of Aristotle about the middle classes cannot be accepted because they are wholly Utopian. As Marx made it clear in the Communist Manifesto, the history of the various groups or of society itself demonstrates that power is held by those in whose hands wealth concentrates, i.e. the State will manifest itself always as the power of the economically ruling stratum or class, or classes. Economically the middle stratum or middle classes do not dominate. In addition, these

classes are wavering. This explains why the middle class mostly means a transition into the stratum of the rich or the poor, as the case may be. The struggle between the classes cannot be eliminated with the insertion of the so-called middle classes. The middle classes never did hold a leading role, and cannot even hold one, in the processes in society, as in history the middle class always took the side of one or the other of the contending classes. The middle class did not advance either the reconciliation of the classes or the mitigation of the class contrasts. What appears to be important or decisive in the conduct or role of the middle classes, is merely the manifestation and the result of the compromise. The compromise has some sort of significance, yet only a tactical or transitional one, as historically it cannot become decisive in the face of the class warfare.

The ideal State of Aristotle would have been one where the citizen had limited ownership, and where the function of the State would have been the guarantee of the happiness of the individual, i.e. of virtuous life, by way of a congruity of interests, where the military and political functions were performed by the very same persons in succession, where matrimony would have been regulated in a way that women would have contracted a marriage at the 18<sup>th</sup> year of age, and men at their 37<sup>th</sup>, in winter. Still matrimony could be contracted even earlier, yet in this case the married couple would not have been allowed to provide for progeny. One of the fundamental ideas of Aristotle was that the State should bring up the children, and not the parents. The principles of State education were that the children of the parents exercising power and those of the parents under the rule of others should be brought up under equal conditions, since also the children of parents under the rule of those holding power might come into power one day. Education should begin with physical training, and continued with the education of the soul. Aristotle laid particular stress on the training of the mental faculties. From their seventh year onwards children should take part in common occupation, where they had to learn gymnastics, grammar, drawing and music.

Aristotle was the disciple of Platon for a long time, however, his views departed from those of Platon, in particular his doctrines of State and law. They agreed in so far as both recognized the need for slavery. However, they differed in their opinions on which layer of the class of slave-holders should be the holder of power. Unlike Aristotle, Platon believed that in Athens the aristocracy should rule rather than the middle strata the golden mean. In this connexion he stated that the slave-holders i.e. the free, or the population, had three classes, viz (1) the philosophers or the class of the wise; (2) the warriors and the class of guards; (3) the artisans and the tillers of the soil. According to his doctrine the virtue of the philosophers only relied on sense, i.e. only the philosophers were in the possession of wisdom. The property of the warriors or the guards was the virtue of valour which relied on the will. The artisans and the tillers of the soil possessed the virtue of temperance which relied on the suppression of sensuality. Platon set out from the thesis that wisdom and valour were the property of a few selected slave-holders only. The artisans and the tillers of the soil, or in one word, the *demos*, were capable of the virtue of obedience only. According to Platon, the three classes were united by the virtue of righteousness. This virtue prompted the philosophers, the warriors and the artisans to discharge their individual duties only. According to Platon, there could be no harmony among the various classes unless

those active in a particular sphere refrained from interfering with the activities or functions of the others. Marx appropriately remarked that Platon's doctrine of the structure of society was, strictly speaking, an idealization of the Egyptian caste system. In fact this is substantiated also by the other doctrines of Platon, stating that the stratum of philosophers could have no property, further that the philosophers and warriors had to be educated in a way that they did not place their individual interests above those of society. Platon noticed that there were transitions between one class and another, i.e. the virtues were not tied exclusively to the classes he enumerated. Consequently there were cases when the various classes did not perform their duties in the proper way. This was the reason why timocracy or oligarchy, and democracy or tyranny sprang up. In Platon's opinion, timocracy was to some extent close to the notion of the ideal State, still it was not identical with it in every respect. He did not praise oligarchy either because it meant the power of the few, i.e. the power of the wealthy, the slave-holders, the merchants and usurers. Strictly speaking he opposed democracy, because in his opinion democracy did not guarantee the rule of the wise or the philosophers in society, i.e. it did not allow that reason governed valour and temperance, therefore it was not the correct form of government. He made it clear that the people could not be philosophers or wise. Criticizing democracy, he made the statement that complete freedom reinforced by democracy created anarchy and that equality guaranteed by democracy was a folly, because in democracy the unequal would become equal. In Platon's opinion, tyranny was the worst form of government. Obviously, the reason was that tyranny overthrew and superseded the aristocratic form of the slave-holder state, i.e. exactly the form of government which Platon put on pedestal. It is in particular history which demonstrates that Platon tried to translate his doctrines into practice. He hoped that he could create the ideal state in Sicily, in Syracuse, however, he hoped in vain. This was, for that matter, understandable, as it was Platon who advocated that the philosophers were called to govern society, yet this doctrine in all certainty did not suit the ruler of Syracuse. Later Platon revised his original notion of the State and formed what may be called a realizable notion. In this new notion, the following essential traits may be discovered: The basis of the State is agriculture; in the State, special attention had to be given to property, the family, and education, because only these advanced the veneration of religion, God and the parents; the aristocratic form of government was the most ideal (and of course relied on a social inequality of a very high degree); the soil had to remain in the ownership of the State, the landowner could merely be the leaseholder, with the lease being inheritable, still indivisible; the authorities had to supervise family life rigorously; the maximum of property had to be defined; a popular assembly, even a narrower council may be organized, still the eldest, most experienced citizen, and not a philosopher had to be at the helm of State; the supreme official organ of the State should be a body formed of thirty-seven representatives.

Obviously Aristotle gave expression to the interests of the middle classes (which was quite understandable, as towards the end of his life he, too, was medium landowner), unlike Platon who represented the interests of the reactionary aristocracy.

Aristotle exposed important doctrines also on the law. In his work "Politics" he pointed out that the "law is nothing else but the order of the political

community, and the law is the measure of justice". As regards the law in particular, his work *Nicomachean Ethics* is worth studying. In this work he investigated the relations between law and morals. He set out from Man, and, on analyzing the relations of law and morals, from the thesis that "the law-breaker is unjust and the law-abiding man is just". What follows is that in a certain sense things permitted by the law are always just and right: what the law decreed is lawful, and what is lawful is believed to be just and right. The law in general controls everything, and serves either general public interests, or only the interests of the ruling class, irrespective of whether the ruling class owes its privileges to some sort of a distinction, or to any other circumstance. According to Aristotle the essence of law is justice. i.e. the law is a measure which is applied in a way that formally equal subjects are compared, and from this point of view justice is an order where the advantages of the best and the most virtuous have to be guaranteed. Further the general welfare of the citizen, the complete guidance of their life, the complete and partial freedom of men, and a certain equality of men have to be guaranteed. Aristotle explains that where power is unlimited, where there is no proportionality, law is out of the question. Namely "proportionality" means that equal punishment has to be imposed on everybody if equal crimes are committed. On the other hand, "proportionality" also means that every citizen has to respect the law equally and uniformly. This he expresses in his works *Politics* by stating that "Man is the noblest creature of all . . . who, if he departs from statutes and from law, is the basest of all". It cannot be argued that proportionality, or, in other words, the equality of the law is abstract, i.e. it cannot have regard for the specific differences of the individual. This means that one has to observe the law irrespective of one's individual properties or individual characteristics. In connexion with the law, Aristotle does not only lay special stress on justice, but also on the antithesis of it, i.e. he subjects also injustice to a detailed analysis. He does not keep injustice and crime apart. He believes that an unjust act is e.g. larceny, robbery, or adultery. (Naturally today the epithet "unjust" is not any more applied to these acts: with a legal term they are called unlawful, so e.g. larceny or robbery, but not adultery which has ceased to be a criminal offence.) According to Aristotle everything that violates statutes is unjust. Hence robbery, because it violates the law, is unjust, and the robber as law-breaker is simply unjust. Naturally the problem has certain moral aspects which are outside the scope of the present work. Namely in the moral sense, righteousness tries to grasp the proportionality expressed in the relation of one person to the other. On this understanding, righteousness is the regulator of the relation between an individual and another, e.g. among friends.

Aristotle did not deal only with the essence and functions of the law, but also with its sources and the systematic division of law. According to his doctrine law has written and unwritten sources. He stated that the statute as a written source of law owed its existence also to an unwritten source of law. This doctrine of Aristotle was clearly associated with his opinions on the systematic division of law. According to Aristotle, there are so-called nature-made legal rules, and there are ones created by the State. According to his opinion, nature-made law is in fact independent of Man. The rules of nature-made law are the general rules of coexistence, are universal and natural truth, and even if never put down in writing, are accepted by all men, because they are in fact moral postulates and their content best suits the moral good. But

as soon as Aristotle gets down to facts, the subjective character of his position becomes manifest at once. Namely, according to his doctrine, natural law includes e.g. slavery, property, ownership and warfare. In this connexion we would remark that, according to Aristotle, the Greek people was the centre of the world, which partly lent contradicting properties to it, partly raised it above the other peoples, i.e. the barbarians. This doctrine of Aristotle may be regarded as the root of the racial theory.

The law created by the State is called positive statutory law. With Aristotle natural law is not the standard of positive law. He sees no contrast between natural law and positive law. In connexion with legislation he states that legislation can be of general validity, still it may at the same time be wrong. Accordingly, both the legislator and those in charge of the application of the law may mend the errors of the statute, for he who acts correctly applies the law not according to its letter, but according to its spirit.

The opinions on the law appeared in Greek society already before Aristotle. e.g. Pythagoras believed that harmony was the primeval principle of law. This harmony was expressed by the equality of numbers. He believed that equality and compensation were the purpose of the law. By justice he understood the numbers multiplied by themselves. Heraclite, too, dreamt of the rule of the "logos". The sophist Protagoras believed that law was changing, conditional and expressed the despotism of Man. Socrates conceived the law exclusively in its positive legal sense and proclaimed that every citizen had to live according to the law, the obedience to the law being a virtue. According to his theory the moral foundation of State-made law was the unwritten divine law, i.e. justice and legality were synonyms also in his theory. Socrates insisted on a strict observance of the statutes expressing the interests of the minority.

Aristotle's doctrines on law and morals also departed from those of Platon. An interesting "dispute" developed on the essence of law between Platon on the one, and Socrates and Trasymachos on the other part. The dialogue between Trasymachos and Socrates on the one, and Platon on the other part centred round the following questions. Trasymachos exposed that "every government makes statutes so as to suit its interest, i.e. a democratic government makes democratic statutes, a tyranny tyrannical ones and so on. Through the legislation the governments declare exactly this, i.e. their own interests, as just to the citizens, and anybody who dares to depart from the law would be punished as a law-breaker and as a man doing injustice." What stands to reason is that Trasymachos recognized the class character of the law, i.e. that the law in all cases expresses the interest and the will of the economically ruling class. Accordingly on this understanding, legality also has a class character, it is a class notion, or, in other words, justice is also of a class character in all times. He too, like Aristotle, incorrectly identified the observance of the law with justice. This identification of truth with law, i.e. the identification of the legal with the just, as has been demonstrated by Marxism, is incorrect. Aristotle differed from Platon exactly in that he identified the concepts of rightful and just, whereas Socrates and Platon operated only with the moral truth-concept, and did not demonstrate the divergent concepts of truth of the opposed social strata.



[3.] In the age of Aristotle, and after him, several doctrines of politics and law brought to bear an influence on public opinion in Greece. The economic foundation of these political and legal doctrines was the economic and political decadence of the Greek city state, their ideological foundation was overwhelmingly the teachings of the cynics. Of the trends of ideas so developed, Stoicism had a significant effect in Rome, and Stoicism had the strongest influence also on Cicero, this greatest orator of that era.

Roman history had its beginnings in the 8<sup>th</sup> century B.C. At this time the Roman primitive community changed over to a politically organized society, and at that time, as the outcome of the intrinsic contradictions of Roman society, the Roman governmental organization was born. The Roman State passed through several phases of evolution. In the beginning it was a kingdom. Later the era of the Republic followed, where the patricians and the plebeians were engaged in a particularly keen class warfare. The plebeians in the first place insisted on the right to take part in the management of the affairs of the State. This struggle was of extreme importance. The plebeians succeeded in creating the institutions of the people's tribune against the arbitrariness of the civil servants of the patricians. It was in the age of the republic that Roma grew from a small Italian city state into a great power ruling the whole Mediterranean basin. Rome began to build up her power from 246 B.C. onwards. At that time, the nobility governed the republic and the Senate was the supreme authority. Towards the end of the republican era, the social contradictions heralded by the great slave risings, grew more and more intense. These contradictions in Roman society brought about the fall of the republic to be followed by the coming into power of a series of military dictatorships. Military dictatorship was introduced by Sulla in 83 B.C. The war-lords became the decisive factors in politics, as in fact Rome continued, and even intensified her wars for territorial expansion and plunder. One is even tempted to say that the army leaders bought the people for the achievement of their political goals with the money extorted from the provinces.

In 63 B.C., Marcus Tullius Cicero entered the political scene in the Roman senate. In the same year he was elected consul, and it was due to the action he took in the Senate that Catilina and his partisans were brought to the scaffold. Cicero adopted the Stoic philosophy. The Stoic philosophy propagated by the Greek Zenon and Chrisippos suited Roman politics irrespective of that some of its theses were subjected to criticism. Cicero visited Greece several times. He was even in Athens. Of this visit he informs us in his work *De supremo bono et malo*.

In the beginning Cicero was the representative of the democratic wing in Rome. — Later he became the leading figure of the conservative camp. Cicero did not take over the Stoic doctrines directly from the Greeks, but through Panetius as intermediary. Rome received Stoicism with understanding, moreover the authorities agreed that several Greek Stoic philosophers should lecture in Rome. In the doctrines of Panetius, Stoicism manifested itself completed with the elements of the teachings of Platon, Aristotle and other tendencies. Thus in Panetian Stoicism the philosophic doctrines combined which suited Roman spirit best. The political and legal doctrines of Stoicism so transformed laid a stress on the sense of duty, individual responsibility, and devotion to public affairs. Thus it lent an idealistic colour to the Roman policy of conquest. Cicero was the foe of Caesar, and in his opinion Scipio was the ideal of a

statesman. When Caesar took arms against him, Cicero saved his life by going voluntarily into exile. The consulate of Cicero came to an end in 46 B.C., and then he was banished officially. In this year the Populares came into power.

In the fifties Cicero returned to Rome and from then onwards he took up literary work. His most prominent work was *De Re Publica* written in 51 B.C. In this work Cicero adopted the theory of the State of Polybios. Polybios was the disciple of the powerful clan of the Scipios and an enthusiastic adherent of Roman world rule.

In his work *De Re Publica* Cicero deals with the problems of the organization of the State. He believed that Rome needed a political organization where power would be divided and exercised by the popular assembly, the Senate and the civil servants of highest rank. According to his views the division of power has to ensure an equilibrium of power. In situations of special gravity and of decisive importance, he approved of a termination of the division of power on the plea that in critical times the best policy was to entrust power to the worthiest of the citizens or to an ideal statesman who would act as an intermediary between the controversial forces of society.

Speaking on the origin of the State, he stated that in society the family is the narrowest group, the smallest element of statehood. Then comes the *municipium* and the State in order of magnitude, as the other elements of society. This thesis of Cicero bore a certain resemblance to the doctrine of Aristotle, and was an adaptation of the latter to Roman conditions. His doctrine on the division of the branches of the political power on the other hand reflected the views of Polybios according to which three principal forces kept up the equilibrium of the social system of Rome, viz. the power of the consuls embodying the monarchical principle, the Senate embodying the aristocratic principle, and the popular assembly representing the democratic element. This was what corresponded to the theory of the mixed forms of government. In fact Polybios thought that Rome owed the constancy of her power to the form of government composed of several elements.

According to Cicero the "State is the community of men united by common law and common interests". Still at the same time he accepted the Stoic thesis according to which there was a widest community which embraced mankind in its entirety. This thesis was, strictly speaking, the idea of a world state proclaimed by the Stoics, and for that matter of a world state where there would be no slaves, no judiciary, no church, and not even money. (Of these ones Cicero did not speak.) It is worth mentioning that according to Polybios the State changes its form in the course of its evolution, yet always returns to its earlier form. In the beginning the State is a monarchy, later it becomes a tyranny, the tyranny transforms into an aristocracy, later on into a democracy, and then into an ochlocracy. Polybios called democracy the phase of destruction, for although this form guaranteed the prevalence of the rights of the people, later evil instincts and selfishness get the upper hand and so democracy eventually degenerates into tyranny. According to Polybios democracy is its own grave-digger. He praised the aristocratic order of Rome. He believed that the purpose of the State is the protection of private property. His ideal was the peace of the classes, the unity of the wealthy classes against the indigents. In the sixth book of his work *De Re Publica* Cicero raised the idea what the person saving the State deserved. His answer was that such a person was rewarded by heavenly bliss, because the State was dear to the gods and its

leaders were received in Heaven. The closing myth of *De Re Publica*, the dream of Scipio, was well suited to inspire with patriotism and encourage to the unselfish and self-sacrificing service of the country even after the change of the forms of society.

Speaking on the law Cicero distinguishes the eternal and unchanging law, i.e. natural law, and the law valid in a given period, i.e. the law he called *ius humanum*. *Ius humanum* was human or positive law. Hence Cicero accepted the notion of natural law and believed that there was an eternal and unchanging justice whose foundations were laid by the divine laws of nature, and which was valid for all men. He explained the existence of natural law by the uniform conviction of man, i.e. that natural law was in the consciousness of all men and that everybody could become acquainted with it with the aid of the intellect. He believed that by nature certain deeds had to be valued negatively, and others positively. He made it clear that human conduct was defined by the consciousness of the natural essence of Man and that it was the laws of nature that permitted the classification of the particular acts of Man as just or unjust. He combined the question of natural law with justice, and stated that everything that peoples at all times considered just was in fact just. He thought that natural law was most perfectly expressed by the so-called Law of the Twelve Tables of the Romans. Besides natural law there was man-made law, the *ius humanum* which according to him could be divided further. Within the *ius humanum* there was the *ius gentium* which gave expression to the legal ideas of mankind as a whole, and which was the most perfect reflection of natural law. Within the *ius humanum* there was the so-called *ius civile*, which consolidated the statutes of the particular peoples. In fact the *ius civile* was valid for the citizens of Rome and did not extend to the aliens, to legal relations existing with aliens. The *ius gentium* was some sort of a "world law", which came into being by the side of the *ius civile* for the regulation of legal relations with aliens.

In the wake of Cicero's oratorical and literary activities the Stoic doctrines exercised an influence also on the average standards of Roman jurisprudence. The Roman lawyers thought that positive law brought into being perfect justice, and they also agreed that power originated in the people. They attributed an ethical character to law and held that positive law depended in a hierarchical order on unchanging natural law.

Cicero was an excellent orator. This is borne out in particular by his speeches for the prosecution and for defence. Cicero set forth that "there are two vocations which raise man to the highest level of dignity, namely those of the leader and the orator". He took a stand before court against the large-scale speculations. Rome and her army leaders systematically looted the newly occupied territories and even the civil servants of Rome governing the provinces were eager to exploit the conquered population. In general the abuses of the governors grew to considerable proportions. In the suit against the quaestor Verres, Cicero acted for the prosecution, and with his speech against Verres he won the confidence of the people. A characteristic feature of the age was the active violation of the law. He pleaded for the defence in a number of cases before court (so e.g. in the case against the son of Sextus Roscius).

At the turn of the years 44 and 43 B.C. the aged Cicero once again took a stand for the defence of the Senate, when Antony strove for power. In 43 B.C. Antony had the 64-year-old statesman killed.

Cicero owed his popularity in Rome partly to his faculties as an orator, partly because he criticized one-man rule, so besides that of Antony, also the despotism of Sulla and Julius Caesar. At this time the theory proclaiming the unrestricted power of the ruler (e.g. an emperor) was not yet popular.

Cicero, the practical-minded Roman, went beyond his Greek masters in that after a juxtaposition of thesis and antithesis he did not hesitate to draw definite conclusions. His method was the considerate and effective means of the prevention of predictable contradictions. In this method, Voltaire emphasized the force liberating from dogmatism and stated: "We despise them, the coarse scholastics, who for such a long time ruled us, still we esteem Cicero and those men of Antiquity who taught us to reason."

[4.] At the time of the Empire, in particular during its last phase, the Roman Empire went through a period of crisis in economics, in home and foreign politics. Even in the sphere of ideas, a period of fermentation set in. Mysticism was spreading and then the teachings of Christianity. In its foundations, Christianity is a mixed theory. It is mixed because it incorporates the doctrines of the Stoics, further the elements of Oriental cults, so such of Buddhism (e.g. the belief of Osiris as the dying and reascent god), and also incorporates Jewish Messianism. In the beginning the Roman emperors persecuted the Christian doctrines, but later, in a modified form, they themselves embraced them. (In the age of the Empire the established religion of the State deified the emperor.) It was due to the growth of trade that the population of Rome could penetrate into territories surrounding the Mediterranean. Knowledge and experiences acquired there shook the established religion of Rome in its foundations. Christian views of either society or the various kinds of human relations were basically of a progressive nature. Still they were idealist in a sense that they reflected the doctrines of Platon, i.e. that the spirit had priority over matter, that the material world was pervaded by the spirit, as the Stoics taught it, that one had to be indifferent to temporary things and that one had to wait for the advent of the Saviour and to believe in a single God.

The first great theoretician of Christianity was St Augustine, who lived between 334 and 430 A.D., i.e. in the period when the political and economic crisis of the Roman Empire gained in intensity and when the onslaughts of the Barbarians against the frontiers of the Empire grew in fierceness. The other Christian theoretician of renown was St Thomas Aquinas, who in the middle of the 13<sup>th</sup> century entered the scene with his teachings. As it is known, later on Christianity was split into two branches. Prominent representatives of the new trend in Christianity were Thomas Muenzer, John Calvin and Martin Luther.

St. Augustine wrote his principal work, *De Civitate Dei*, between 412 and 427 A.D. In this work St Augustine advanced the official views of the Church on the State. St Augustine was in fact a disciple of Ambrose, bishop of Milan, who taught that in matters of the soul the Church was sovereign; whereas in secular matters the emperor was sovereign. This meant that in secular affairs the emperor could freely direct his subjects. Still in spiritual matters decision lay with the Church, and here not even the emperor was excepted. Ambrose made it clear that it was not only the right, but even the duty of the clergy to condemn the immoral acts of the rulers. In fact Ambrose defended the

sovereignty of the Church against the State. Strictly speaking, St Augustine exposed doctrines on the relations between State and Church, and thought, he had to go further than Ambrose. He indoctrinated the opinion, and tried to justify it theoretically, that the Church stood above the State. He believed that in the history of mankind two "orders" were contending, of which the one was the *Civitas Dei*, the other the *Civitas Terrena*. The State of this world was organized on the ground of base instincts, it was in fact the rule of evil and sin, which originated from Kain, and through the dominion of the Assyrians, Babylonians, Persians, Greek discharged itself into the Roman Empire. On the other hand, the Kingdom of God was organized on the ground of the belief in the salvation of the soul, for the achievement of eternal repose in the next world, and not on the ground of evil and sin, i.e. of various base instincts. According to St Augustine, the State of God had its origin in Abel, and developed through the patriarchs, judges, kings and prophets to Christ and His Church. Hence according to St Augustine the Church was the principal power of the world. With this doctrine he laid the foundations of the theoretical notion of the State. However, he believed that Church and State had to cooperate, still in this cooperation the State was subordinated to the Church, for in fact the State was an evil phenomenon in society. He thought that coercion and violence were necessary, because both coercion and violence were but the penalty meted out by God for the sins of mankind. According to his doctrine Man is free by nature, i.e. everybody was born free, however, in consequence of his sins Man lost his freedom. He declared that in point of fact slavery must be considered the due of the wicked. Hence the first cause of slavery was sin, on account of which the one man was subordinate to the other, and personal liberty was limited. All this happened according to the judgment of God. Slavery was occasionally useful, and for the purposes of the service of God always useful, he wrote in *Civitate Dei*. Slavery was also a consequence of sin. Therefore men, i.e. the slaves had to be improved morally and religiously, and it was not necessary that socially all men should be equal.

As regards domination and power, St Augustine taught that secular power had to be subordinated to the Church. The Church appeared with her claim to power at a time when the Roman Empire was in the state of crisis and its disintegration was almost complete. St Augustine made it clear that with the birth of the Christian Church a turn would follow in the history of mankind. From this date onwards only the Christian State could exist, whose function was to assist the Christian community in its endeavour to achieve spiritual perfection.

In 325 A.D. the Roman Empire was divided into two parts. The West Roman Empire collapsed in 476, the East Roman, or Byzantine Empire survived till 1454. On the ruins of the West Roman Empire new states sprang up. In 613 the Frank Empire became united. The feudal Frank Empire flourished in particular during the reign of Charlemagne. In the beginning Charlemagne ruled together with his brothers, still in 771 he became the sole ruler of the Frank Empire. As a ruler Charlemagne excelled with an extraordinary ability for organization. His surroundings and the clergy inculcated on him the belief that he was appointed by Providence the ruler of his empire and that his primary duty was the translation of the Augustinian concepts into reality. The imagination of Charlemagne was strongly influenced by the political doctrines of St Augustine. According to contemporary records, at dinner he was wont to

listen to either music or lectures. The tales and the history of Antiquity were read to him. He was very fond of the works of St Augustine, in particular of *De Civitate Dei*, Charlemagne vindicated the claim to bring into being the Kingdom of God on earth and to pave the path to eternal bliss for his subjects. Although he wanted to carry into effect the doctrines of St Augustine, he placed himself in the first place in the State and attributed a decisive significance to his person. Charlemagne concentrated secular and spiritual power in his hands. The secular power was not indifferent for the Church, therefore it went out in praises for the rule of Charlemagne, although theoretically the relations between the spiritual power and the secular power did not manifest themselves in the works of St Augustine in the manner as these relations were embodied by the empire of Charlemagne. During his reign the Church did not succeed in subordinating the secular power to her rule. The Church could not establish her dominion in the world, although on the ruins of the Roman Empire she cherished this idea, which was in particular one of the favourite concepts of Pope Gregory the Great. Charlemagne had a decisive role even within the Church. After his death the situation changed.

In the opening years of the 9<sup>th</sup> century Christianity put up an opposition to the interference of the rulers with the affairs of the Church. In the 9<sup>th</sup> century secular power rose above that of the Church to the full extent. It stands to reason that in the 9<sup>th</sup> century again the thesis turned up according to which the popes were superior to the secular power. In the 9<sup>th</sup> century the doctrinarians of the Church tried to set limits to the power of the ruler by means of religious, moral and legal norms. They expounded the thesis that the ruler was bound to enforce the law unconditionally, that he had no right to create law arbitrarily, and that he could not change the statutes of old. The 9<sup>th</sup> century was almost wholly absorbed by the struggles of the West-European rulers against the various invaders from the North. In the middle of the 10<sup>th</sup> century a lull set in in the onslaughts from the outside, and on the ruins of the Carolingian Empire a series of new states became established.

In the 11<sup>th</sup> and 12<sup>th</sup> centuries doctrines hostile to the Church, i.e. heresies emerged and began to spread over Europe. The age gave birth to thousands of heretics. The teachings of St. Augustine proved ineffective in the fight against heretics. There was need for a theory which would at the same time be a suitable weapon against the heresies. In this age the growth of handicraft industry, commerce and the natural sciences also called for new theories. The creator of the new ecclesiastic theory was St Thomas Aquinas who belonged to the highest circles of the feudal hierarchy. Although his doctrines were not wholly his own, St Thomas Aquinas nevertheless did excellent service to the Church. The teachings of earlier thinkers had a decisive influence on his doctrines. Pope Urban IV commissioned St Thomas Aquinas critically to interpret and mend the earlier translations of the works of Aristotle. Of this work Lenin wrote that "the clergy killed in Aristotle what was still alive, and revived in him what was dead".

The standard work of St Thomas Aquinas was his *Summa Theologica*. On investigating the origins of the State, St Thomas Aquinas, following the footsteps of Aristotle, combined the origin of the State with the community nature of Man, and taught that Man was a political and social being, that the life of the individual had to coalesce with that of the community in a harmonious manner, for it was only on this understanding that Man could reach

his ultimate goal, God. He accepted the State as a means of the achievement of religious ends, yet as a means which had to be analyzed in a manner independent of religious values. Consequently he also recognized non-Christian rulers. He conceived the State as a natural phenomenon of all ages and all societies i.e. in his opinion the relation between those governing and those governed was of necessity. He took a stand for the aristocratic system, i.e. for the system where prominent persons held power. He taught that Man living in the framework of the divine order owed allegiance to the political power, as political power had its origin in the laws of nature. In contrast to traditions, in his opinion submission to power, even to the most despotic, had to be passive. On the other hand, power that infringed the laws of God and compelled the subjects to commit sins had to be overthrown. Also the power had to be overthrown which neglected the interests of the community. However, in certain cases he disapproved of an opposition to power. In his opinion the rule of a tyrant was still better than revolutionary anarchy. He believed in the need for a dual guidance of human affairs. On this understanding he made it clear that the guarantee of the common weal of the citizens did not absorb the functions of the State wholly, for the function of the State was also the achievement of eternal ends. From this thesis it follows that secular power was essential, still this power depended on the spiritual power. i.e. secular power had to be subordinated to the pope absolutely. Accordingly the pope was the temporal vicar of God and the supreme arbitrator in both religious and secular matters. The pope was the master of the world and every secular prince was his vassal.

On analyzing the problems of law, St Thomas Aquinas emphasized that there was a so-called *lex naturalis*, i.e. natural law, which in fact was the reflection of the *lex aeterna* in the human soul. This natural law, i.e. the *lex naturalis* permitted the guidance of human will. Natural law taught man what was good, and what was evil. The concrete norms of good and evil implied in natural law were then defined by positive law, i.e. the *lex humana*. The *lex humana* i.e. positive law was but the supplement of natural law, and as such was composed of a variety of detailed rules and instructions. The enforcement of the concrete norms implied by the *lex humana* was guaranteed, by coercion and other sanctions. The *lex humana* was one of the links, yet not the most perfect of the divine order. It was created by the human intellect, and human intellect reflected the ideas of God. St Thomas Aquinas mentioned yet another group of rules, the *lex divina*. The *lex divina* was aligned by the side of the *lex aeterna*, the *lex naturalis* and the *lex humana*; and it meant the divine statutory law. This statutory law was incorporated in the books of the Old and New Testaments. St Thomas Aquinas also raised the problem of the improvement of the law. In connexion with the evolution of law he exposed that appraisals could often be erroneous, that they often considered only the outside of conduct, and that the prescriptions of the law could not be extended to each individual case. Therefore supplementations, changes and modifications were needed. But he did not leave the modification and changing of the law to men. He added that although the individual could ascertain a conflict between human norms and natural law, still this finding did not authorize insubordination. According to his doctrine it was always God who supplemented human law with concrete instructions, and in this respect the *lex divina* had to be respected. If therefore statutory law conflicted with the divine law, the

individual could, and even had to, refuse obedience on the ground that divine norms were always above man-created norms. According to his position the *lex naturalis* justified the existence of feudal political and legal institutions. He criticized the statement according to which these institutions owed their existence to sin. He even criticized the doctrine according to which before the origin of sin men were free and equal, i.e. they did not know power, slavery and private property. In the notion of St Thomas Aquinas, sin, strictly speaking, threw difficulties in the way of Man in his endeavour to achieve the final goal. According to him, private property brought under regulation by the *lex humana* was not conflicting with natural law. He recognized the right of the State to promulgate laws provided with sanctions and to resort to any means for the preservation of its subsistence. St Thomas Aquinas maintained the division of the *ius gentium* and the *ius civile* within the framework of the *lex humana*.

The influence of St Thomas Aquinas lasts to the present days. The philosophy relying on his teachings has been given the name of Neo-Thomism. Neo-Thomism even today tries to reinforce Catholic doctrine and spread it within as wide a sphere as possible. The theses of Neo-Thomistic theory essentially do not depart from those proclaimed by St Thomas Aquinas. Marxism opposes Neo-Thomism and holds that its theses are not worth discussion.

Here it should be mentioned that the Reformation turned against the feudal Catholic Church and its teachings. The Reformation is split into a bourgeois and popular tendency. Luther was the representative of the bourgeois-moderate tendency, whereas the doctrines of the popular tendency were formulated by Muenzer. Essentially Luther betrayed the popular movement. He believed that the princes were ruling by the grace of God, and insisted on passive obedience on the part of the people. His doctrines of the State and its functions were extremely primitive. According to his doctrine "it is not the right of the Christian to oppose injustice and unlawfulness; it is his duty to endure and to suffer". In Luther's notion the State had priority, i.e. the clergymen were in fact the officers of the kings.

The representative of the popular tendency of the Reformation was Thomas Muenzer. His doctrines were strongly influenced by those of the Czech Taborites. Muenzer gave expression to the interests of the exploited strata of the population. He taught that all power had to be exercised by the common people, and that the exercise of power had to be controlled. The civil servants should be nominated and elected by the people. Muenzer, unlike Luther, the initiator of the Reformation, drew the conclusion that feudal differences had to be abolished. He insisted on the termination of the classes living from the work of others, i.e. on the metamorphosis of the whole social and political system. For the creation of the new social order, Muenzer demanded the formation of a party, which would have received the name of Christian Union and Brotherhood. He thought that a new social and political system had to be called to life, and for this purpose agreed with the recourse to violence in addition to persuasion. He was the first to raise the idea of the withering away of the State, after he made it clear that in the new society everybody had to work and that no one could live from the work of others. Everything would be common, there would be no need for a political organization, because the armed people would be the community itself.



*Agyagtáblák üzenete.* Fordította: Rákos Sándor. Az utószót írta: Hahn István. Budapest, 1963.; *Antalffy György: Állam és alkotmány az athéni demokráciában.* Budapest, 1962.; *Antalffy György: Chapitres choisis de l'histoire des idées politico-juridiques de l'Antiquité et du Moyen-Age.* "Acta Universitatis Szegediensis, Acta Juridica et Politica" Tom. 14. Fasc. 1. 1967. Szeged; *Antalffy György: Platón és Arisztotelész a „tökeletes” állami és társadalmi szervezeti formákról.* „Acta Universitatis Szegediensis, Acta Juridica et Politica” Tom. 3. Fasc. 3., 1957. Szeged; *Arisztotelész: Az athéni állam.* Fordította: Ritoók Zsigmond. A bevezetést és a magyarázatokat írta: Sarkady János. Budapest, 1954.; *Arisztotelész: Politika.* Bevezetőjét és a jegyzeteket írta: Simon Endre. Fordította: Szabó Miklós. Budapest, 1969.; *Arquillière, H. X.: L'augustinisme politique. Essai sur la formation des théories politiques du Moyen-Age.* Paris, 1956.; *Aquinói Szent Tamás szemelvényekben.* [De Regimine Principum, Summa Theologica.] Kiválogatta, bevezette, fordította és magyarázta: Schütz Antal. Budapest, 1943.; *Augustinus: De Civitate Dei; Avgyijev, V. I.: Az ókori kelet története.* Budapest, 1951.; *Barker, Ernst: Greek political Theory. Plato and his predecessors.* London—New York, 1960.; *Bilabel, F.: Geschichte Vorderasiens und Aegyptens von 16. Jahrhundert v.Chr.* Heidelberg, 1927.; *Brezzi, P.: L'idea di Roma nelle alto Medio Evo.* "Studii Romani" VII. No 5., 1959. Roma; *Carlyle, R. W. A.: A History of medieval political Theory in the West.* Edinburgh—London, 1903—1936.; *Carlyle, R. W. A.: History of Mediaval political theory.* Vol. I. London, 1924.; *Cerroni, Umberto: Il modello della "Politica" di Aristotele,* in "Marx e il diritto moderno". Roma, 1962.; *Cicero válogatott művei* [Ad Atticum, Ad Familiares, De Legibus, De Republica]. Némethy Géza fordításának felhasználásával összeállította, bevezetéssel és jegyzetekkel ellátta: Trencsényi-Waldapfel Imre. Budapest, 1958.; *Cölgecen, M.: Le Code d'Hamurabbi.* Paris, 1949.; *Dalok Könyve.* Fordította: Tőkei Ferenc. Budapest, 1959.; *Demougeot, Émilienne: La formation de l'Europe et les invasions barbares. Des origines germaniques à l'avènement de Dioclétien.* Paris, 1970.; *Escar, J.: La conception chinoise du droit.* "Archives de Philosophie du droit et de sociologie juridique" No 1—2., 1935. (Paris); *Fasso, G.: Storia della filosofia del diritto.* I. Antichità e Medioevo., II. L'età moderna. Bologna, 1966., 1968.; *Figgì, J. N.: The Political Aspects of S. Augustine's City of God.* London, 1921.; *Flori, Ezio: De regimine principum.* Bologna, 1928.; *Gilmora, M. P.: Argument from Roman Law in political Thought 1200—1600.* Cambridge, 1941.; *Grabman, M.: Thomas von Aquin.* München, 1920.; *Gramsci, Antonio: Filozófiai írások.* Fordította: Polanyi Ervin. Budapest, 1970.; *Grzybowski, Konstanty: Historia doktryn politycznych i prawnych. Od państwa niewolniczego do rewolucyj burżuazyjnych.* Warszawa, 1967.; *Gyeborin, A. M.: Az újkor társadalmi és politikai tanai.* Fordította: Józsa Péter. Budapest, 1962.; *Halasy-Nagy József: A politika tudomány kezdetei.* Platón és Aristoteles. Budapest, 1942.; *Hörn, K.: Solon—Staatsman und Weiser.* 1948.; *Kautsky, K.: A kereszténység eredete.* Budapest, 1950.; *Kínai filozófia. Ókor I—III.* Szöveggyűjtemény. Válogatta, fordította, a bevezetéseket és a jegyzeteket írta: Tőkei Ferenc. Budapest, 1965.; *Klausner, J.: The Messianic Idea in Israel.* New York, 1955.; *The Koran.* Translated from the Arabic by the

Rev. J. M. Rodwall. Introduction by the Rev. G. Margoliouth. London, 1945.; *Lagarde, G.*: La naissance de l'esprit laïque au déclin du Moyen-Age. Paris, 1948.; *Lao-ce*: Az Út és Erény könyve. Fordította: Weöres Sándor. Utószavát és a magyarázó jegyzeteket írta: Tőkei Ferenc. Budapest, 1958.; *Lin You-tang*: Han-fey as a Cure for Modern China, in "China's own Critics". London, 1931.; *Lucretius Carus*: A természetről. Fordította, bevezetéssel és jegyzetekkel ellátta: Tóth Béla. Debrecen, 1957.; *Mosca, Gaetano—Bouthoul, Gaston*: Histoire des doctrines politiques. Depuis l'antiquité. Paris, 1969.; *A mongolok titkos története*. Fordította: Ligeti Lajos. Budapest, 1962.; *Ókori keleti chrestomathia*. Fordította: Dávid Antal. Budapest, 1965.; *A paraszt panaszai*. Oegyiptomi novellák. Fordította: Dobrovits Aladár. Budapest, 1963.; *Pirenne, J.*: Civilisation antiques. Paris, 1951.; *Platón*: Az állam. Válogatta, bevezetőjét írta és jegyzetekkel ellátta: Sándor Pál. Fordította: Jánossy István. Budapest, 1968.; *Platón*: Az állam, Politika, A törvények, „Összes Művei”, Budapest, 1943.; *Platon*: Von Mensch und Staat. Basel, 1942.; *Pólay Elemér*: A dáciai viaszostáblák szerződésai. Budapest, 1972.; *Prélot, Marcel*: Histoire des idées politiques. Paris, 1960.; *Rahner, K.*: Gest in Welt. Zur Metaphysik der endlichen Erkenntnis bei Thomas von Aquin. München, 1957.; *Rowley, H. H.*: The Old Testament and Modern Study. Oxford, 1951.; *Walter, Siegfried*: Der Rechtsgedanke bei Aristoteles. Zürich, 1947.; *Seidler, G. L.*: Politikai gondolkodás az ókorban és a középkorban. Szerkesztette: Popovics Béla és Kállay István. Fordította: Zsembery Teréz. Budapest, 1967.; *Simon Endre*: Rabszolgaság, tulajdon, kormányzati forma és természetjog Arisztotelész Politikájában. „Magyar Filozófiai Szemle” N° 2. 1969. (Budapest); *Stein, O.*: Megasthenes und Kautilya. Wien, 1921.; *Steinmetz, Peter*: Politica und Res publica. Beitr. z. Verständnis von Politik, Recht und Staat in die Antike. Wiesbaden, 1969.; *Suetonius*: Caesarok élete. Tizenkét életrajz. Fordította és a jegyzeteket írta: Kis Ferencné. Budapest, 1961.; *Touchard, Jean*: Histoire des idées politiques. Vol. I—II. Paris, 1959.; *Toynbee, A. J.*: Hellenism. London, 1959.; *Tőkei Ferenc*: Antikvitás és feudalizmus. Budapest, 1969.; *Tőkei Ferenc*: Az ázsiai termelési mód. Budapest, 1964.; *Widgery, Alban G.*: Les grands doctrines de l'histoire. Paris, 1967.

## PART TWO

### EVOLUTION OF THE POLITICAL AND LEGAL THINKING OF THE BOURGEOISIE, AND CRITICISM OF THE FEUDAL POLITICAL AND LEGAL IDEAS

1. Machiavelli. — 2. Hobbes. — 3. Montesquieu. — 4. Rousseau. — 5. Kant. —  
6. Hegel. — 7. A Hungarian political thinker: Lajos Kossuth. — Basic Literature.

[1.] Social and economic development converted Italy of the 14<sup>th</sup> century into the leading country of the Renaissance. However, in the closing decades of this century Italy was swamped into economic and political, and partly also cultural bankruptcy. The causes of her decay must be sought for in the first place in the internal economic structure, namely in the fact that in the various city states commercial capital gained the ascendancy over industrial capital. Commercial capital had no productive basis of its own, and consequently its autonomous growth brought the small-scale producer into a state of existential dependency on the procurer, it put a brake on the further evolution of the productive forces, threw obstacles into the way of a liberation from the shackles of feudalism. The need for revolutionizing industry to take the place of the manufactures became a pressing need. The leaders of the city states were the *grassi* (stout), i.e. the rich merchant bourgeoisie, which also owned landed property, and maintained the feudal forms of an exploitation of the *minuti* (slim). This period represents clearly the class warfare between the oppressors and the oppressed, and provided a favourable soil for the formation of the principalities, i.e. personal or aristocratic dictatorships. These dictatorships did not destroy the fetters of feudalism, they even strengthened them in the small city states.

It was in this period that Niccolo Machiavelli entered the scene. It was also the period when Alighieri Dante, Tommaso Campanella, Thomas Morus, and then later on Giambattista Vico exposed their doctrines.

Machiavelli lived in the Italy of the 15<sup>th</sup> and 16<sup>th</sup> century and in his works he sought for a reply to the question how to take a stand towards capitalist evolution. He even tried to find a solution. The reply to this question was of utmost importance, since as is evident from what has been set forth earlier, at that time in Italy the original accumulation of capital was completed, although in forms other than in England. Machiavelli tried to answer the question by looking for the best form of government within whose framework the evolution of capitalism could take place. In his work *The Prince* he came to the conclusion that the absolute monarchy was the form of government which could advance the evolution of capitalism in Italy and could save Italy from the ruin. However, the call for the absolute monarchy at the same time raised the problem of how the national unity of Italy could, and even had to, be brought about. Namely at that time Italy was split into a large number of small states. Consequently there was no uniform national economy in Italy, there was no united territory on which a domestic national market and political power could have taken shape hence it was the dismemberment of Italy into

the many small states that prevented the growth of Italy. According to Machiavelli the continuity of capitalist evolution had to be maintained in Italy. The principal obstacle was the absence of a united national state, and for the creation of such a state the absolute monarchy was most appropriate. One of the principal obstacles in the way of the birth of Italian national unity was the power of the Church, of Papacy. Machiavelli in his work *The Prince* encouraged Lorenzo de Medici to conquer Italy, to create the united national state, to drive out the barbarians from this soil. In *The Prince* Machiavelli dealt with the various types of monarchy and the methods of acquiring power and keeping it. He analyzed hereditary monarchy specially, and so also the mixed monarchy, and then illustrated and proved his statement with examples taken from history. What is new and of significance is Machiavelli's idea of the *raison d'état*. In Chapter XVIII of *The Prince* Machiavelli exposed that the monarchs tried to achieve the various ends of the state by two methods, viz. by law and by force. He wrote that when with the one the prince could not succeed he had to resort to the other; although it was true that the one was a human property, the other brutish. He made it clear that the prince had to make use of his brutish nature properly, he had to follow the fox and the lion. The lion was powerless against the snare, and the fox could not escape the wolves. Therefore the prince had to be a fox acquainted with the snare, and a lion terrifying the wolves.

Machiavelli thought that the social good, which brought evolution on mankind, could be achieved also through the evil. i.e. Machiavelli approached the problem of the united Italian state and its political form, the absolute monarchy, from the side of morals. He believed that if the final goal served evolution, or promoted the progress of mankind, recourse to whatever means was justified for the achievement of the end. Machiavelli, like Smith and Ricardo, approved of the growth of the productive forces, although their advancement might be fraught with loss.

Machiavelli recognized the historical necessity and, knowing that he appealed to Lorenzo de Medici to obey his historical mission, i.e. to create the independent and autonomous Italian state. Machiavelli's reply to the great question of the age was at that time correct, and from the point of view of historical evolution, of a progressive character.

Subjectively Machiavelli was an extraordinarily great humanist, yet the circumstance that he was living in a society burdened with enormous contradictions, instigated him to the elaboration or formulation of certain "cynical" categories. He saw that this contradiction was to a certain degree even necessary, still he asserted that Italian national unity had to be brought about by any means, by reducing the evil side of the contradiction to the possible smallest degree. The style of Machiavelli, as Gramsci points out, is that of an active man, a man who prompts to action: his style is that of a "party manifesto". He studied the question what the task of an absolute monarch, i.e. the prince, and the leader really living at his age was. As Gramsci emphasizes Machiavelli wanted to convince the "nescients", the revolutionary forces of the age of the need for a prince who knew what he wanted, and also how he could achieve what he wanted, and inculcate on his contemporaries that they had to receive such a prince with enthusiasm even when his acts run counter, or appeared to be running counter, the generally current ideology of the age, or religion. According to Machiavelli the prince has to deal not only with what

exists, but also with what has to be, i.e. he has to be provident, and so has to create new power relations, and to this end he will always have to examine, whether the "new" is necessary or arbitrary only. (In this respect the distinction Gramsci makes between the "diplomat" and the "politician", the scholar of politics and the active politician is most apposite.) Machiavelli believed that it was the duty of the prince, the necessary trend of his activities, to fight through rough and smooth for the creation of a progressive economic order, for the suppression of the obstacles in the way of capitalist evolution. This was the principal goal, for whose achievement the prince might use any means, as was confirmed by experiences of earlier political practice: he could have recourse to conviction, to murder, to poisoning, to intrigues. Hence the question of the means was indifferent, what was important was that it should advance the achievement of the ultimate goal. His ideal was Cesare Borgia, who for the achievement of his objectives, the creation of the absolute monarchy extending over whole Italy, shrank back from no means. Machiavelli thought that a recourse to the means referred to before was for the achievement of the ultimate goal needed only against the *grassi*, but not against the people. This suggests that Machiavelli demanded from the prince not any violence, murder, or treachery, but only such as was directed against the reactionary feudal forces. From this idea then Machiavellism has sprung up, i.e. the doctrine that a final moral end could be reached on an immoral path. However, this is a narrowing down of Machiavellism of a later age. As a matter of fact the term Machiavellism does not simply denote that the holder of power can shrink back from no means for the achievement of the goal. In point of fact with Machiavelli the goal was not merely an individual one, but the promotion of progressive social evolution. The wide-spread erroneous opinion as if Machiavelli had justified the means for any end, is untrue. The question of the means cannot be studied in itself in Machiavelli. Frederick the Great, King of Prussia, who wrote a book, *Anti-Machiavelli*, had recourse to any means for the exercise of power, yet with the difference that he acted in the interest of a reactionary social end. Hence immoral policy or measure for the achievement of a non-progressive social end is not justified. It is not correct to brand Machiavelli's *The Prince* as a notorious work, as the cynical apology of political perfidy and double-dealing. It was not Machiavelli's fault that his morals which sprang up from the historical situation of the Italy of his times have been generalized for the rulers of all times. He was wrong in so far as he wrote a book purposing the solution of a given situation with a claim to generalization. As a matter of fact a monarch will always find an excuse for temporarily setting aside the norms of morality and for formulating lofty ends.

Machiavelli as a Florentine politician and thinker wrote several books. Among these his *Treatises on the First Ten Books of Livy* and the *History of Florence* deserve special mention. His *The Prince* has to be analyzed in conjunction with these two works. It is the *Treatises* written in 1519 that present the historical outlook of Machiavelli. From his works it is evident that Machiavelli analyzed the problems of society, the State and power from the point of view of the class warfare raging between the merchants and the lords paramount, and also between them and the have-nots. What has to be emphasized in the first place is that he is the representative of the national principle, that the national state he wanted must be recognized as an independent secular institution free of all religious deposits, and that he recognized

no natural law. There were no legal or moral considerations for him. Essentially he recognized a single principle only, viz. political expediency. Machiavelli, although he recognized the historical function of the absolute monarchy in the creation of the united Italian national state, was in the last resort against tyranny, i.e. he valued a free republic more. This is in connexion also with the circumstance that from 1498 till 1512 Machiavelli was secretary of the Florentine Council of Ten. On the other hand he also recognized monarchical power, however, only if monarchical power was limited by laws (this would be some sort of a constitutional monarchy) and if it was free of arbitrariness. With the recognition of the royal power, i.e. the monarchy, he wanted to make his contemporaries understand that a monarchy might also have a function in the creation of the centralized national state. Further he proclaimed that the fundamental condition of the creation and the stability of a republic was the equality of the citizens. For where there was equality, there was no absolutism, no tyranny, which would bring about ruin and decay. In his opinion a republic relied on virtue, i.e. on the love of freedom, on patriotism. The fundamental functions of the State were the defence of freedom and independence, however, he believed in wars against foreign oppression and also in territorial expansion. The State was strong, when the people had a role in its life, as in fact in his opinion there was more wisdom in the people than in the prince. In the state fundamentally the common weal had to prevail and not the personal interest of the few. In the military sense he believed that the strong national army would guarantee the freedom of Florence. He suggested to organize the army from the members of the people, i.e. he preferred a national army rather than one of mercenary troops. In the creation of a national army he wanted to discover the other principal duty of the prince. Machiavelli recognized the great consolidating force of the common language, the common customs, traditions and beliefs. He thought that the prince could not govern with success, or even launch an attack, or put up defence, unless he assessed the effects of his deeds on the given society and the single members of the people. For the purposes of government he thought the knowledge of the psychology of the single man and of society was indispensable. He was convinced that a statesman ought to be a good "doctor" at the same time. He considered religion a means of government, and as such he subordinated it to the State; he qualified the Church as the corrupter of society.

On speaking in connexion with the forms of government, the movement of society, Machiavelli set out from the theory of cycles of Polybios. Accordingly, society moved from freedom, through oligarchy to the monarchy, and meanwhile also forms of retrogradation were apt to develop. In his opinion a mixed form of government could check these cycles and bring about a unidirectional evolution in the State. In this mixed form of government, the new type of a prince would keep society in a state of equilibrium, and by relying on the forces of the people put a brake on the oligarchy, yet he would rely on the oligarchy against the people.

A study of Machiavelli and the valuation of his oeuvre cannot stop short of an analysis of his *The Prince*. Nor can only certain sections of this work be made subject to a study, for in this case no adequate picture can be formed of the doctrines of Machiavelli. Accordingly Machiavelli is not the ideologist of tyranny, and in *The Prince* he does not raise the general problems of the

governmental arrangements (although the problems have been discussed in a generalized form). He tries to find a way out of a society fraught with contradictions, a society living between feudalism and capitalism, when the power of the liege lords can be overthrown with violence, i.e. with the aid of a dictatorship. On this understanding it cannot be argued that against classes, which have outlived their day, dictatorial measures may also be taken. The problem cannot be solved merely by one-sided moralizing, and therefore the political aspects of the question cannot be ignored. In the oeuvre of Machiavelli is studied as a whole then it will be obvious that he considers dictatorship a temporary, transitional means for the achievement of the principal goal. He favours the establishment of a republican system of government as soon as dictatorship has performed its functions, and this on the ground of bourgeois democratic principles. He wanted a form of government where a parliament would defend the laws and restrict the power of the monarch. It is true that Machiavelli emphasizes power, dictatorship and violence in his work *The Prince*, however, in this respect he does not stand alone. Other great political thinkers also proclaimed the need for power and force, or the establishment of a dictatorship. As a matter of fact as long as there is a state and classes opposing one another, the classes, or the parties representing the interests of these classes will always be striving for power and all of them will outstrip the other and gain a preferential position to bring under regulation the living conditions of the conflicting classes, strata, or groups.

Marx and Engels thought the greatness of Machiavelli lay in his emphasis of the temporary character of dictatorship. The doctrine of the need for a revolutionary dictatorship, in a concrete form the dictatorship of the proletariat, had great significance also in the political and legal concepts of Marx and Engels. They wanted a dictatorship of the proletariat merely as a transition from capitalism to socialism.

As a matter of course not only Machiavelli, but also other thinkers of the age wanted to give a reply to the social problems and tried to find the paths leading to a solution of the historically mature problems. Unlike Machiavelli, Alighieri Dante, the poet, living at the turn of the Middle Ages to Capitalism, also a native of Florence, proclaimed the need for a unity of his native country by setting out from a sentimental ground rather than from a political one. He exposed his ideas in the *Divina Commedia* and in his work *The Monarch*. He believed that the idea of unity relied on charity. Charity would lead to the harmonious coexistence of mankind as a whole, i.e. to the world monarchy. Dante was convinced that mankind would achieve freedom if it decided autonomously on its activities and could live without constraint. Unlike Machiavelli, Dante wanted to discover the fundamental form of the coexistence of men in the municipal organization. This, i.e. the policy of a maintenance of the disunity accounts for his diffuse concepts of a united Italian state. Dante did not expect the liberation of Italy and the establishment of a world monarchy from an Italian prince like Machiavelli. For this he was looking at Emperor Henry VII, although in the beginning he was anti-imperialist. In 1302 he was exiled from Florence, or more exactly, prevented from returning to his native town. He was threatened with being burnt on the stake, should he attempt to return. As a matter of fact Dante took the side of the Whites i.e. the rich merchants, who were engaged in a keen struggle against the aristocratic party faithful to Rome, i.e. the Blacks. With the death of Emperor Henry

VII in 1313, Dante's earthly dreams melted into thin air. He wrote several books on the Aristotelean pattern, still he proclaimed the idea of equality, fought with ethical means against the inequality of property. He believed that dishonesty was the source of wealth. On the pattern of the Aristotelean ideas, he, too, set out from the thesis that Man was a *zoon politikon* and that it was the wars which frustrated mankind to achieve happiness. In his opinion only a world monarchy, i.e. imperial autocracy could curb the evil inclinations of Man, as he tried to make it clear in his work *The Repast*, written under Ciceronian influence. In his work *The Monarch* written after the death of Henry VII he opposed Papacy. In this work he proclaimed his idea of the world state. The world state would be headed by the Emperor, as a uniform power standing above mankind. Only a power of this type could guarantee universal peace. According to Dante, divine providence directly elected the emperors to govern over the world. (Earlier he thought the Romans would be fit for this role.) Dante believed that imperial power should be made independent of the spiritual power, i.e. Papacy. He quotes the Scriptures, which do not justify an interference of the Church with secular affairs. He thought that the Earth should be segregated from Heaven, political life from spiritual life. The world state of Dante, as referred to in the *Divine Comedy*, would consist of small urban communities: In his opinion the fundamental form of a union of mankind lies in the municipal organization. It stands to reason that this idea of Dante's is closely associated with Florence.

The work of Dante, *The Monarch*, was burnt in public in 1329. The ideas embodied by this work never materialized. On the other hand, Machiavelli's doctrines prevailed in their entirety, e.g. in the age of Charles V, Louis XIV, or Frederick II, however much Jesuits, kings, lords, Catholics ridiculed and criticized them. Still Machiavelli's dream of the birth of a united Italian state came to naught, because the conditions had not yet matured. Machiavelli died at the age of 58, on June 22, 1527. Only as late as 1787 a memorial was erected for him in the Florentine Santa Croce. "No praise is sufficiently worthy of his great name" is inscribed on it.

Problems concomitant of the growth of capitalism emerged also in other countries, not only in Italy. Thomas More gave a reply other than that of Machiavelli to the question confronting him. In like manner, a reply different from Machiavelli's, yet similar to that of More, was offered by Tomaso Campanella.

[2.] In the 17<sup>th</sup> century, capitalistic evolution moved from Italy to England. In Italy there were no guarantees for the creation of the united Italian state of Machiavelli's dream, and the reactionary feudal Church with her activities stood in the way of capitalistic evolution. In England the original accumulation of capital took place, which carried with it many contradictions. On analyzing the historical circumstances of these contradictions, we have to point first of all out that between 1588 and 1679 there was an absolute monarchy in England. In this period, in particular with the accession of James I and Charles I to the throne, the harmony between the bourgeoisie carrying capitalistic evolution and the monarchs broke up. Controversies sprang up between Parliament representing the bourgeoisie and the institution of the monarchy. Processes came to pass where the anti-national traits of the reactionary feudal forces came into prominence. The contrast between the class *in statu nascendi*,



i.e. the bourgeoisie and the feudal class carrying the earlier relations of production could not be mitigated till the middle of the 17<sup>th</sup> century, and then in 1646 the English bourgeois revolution broke out. In this revolution a variety of forces took part, groups representing a variety of interests struggled against one another. The targets of the revolution found an expression in the basic contrast, namely the contrast of interest of the bourgeoisie and the feudal forces. The great leader of the English bourgeois revolution, Oliver Cromwell, was prompted by the idea to create an absolute monarchy relying on national foundations, a monarchy which would give expression to the interests of the bourgeoisie as well as to those of the broad masses. However, this target of Cromwell's was never reached, because at that time the conditions of constitutional monarchy were already present in England. After the death of Cromwell, the Restoration followed, which lasted for a short time only. The revolution came to an end with a compromise. Obviously there are historical situations which are apt to change, mould and transform a given political idea within a brief spell. In these circumstances of extreme complexity, i.e. before the Revolution and immediately after it, i.e. in the age of Cromwell, and then in the period of the Restoration Thomas Hobbes stated his political and legal doctrines.

Thomas Hobbes (1588—1679) was a political thinker whose political and legal doctrines, when the underlying historical conditions are considered, underwent a change during the comparatively short time of hardly ten years. This makes it clear that Hobbes cannot be considered the representative of the earlier, reactionary, absolute monarchy. Owing to the change his doctrines underwent, and for reasons of expediency, it is suggested to set out from a work he wrote in 1640. This is *The Elements of Law Natural and Politic*. In this he still takes sides with the king. Later, in his *Leviathan*, written in 1651, he ceased to oppose the bourgeois revolution, and not only defended the power of an absolute monarch, but at the same time he wanted to grant a role to a collective body at the head of the State.

In *Leviathan* Hobbes deals with the phenomena of the State in their detail. In association with the problem of the State, Hobbes is in the first place concerned with the origin of the State. This he subjects to a detailed analysis. He explains the birth of the State on psychological grounds. He believes that Man created the State in his fear of death, his desire for peace, and based on the wish to escape from the chaos of a natural state. He makes it clear that in a natural state Man does not live under the dominion of a common power which intimidates or curbs him. Consequently, in a natural state Man is a wolf of his fellows. In this state the one man tried to take what was the property of the others, i.e. men hated one another. Later they came to the conclusion that they could live in peace, and waived their natural right that everybody could do as he liked. Men therefore met, entered into a contract with one another, and in this contract they surrendered their congenital natural rights to the monarch (the king). The king, or the sovereign representative of the State, carried in him the natural rights of all inhabitants, i.e. all subjects. Consequently the ruler could do as he liked, for under a contract he was entrusted with his right by all men. This was the way how bourgeois society (the State) developed, which at the same time guaranteed the welfare of Man. It should be remembered that at that time the thinkers did not draw a line between society and State. Hobbes himself studied the origins of society

and State on the same level. However, as pointed out by Marxist political doctrine, this was not correct. As a matter of fact the State seceded from society, it is a mechanism segregated from society, and consequently the two have to be kept apart. It is only on this understanding that the problems of the class character of the State, its class target and functions can be grasped.

Hobbes deals not only with the origin of the State, but also with the problems of its mechanism, form. He says: "The only way to erect such a Common Power, as may be able to defend them from the invasion of Forraigners, and the injuries of one another, and thereby to secure them in such sort, as that by their owne industrie, and by the fruites of the Earth, they may nourish themselves and live contentedly; is, to conferre all their power and strength upon one Man, or upon one Assembly of men, that may reduce all their Wills, by plurality of voices, unto one Will..."

The various organs of power receive their power to apply force by authority conferred on them by living men, for safeguarding internal peace and for a successful struggle against the external foe. According to Hobbes, the unlimited, sovereign power may be exercised by one man, or by one assembly of men. In both cases those wielding power have to embody the will of those creating it, to represent the persons of those creating it: "which is as much to say, to appoint one Man, or Assembly of men, to beare their Person; and every one to owne, and acknowledge himselfe to be Author of whatsoever be that so beareth their Person, shall Act, or cause to be Acted, in those things which concerne the Common Peace and Safetie; and therein to submit their Wills, every one to his Will, and their Judgements, to his Judgment."

On examining the origin of the various organs of the State in a concrete form, Hobbes makes it clear that they owe their origin to a mutual covenant. However, these organs can be created also by force. e.g. in a war the monarch may grant pardon to the enemy on the condition that he submits himself to the will of the conqueror. In "*Leviathan*" Hobbes deals in detail with the privileges of the institutional monarch and the freedom of the subjects. In this sphere he strictly speaking analyses the relations between the governmental organs and the individuals. He sets out from the thesis that men enter into this covenant with one another "to confer all their power and strength upon one man, or upon one assembly of men, that they may reduce all their Wills by plurality of voices unto one Will". Power and right of the State is derived from this bestowal, because men have made this covenant with one another and not with the monarch. Consequently the ruling individual or assembly cannot break the covenant, nor can a single subject escape from the superior power of the ruler or assembly. Hobbes believes that if the ruler signed separate covenants with each of his subjects, a mass of covenants would accumulate. He criticizes the point of view as if power were conferred on the ruler conditionally only.

In connexion with the right and freedom of the subjects, the question emerges, whether the subjects may violate the social contract. This question is of extreme significance, because it concerns the right of men to act against the covenant, the right to put up resistance against those wielding power, the right to a revolution. In Hobbes's opinion the social contract is indissoluble and the individual is authorized to act against the covenant in one case only, i.e. when he wants to save his life. Hence the individual may terminate the covenant when e.g. the ruler wants to execute him, i.e. he may then put up

resistance against the ruler. However, collectively the covenant cannot be dissolved. Here the intention of Hobbes is to provide a theoretical basis for the unlawfulness of revolutions. On this understanding Cromwell's revolution was also unlawful, because it dissolved the covenant between subjects and ruler collectively, and because it beheaded a monarch. Hence the people has no right to a rising. The power of the monarch will come to an end only when he cannot anymore guarantee the safety of the subjects, i.e. the subjects are in fact the dependents of the king. The safeguard of order is the function of the State. In this connexion Marx points out that Hobbes flashed back the capitalistic peculiarities of his age, when Man was in fact the wolf of Man, to a prehistoric age. i.e. when Hobbes speaks of prehistoric conditions, he understands by them the reflection of the given capitalist circumstances. In his reflection of these circumstances Hobbes advances the statement that in his primitive state Man followed his own selfishness. This own selfishness is always directed against the selfishness of another man. In the age when there is already a State, Man again follows his own selfishness, because all men are born egotists. However, since there is a State in the last resort, the innate egotism of Man will be subservient to the benefit of the State itself. It is beyond argument that a spontaneous pursuit of the own interests cannot lead to a pursuit of the interests of society as a whole and of the State. This doctrine reflects the age when in the pursuit of their own interests the capitalists in fact pursued the interests of their own class. Hence class interests loom up behind the pursuit of individual interests. However, this doctrine does not hold its own, for in class relations it is the interests of the class as a whole that are primary, and not individual interests. Economic interests cannot be separated from political interests. Consequently even if the doing of something, or its prevention, may be an evil in view of the interests of a particular bourgeois, it may nevertheless be beneficial for the bourgeois class as a whole.

Hobbes deals with the definition of the State and here he has recourse to the category of the essence of the State. According to his doctrine the State may be defined as follows: "One Person, of whose Acts a great Multitude, by mutuall Covenants one with another, have made themselves every one the Author, to the end he may use the strength and means of them all, as he shall think expedient, for their Peace and Common Defence."

The "person" is always embodied by the ruler whose power is sovereign. The sovereign may be a man, or an assembly. The notion of Hobbes of a single person, strictly speaking, embraces the king and the collective bodies irrespective of whether the latter stand for democracy or aristocracy. He believes that the State is a plurality united in a single person, which he calls the Great Leviathan. In his doctrine the soul of the plurality united in a single person is the sovereign, i.e. supreme power, which might be a man as well as an assembly of men: "The Sovereignty is the Soule of the Common-wealth; which once departed from the Body, the members do no more receive their motion from it."

In addition Hobbes points out that the State has not merely a soul, but also intelligence. The intelligence of the State are justice and the laws. In addition the State has joints, these are the executive organs and the judiciary. These refer at the same time to the mechanism of the State, and also to the fact, as Hobbes states, that the State is the creation of Man, who was basically moved by the instinct of self-preservation. Here he comes to the problem of coercion

by the State. In his opinion the State exercises its power by coercion, as Man has to be constrained by the means of intimidation.

Hobbes analyzes the problem of law and the statutes in all their details. He does not approve of the division of the legislative, executive, and judicial powers, for in his opinion such a division of powers may become responsible for dissent in the State. According to his doctrine in the same way as Man can create a state artificially, so he may enact laws of the State. Strictly speaking the purpose of the statutes is to strengthen the close relationship between power and individual, i.e. the statutes connect the mouth of power to the ears of the subjects. However, he adds that the lips of the State, i.e. a single man or an assembly, as the case may be, cannot bring under regulation all acts of men. He believes that where there are no laws Man is free and in the interest of his greatest profit he may freely do as he likes. He attributes a great significance to the power of the State in the observance of the laws and makes the statement. "The lawes are of no power to protect them, without a Sword in the hands of a man, or men, to cause those laws to be put in execution." Hobbes recognized the relations between property and the State. He writes: "The Distribution of the Materials of this Nourishment, is the constitution of Mine, and Thine, and His; that is to say, in one word Propriety; and belongeth in all kinds of Common-wealth to the Sovereign Power. For where there is no Common-wealth, there is (as hath been already shewn) a perpetuall warre of every man against his neighbour; And therefore every thing is his that getteth it, and keepeth it by force; which is neither Propriety, nor Community; but Uncertainty. Which is so evident, that even Cicero, (a passionate defender of Liberty,) in a publique pleading, attributeth all Propriety to the Law Civill, Let the Civill Law, saith he, be once abandoned, or but negligently guarded, (not to say oppressed,) and there is nothing, that any man can be sure to receive from his Ancestor, or leave to his Children. And again; Take away the Civill Law, and no man knows what is his own, and what another mans. Seeing therefore the Introduction of Propriety is an effect of Common-wealth; which can do nothing but by the Person that Represents it, it is the act onely of the Sovereign; and consisteth in the Lawes, which none can make that have not the Sovereign Power. And this they well knew of old, who called that "Nomos" (that is to say, Distribution,) which we call Law; and defined Justice, by distributing to every man his own."

Consequently the nature of law consists in the observance of valid covenants. However, the validity of covenants began with the organization of the sovereign power. The sovereign power is strong enough to compel Man to observe the covenants. This is the point where property has its origin. Hobbes professes the simultaneous birth of property and State. However, he states that although sovereign power is immortal, it is nevertheless exposed to a violent death. The death of the sovereign power, i.e. the State, is brought about partly by wars, partly by the ignorance and passions of Man. He emphasizes that internal disunity in a given society carries in itself many a seed of the natural death of the State. Hobbes also defines the notions of the statutes and law. According to his statement the law or statutes are the totality of rules relating to the subjects to which everybody has to apply, or in another formulation law or statute are. "Civil Law, is to every Subject, those Rules, which the Common-wealth hath Commanded him, by Word, Writing, or other sufficient Sign of the Will, to make use of, for the Distinction of Right, and

Wrong; that is to say of what is contrary, and what is not contrary to the Rule."

He also raises the question of the scope of validity of the law and declares that the statutes may apply to all citizens, to certain professions, or to certain men only. He then analyzes the relations of law and justice. He sets out from the thesis that the legislator may be the sovereign, i.e. a single man, or the assembly of men. The legislator is not subject to the statutes enacted by him, he may repeal them, and create new ones. In his opinion natural law and positive law mutually include each other and are of uniform extent. Accordingly he writes: "The Law of Nature therefore is a part of the Civill Law in all Common-wealths of the world. Reciprocally also, the Civill Law is a part of the Dictates of Nature."

Among laws the positive ones are in fact the true laws. Only the sovereign can guarantee the punishment of those infringing the laws. Strictly speaking the social contract relies on a respect for the laws. Consequently observance of positive laws is also part and parcel of natural law. He denies the difference between natural law and positive law, although he recognizes that the goal of positive legislation is to bring under regulation natural law, i.e. the natural freedom of Man. Without such a regulation there is no peace in society. He believes the principal function of the institutional sovereign is partly the creation of laws which promote the various crafts (e.g. shipping, handicraft), partly the creation of good laws. In his opinion a law is good when it is necessary, serves the welfare of the people, and in addition is easily understood. Hence it is not the just law that is good, for he sets out from the thesis that no law can be unjust.

In *Leviathan* Hobbes discusses not only the problems of State and law, and of society. Beyond these he touches on a number of other problems. e.g. he discusses problems of economics and religion. He insisted on the subordination of the Church and religion to the State, for religion and Church as some sort of a bridle might be useful for the State. He stressed the problem to a point where he thought that the State should define the articles of faith. He stated that the people had to accept the articles of faith in the same form as they take the pills prescribed by the doctor. He believed that religion was fear of an invisible power either invented by the intellect, or imagined on the ground of generally accepted fairy tales.

In his work on methods he deals with the relations between the philosophy of State and the philosophy of morals. He believes that the two can be kept apart. He also discusses the relations of language and State, the notion of intellect and science. He wants to discover the essence of intellect in counting, i.e. in addition and subtraction. He thought that political writers add up the treaties in order to establish the obligations of people; on the other hand lawyers sum up the laws and deeds in order to establish what is right and what is wrong in the action of people.

In the period of Hobbes's activities many other political and legal thinkers were at work. Before Hobbes Jean Bodin, the ideologist of French absolutism formulated his ideas. Hobbes had a considerable influence on the political and legal thinking of Spinoza. Earlier other doctrines were formulated in the Netherlands by Althusius Lipsius, Grotius, in England by Bacon, then by John Lilburne, Gerald Winstanley, John Milton, James Harrington, further Bentham Burke, J. Austin and Jonathan Swift.

[3.] At the end of the 18<sup>th</sup> century and in the beginning of the 19<sup>th</sup> France presented the picture of a feudal society, where capitalist evolution was unfolding vigorously. Thus a keen contradiction sprang up between the economic needs of the age and the feudal institutions of society then still existing. The third estate, i.e. the bourgeoisie, artisans, small-scale producers insisted on the liquidation of the feudal institutions, whereas the aristocracy together with the *noblesse de robe* and the high clergy made efforts to preserve the obsolete institutions of feudalism. In the controversy Montesquieu stood up for the bourgeoisie, and for that matter for the *haute bourgeoisie* which showed no interest in the abolition of all feudal institutions, as these protected the interests of the *haute bourgeoisie* against the exploited workers.

Montesquieu (1689—1755), or by his full name: Charles-Louis de Secondat, a devoted French adherer of the constitutional monarchy, a representative of geographic determinism in the 18<sup>th</sup> century, in whose career the philosopher (the author of the *Lettres Persanes*) in the chronological order preceded the lawyer (the author of *Esprit des lois*). Montesquieu was interested in society and progressed from society to law, and not the other way round. In his first work of renown, the *Lettres Persanes*, written in 1721, there was so to say the total essence, the gist of the teachings of enlightened philosophy. In his criticism of the Church, this ideological support of feudal society, Montesquieu was equal in rank with the other philosophers of the Age of Enlightenment. Also in questions of natural philosophy he agreed with the doctrines of his age. Even in the philosophy of State and law he believed in the need for the exploration of the natural, i.e. objective laws of society.

Montesquieu devoted his life to find a scientific explanation for the errors of society he criticized in his *Lettres Persanes*, and to provide the principal means for the improvement of the fate of mankind. Of his undertaking he said: "There is no more beautiful idea than leave mankind happier behind us than we have found it."

In his investigations he set out from the hypothesis that the life of society had its objective laws in the same way as nature had its. This statement of Montesquieu was of considerable weight, and for its originality of remarkable ingenuity. In his work "*L'esprit des lois*" he made it his goal to explore the laws according to which political institutions and legislation came into being. The spirit of the laws was the essence of all laws, the objective regularity defining their birth. What Montesquieu wanted was to investigate and explore the natural and social regularities of legislation. This was the first attempt at laying the foundations of a scientific notion of society.

Montesquieu conceived the State as an association (he saw no difference between State and society) and according to his doctrine the republic was the ideal form of government. As a matter of fact he hated tyranny (he criticized the absolutistic governments of Louis XIV and Louis XV in sharp terms). The love of the republic and the hatred of tyranny were the ideas which permeated the *Lettres Persanes*. He sympathized with the republic, however, later on (in about thirty years) in his work *L'esprit des lois* his sympathy turned towards the constitutional monarchy. Here, besides his class allegiance, also his thesis operated that enlightened feudalism could also bring about freedom, the true end of life. His work *L'esprit des lois*, which was published at a period of the radicalization of the opposition of the feudal monarchy, of the immediate proximity of the Revolution, and the final intensification of class controversies,

already wanted to serve the idea of a class compromise, i.e. to meet the demands of the *haute bourgeoisie* in a manner not conflicting with the existence and interests of the feudal monarchy.

When he returned home from England, he brought with him an enthusiasm and passion for the constitutional monarchy, and setting aside his earlier republican ideas tried to popularize the political conditions of the post-revolutionary England in a pre-revolutionary France.

Since Aristotle it has been customary to distinguish the systems of government with the purpose to establish which is the best form of government. In Montesquieu's opinion the soundness and excellence of any form of government were relative only, therefore at a classification the outset should be from historical and not from philosophical considerations. Systems of government could be classified only on the basis of an investigation of states actually existing, or which had existed. Incidentally Montesquieu distinguished the republic, the monarchy and the tyranny from one another.

Notwithstanding the physical and social conditions, he did not consider the governmental systems unchangeable, and this for the very reason that the intellectual, and to a certain extent even the physical factors, were subject to changes. Changes were justified owing to the various abuses, the elimination of these abuses, the supervention of new conditions, further the adoption of methods or examples which had stood the test. He pointed out that the adoption of an example or method must not degenerate into mere imitation. In the course of legislation, attention should always be given to the climatic conditions, morals, customs, etc. of the country in question.

The forms and systems of government have different features, and guiding principles. (The principles are the feelings of those governing and those governed which present the given system, describe it, and which are the incentives to the decisions of those governing or governed.) According to Montesquieu the fundamental principle of a republic is virtue, that of a monarchy is honour, that of tyranny is fear. In the "acquisition" of virtue, or of the basic principles in general, he emphasizes the importance of education. "First of all we become acquainted with the laws of education, these prepare us for becoming citizens. If the people has a guiding principle, the families will also have one. The laws of education differ in all systems of government. Their subject-matter in a monarchy is honour, in a republic it is virtue, in tyranny it is fear."

Virtue means political virtue. The essence of this is abidance by the law, identification with the public interest. Owing to an identification with public interest, the essence is the love of one's country with which equality has to be associated. In a democracy equality extends to everybody. It is only in this way, i.e. the respect for the basic principles, that freedom can be guaranteed in the State. The model of political freedom laid down in a constitution is for Montesquieu the English system.

In his opinion men were born equal. However, this equality disappeared in social coexistence, so that in his opinion the law had to restore this equality. He disapproved of a policy which did not grant to women the same rights as to men. Also he disapproved of exaggerated equality, and believed that this would be dangerous. In his opinion exaggerated equality was the situation when all men wanted to be equal to those whom by their election they appointed to a position where they ruled others. Democracy had to avoid all

sorts of exaggerations. True equality does not want, nor does political freedom in a democracy consist in the fact that all can do as they like. "Freedom is the right that everybody can do what the laws permit." Democracy would deteriorate not only when the spirit of equality faded away, but also when the spirit of equality was carried to extremes, and everybody wanted to be equal to those whom they elected to command. "The people wants to perform the functions of the authorities, i.e. the people does not anymore respect them . . ." According to Montesquieu true equality demanded that those who for their birth, wealth or rank excelled among the others should be accorded a proper share in legislation. By the side of the people's claim to legislation he proclaimed the participation of those excelling for their birth, wealth or rank (i.e. the aristocracy and the *haute bourgeoisie*) in legislation.

According to Montesquieu there must be a harmony between the nature of government (i.e. what government is like) and the principle (i.e. what prompts to action), i.e. between the structure and the moving passions (ideas). One has to remember that as the outcome of self-preservation the main principle of government is security, and also that as the effect of the wealth of the country ambitions awake in the heart, and that, on the other hand, the effect of poverty is despair. Thus the wealthy are egged on by work, whereas the indigent find solace in inactivity.

He believed that the best form of government is the one which steered on a middle-course. This is the form which can achieve its object at the expense of the least sacrifices and for the most part leads men in a way suiting their nature and inclinations. He came to the conclusion that the form of government defined the laws, whereas the form of government was a creation of the climatic conditions and other geographical factors. However, when developing these few and erroneous results Montesquieu made a large number of correct comments on politic and law going into minute details. What Montesquieu analyzed as the spirit of enactments later Marxism discovered as the economic and social foundation of the political and legal superstructure. What Montesquieu wanted to discover in the form of government, may actually be found in the forms of society. What Montesquieu recognized as the determining factor of the climatic conditions, had been explored by the cognition of the method of production of material goods in its fulness.

Montesquieu and the liberal wing of French enlightenment set out directly from Locke. Montesquieu too was a follower of Locke's constitutional monarchy. Montesquieu was not the immediate promoter of the Great French Revolution, however, those who had a hand in its preparation relied and drew on him: they marshalled the course of events consciously towards its outbreak.

One of the roots of the geographical determinism of Montesquieu was the doctrine of one of his predecessors, Jean Bodin, who explored the factors operating on history and according to whom the history of a country was determined by the geographical situation of its territory, the character of its people and the economic conditions. His recognition of vital importance was that there were no eternal laws suitable for every people, that there were no rules independent of time and place which would be appropriate for a regulation of the relations of men and peoples at all times and everywhere. "History has to be understood by means of the laws, and the laws by means of history" he said to substantiate this recognition.

Montesquieu was unacquainted with the general theory of evolution.



Instead he accepted partial generalization. Historically he acted an important part even so. As an early cultivator of comparative political science and law, Montesquieu recognized that history had its origin not in the random, nor in the wisdom or narrow-mindedness of the sovereign, it had not its origin either in the grace of God. The well-known situations and events of history were creations of universally active forces, physical and intellectual factors.

On exploring the objective regularities of society he enumerated four natures of law which operated on society. These were (a) the law of peace; (b) the law of nutrition, self-preservation; (c) the desire for mutual approximation; and (d) the law of living in society. Erroneously he derived social and political order in its entirety from the effects of natural conditions and physical factors. He narrowed down the notion of the laws of nature to the phenomena of social life, i.e. he tried to find the clue to the explanation and understanding of world history in nature outside Man.

He conceived social metamorphosis in an evolutionary form. He approved of the demolition of obsolete institutions, however, as for the means he showed moderation and caution. Since the methods of exploration discoverable in his works are of greater importance than the particular results achieved, we may say that Montesquieu got as far as the threshold of reality. Strictly speaking he was looking for the foundations of political and legal arrangements in the methods of production without, however, having a clear idea of the essence of the methods of production. On criticizing the political and economic arrangements of his society, he condemns usurious rates of interests, unearned profits. He warns to exercise moderation in taxation and proposes progressive taxation. He prophesies that the time will come when money will be banned. He recognizes the influence of economic factors on the development of the political system of the State, on the regulation of its relations in the "spirit" of statutes to be enacted.

In his view the purpose and function of the State is to further public interest, to ensure the common good, self-preservation and freedom, and thinks that all this can be realized also by a constitutional monarchy as a form of government, although ideal realization is possible only by a republic. The common good means — in the bourgeois-individualistic formulation — the protection of the person and of property. He respects private ownership, but objects to the excessive growth of the property and incomes of the clergy.

Montesquieu did not consider a complete abolition of the privileges of nobility, nor a complete liquidation of the reactionary feudal system. Since it is not possible to maintain "original" equality of property, he demands that statutes should provide for the redistribution of land, for the regulation of inheritance, of dowry, etc. lest excessive inequality of property should come about. He suggests that the nobility should not engage in trade lest they grow excessively rich.

Montesquieu was neither an illusionist nor a Utopian. Recognition and declaration of the complete obsolescence of feudalism are absent from his work. The illusionistic elements of a bourgeois aspiration for freedom do exist in his work, but he "finds" these not only in a new society, but also within a reformed, enlightened feudalism that is free from tyrants and has assumed bourgeois features, and thinks that they can be realized also in such a feudal system. This compromise connects in a peaceful manner feudalism with capitalism, the monarchy with constitutionalism, and absolutism with legality.

Montesquieu is the searcher for the best form of political system. He is aware of that there is no political system which would suit every people and every society. He also knows that the legislator has to respect the peculiarities of the "spirit" of his own nation. Therefore he wants to become acquainted with each political system, discover the reasons of the birth of the particular systems and the grounds of their comparison.

His standard of a comparison of the various political system is freedom as the purpose of the State. This is the supreme human good and therefore Montesquieu sets out from the idea of freedom when he analyzes and criticizes the political systems and the properties of government. Freedom does not mean that one can do as one likes to, for in this way one man would encroach on the freedom of the other. The state showing moderation best suits human nature yearning for freedom. Political freedom (which again is indispensable) is the feeling of security, the awareness of man that he lives under the protection of the law in safety, that he has not to fear the government or any other citizen. Hence people can feel free where nobody can force them to a conduct which the law does not decree and where people may do anything which the law does not prohibit. In this connexion he refers also to the "difficulties" of freedom. "Even freedom itself appeared insupportable to peoples which were not used to live in it. It may happen that pure air will harm those who are living in marshland", he writes in *L'esprit des lois*.

In the sphere of problems of freedom he refers to the claims and rights of conquered peoples. "It is not enough to leave to a conquered nation its laws, it is even more necessary to leave it its customs, because the peoples know their customs better, they cherish and defend them . . . It is hard for a nation to endure the pride of the conqueror, yet it is even harder to endure his immodesty and importunity, which are by far more hurtful because they multiply the insults."

Montesquieu, on analyzing the problems of the political organization, goes into details in his investigation of the mutual relations of the particular organs of the government, mainly for finding the guarantees of a state of equilibrium. Here the pith of his political and legal ideas is the division of powers. In his opinion a division of power guarantees the freedom of the citizens. The essence of his oeuvre is the idea that for the guarantee of public freedom the organs or branches of government which would mutually restrict one another, should be segregated from one another. This thesis he deducted from his study of the English constitution, because he thought that the cause of English public freedom lay in the segregation of the legislative, executive and judicial organization. From the end of the 17<sup>th</sup> century onwards there is a parliamentary government in England, which, however, is not identical with a separation of the branches of political power. As a matter of fact in this system there is an intermediary institution above the legislature and the executive power, viz. the cabinet (the administration), which is the depositary of the trust of both, unites legislation and execution, guarantees and stabilizes their harmony and mutual influence. A division of power alone is not enough. For a good operation of the "division of labour" a number of guarantees are needed or else the desired equilibrium remains a pious desire. On the other hand if a division of power were carried through consistently, the government could hardly operate in a normal manner. The division of power would in this case fritter away

sovereignty, put an end to the unity required for the normal operation of the State.

The thesis that there are three powers in the State (viz. legislative, executive and judicial) that for the freedom and security of the citizens these three powers have to be divided lest the same person should exercise all the three, has grown into an article of faith. If the three powers are divided, then sovereign power cannot degenerate into tyranny, as the "divided" powers control and balance one another, i.e. in the event of a division of power "power will set a limit to power", it will prevent abuses, so that the feeling of security and freedom of the citizens will be intensified.

Those who turned the famous thesis of Montesquieu into an article of faith or dogma failed to recognize that Montesquieu wanted to guarantee an equilibrium among the branches of the sovereign power, and never thought of their rigid separation. For that matter it should be recognized that "the separation of the branches of the sovereign power" does not stand for a segregation of spheres of power. What is meant with the separation of the "branches of power" is merely the division of functions (competences), i.e. the division of labour within the State. (Power is united always and everywhere.) Marx said that the theory of the division of power was but the simple division of labour applied to the machinery of the State.

According to a considered and correct interpretation of the teaching of Montesquieu, the guarantee of freedom is not a segregation of the spheres of powers, but the respect for legality. The guarantee of this respect for legality lies in the equilibrium of the competences of the appointed organs, their mutual control and the harmony of their operation.

What is essential in his oeuvre is the exploration of how freedom can be achieved and secured. He does not completely trust the people, because people is either too active or too passive. "Often with its hundred thousand arms it upsets everything, at another time it will advance with its hundred thousand feet like a caterpillar." He would have the rights of the people restricted to the election of its representatives, however, he does not consider the organ of popular representation a decision-making agency, but only a body suitable for controlling functions. In his opinion the most desirable system is the constitutional monarchy, which with its respect for the spirit of the law, the organization of legislation, the guarantee of legality may proceed in safeguarding freedom and the common weal. He created this structure merely because he wanted to forestall the revolution by the help of thinking and political practice.

In respect of political organization his oeuvre incorporates also reactionary elements: e.g. he wanted to secure a privileged position for the nobility: he insisted on a separate representative organ for it. This organ is the so-called "second chamber" which transmits and sifts the decisions of the popular representation. He also believed that noblemen could be called to account only before a court of noblemen.

Here, too, we may find an embodiment of the idea of a compromise.

On analyzing the law he states that "everything" i.e. the social phenomena, the elements of the governmental mechanism, are closely related to one another. Another essential trait of his study of law is that he sets aside natural law, for natural law will fail to explain why positive laws (the legal systems) differ from one another, are changing and contingent, although Man

is the same everywhere and always. He wanted to come to the cognition of the content and meaning of positive law through an exploration of historical evolution. In conformity with the ideas of Enlightenment, eventually he derived law (the statutes) from human reason. i.e. he distinguished natural law and positive law, yet failed to explain their mutual relation.

A fundamental and decisive thesis in connexion with the statutes is the need for their harmony with the nature and principles of the existing government or the government to come. The statutes must therefore be in harmony with the physical potentialities of the country: climate, the quality of the soil, the way of living of the population, the degree of freedom, religion, the wealth of the country, the number of its population, commercial activities, morals, further the mutual relations of these, their origin, ends, and order of their subjectmatter. The totality of these relations is the spirit of the laws.

On analyzing the spirit of the laws, the reason of the birth and creation of laws he recognized the fact that here the material factors of a country had a considerable and decisive role. Although owing to the standards of the science of the age he could not come to the proper conclusions, still this recognition was a landmark in the evolution of political and legal thinking. There could be talk of evolution because this recognition marked out the path or road on which the correct solution, i.e. the scientific exploration of social relations, could be approached and eventually reached.

Among the material causes creating the law, Montesquieu gives prominence to the climate of a country and the conditions of its soil. He supplements these physical properties with the quality of human activity. In this respect a certain simplification may be discovered in him, still what is essential is that he adduces objective facts against dogmatists relying on authority and moralists in the search for eternal truths. He was the first to formulate the natural history of the statutes and of law and to attempt the establishment of the relations of social potentialities to other factors.

Montesquieu was not interested in the content of statutory law, he was more interested in legislative activity, in the causes which brought about the laws, and the method how these laws came to life. However, Montesquieu overrates the potentialities of legislation (the creation of law), so it is understandable that he expected from legislation the carrying into effect of his solutions and ideas.

On examining the relations of law, morals and propriety, and the human relations, he makes the statement that education is worth more than courtesy. "Courtesy flatters the faults of others, education prevents the manifestation of faults of our own. . . it is a barrier which has been set up lest men should spoil one another." To prevent confusion, he believes in the need for a distinction of law, morals and propriety. He refers to Lykurgos, who consolidated law, morals and propriety in a single code, and also to the legislators of China, who acted in the same way. "They confuse these", he writes, "because morals represent the laws, and propriety morals". He specially emphasizes that propriety is "not all", it is not identical with law.

On analyzing legislation (the making of law) he sets out from the thesis that in a free state, governed by man made free by reason, all men have to govern themselves. Consequently the whole people is holder of the legislative power. Hence the people has a right to take part in legislation. However, the university of the people cannot exercise the right of legislation, therefore a

body elected by the people has to exercise legislative power. What is progressive here is the idea of popular sovereignty, which manifest itself partly in the right of resistance, partly in the right of popular representation. According to Montesquieu all this follows from the fact that he yearns for human freedom and wants to restrict absolutism. For the constitutional guarantee of the freedom of the individual he believes that the people has to exercise legislative power. Yet immediately he values the people in a way that he would have this "power" limited, because of the inability of the people to discuss the affairs of the country, and also because in a large country the totality of the people cannot exercise this power (owing to organizational considerations) unless through representatives. Eventually he recognizes the election of the representatives as the sole right of the people.

He also wants to guarantee legislative power for those excelling owing to their wealth, birth and ranks. He believes that true equality can be enforced only when the body of those excelling in rank, birth and wealth may in like way bring to a stop the initiative of the people, just as the people is entitled to bring to a stop the initiative of the body of the privileged legislators. From this the conclusion may be drawn that Montesquieu is in favour of a bicameral legislature, from which again his opposition to the abolition of feudal privileges follows.

What is characteristic of his liberalism is the following statement relating to the legislator: "... the legislator ought to be guided by the spirit of moderation. The correct policy and the correct morals will always be found between the two extremes".

In connexion with legislation he appeals to his contemporaries that nobody should change the national spirit by statutes. "If we want to transplant a spirit of narrow-minded pedantry to nation by nature cheerful, the State will gain nothing by this in either this country or outside it. Let the frivolous things be done seriously, and the serious things cheerfully."

His demand for legality is another important idea. He studies the problem of legality not only in its bearings on the theory of politics and the State, but even beyond this, on a level of legal policy, in the sphere of legislation and the application of law. He opposes absolutism and describes it in the following words: "When the wild men of Louisiana are craving for fruit, they cut the tree in its trunk and so collect its fruits. This is absolutistic government." His opinions and proposals put forward in the discussion of certain questions of criminal law are associated with legality. In his opinion the gravity of penalties meted out is characteristic of the general situation in a country. He believes that "any punishment not dictated by exigencies is a tyrannical act. The law is not purely an act of power; the regulation of things, by their nature indifferent, does not come within the scope of law." If the penalty does not meet the requirements, i.e. the requirements and principles of society and State, it may be responsible for corruption. A kind of "corruption" is when the people ceases to respect law, another kind of it is when the law spoils the people.

Of the justness of the legal system he holds that its criterion is essentially the adaptation of the content to the spirit of the law; another criterion is the elimination of logical contradictions. He deals with the division of the legal system and divides it into international law, public law, civil law and criminal law.

By objective standards, Montesquieu's *L'esprit des lois* is a counter-revolutionary work. This is borne out by the fact that at the formation of the ideology of the bourgeoisie which came to power in the revolution and at the time of the taming of the revolutionary character of the ideas of Enlightenment in a liberal sense, Montesquieu, the prerévolutionary progenitor of the post-revolutionary liberalism, again became popular. His oeuvre suited this end, because the content of his theses, their conflict with reality were those of the class of society to which Montesquieu himself belonged. However, the acumen of the formulation of the theses, the discovery of the underlying relations, i.e. the formal values of the theses, are his own. His political and legal doctrines reflect the ideas of the *haute bourgeoisie* of his age. (e.g. his thesis that "Not the man is poor who has nothing, but the man who does not work" sounds cruelly erroneous. In Marxist formulation the thesis would read "Not the man is rich who does work, but the one who has all.") However, in courage and the fixation of the critical positions he even goes beyond this. His ideas are permeated by a love for mankind and by humanitarianism. Notwithstanding his superficial social criticism and inconsistencies, the optimism of a progressive thinker prevails in his life-work, of a progressive thinker who fought against religious fanaticism and dogmatism, who struggled against chauvinism (I am of necessity a man, yet only by accident French, he wrote at one instance), who denied the subordination of the State to the Church.

His teaching that there is a deep relationship between scientific truth and social righteousness, the progress of science and the progress of mankind, is of great moment and still timely. In the last resort these pairs will have of necessity to meet somewhere. In the Preface to *L'esprit des lois* Montesquieu professes: "In a state of ignorance no doubts will arise in Man, even if he does the worst; however, at a time of enlightenment, may he follow the best, he will be overcome by fear and trembling. We shall feel the absurdities of old, we shall see the way of mending them, however, at the same time we shall see the improprieties in mending."

The close relationship of scientific truth and social righteousness, of the progress of science and the progress of mankind, and their encounter will be the great rule of the humanitarianism of science, to be followed by scientific socialism after centuries.

[4.] The contradiction between the forces of feudal society and the rising bourgeoisie grew in intensity in the France of the second half of the 17<sup>th</sup> century. The intensification of the contradiction found an expression in new political and legal doctrines.

New tendencies sprang up in political and legal thinking. These may be segregated from one another most clearly by their concept of equality. The most important representative of the first tendency was Voltaire, who worked out the notion of freedom in its formal sense. The second tendency discovered the inequality of property lurking in the background of equality, and made it a point that each citizen should own property of approximately the same value, i.e. property which he could produce with his own work. In this tendency expression was given to the interests of the *petite bourgeoisie* of the towns and the wishes of the peasantry living in feudal bondage. The principal representative of this latter tendency was Jean-Jacques Rousseau (1712—1778). [The representatives of a third tendency recognized that for private property

no maximum could be fixed, it could not be levelled, moreover it was a source of all social and economic inequality. They thought that equality was identical with the abolition of private property, the source of inequality. In the 18<sup>th</sup> century the followers of this doctrine (e.g. Mably, Morelly) represented the plebeian strata of society and the early proletariat.]

Rousseau in his principal works "*Discussion about the Reasons of Inequality of People*" and "*Le contrat social*" stood up against absolutism and the feudal system.

On exploring the origins of the State, he believed that at the beginning men lived in a state of natural freedom and equality and only with the growth of social organization (the birth of private property and the State), i.e. with the creation of inequality among men, the ruin of mankind set in. (In this statement he conflicts with Hobbes and Hume, who assumed a state of "a war of all against all" before the creation of the State, although Rousseau too recognizes the existence of violence in the primitive state of mankind.)

In the beginning Rousseau entertained a close relationship to the Encyclopedists (mainly with Diderot). However, in a number of questions he professed ideas different from theirs. The Encyclopedists waged war against the Catholic Church, religious prejudices, superstitions, they were atheists and materialists. Rousseau was a believer and in the general problems of philosophy he opposed materialism. The Encyclopedists were the enlighteners, Rousseau on the other hand viewed Enlightenment with doubts, because he thought that civilization, science and the arts were noxious to Man.

Rousseau was in favour of progress still he wanted to prevent the growth of the inequality of property or of capitalist property by an equal or more uniform distribution of property: he wanted to preserve small-scale production. He pointed forward and backward at the same time. From the maze of contradictions he wanted to escape by sounding idealistic concepts. This "liberation" was helped by the subjectmatter of his research, his interests in politics. For Rousseau the discussion of the governmental establishment and of private property were problems of primordial importance.

His paper written on science in 1750 defined his ideology for his whole life. This ideology differed fundamentally from that of the other thinkers of the time. Rousseau set out from the thesis that nature created Man "perfect", and came to the conclusion that culture and civilization brought unhappiness on mankind. In response to the effects of culture and civilization natural Man changed to an "artificial Man": he lost his properties bestowed on him by nature.

In 1754 he wrote his work "*Discussion about the Reasons of Inequality of People*" a sequence to his first paper. In this he discussed the problem of Man in the first place, and set out from the abstract assumption of a natural state of Man. He handled the „natural state" not as a fact, but as a method, or rather as a hypothesis. With the aid of this hypothesis he thought he could solve more easily the problems confronting him. The essence and gist of the problem was the study, how in the course of history, owing to the social and political order, Man changed into an artificial being, and how from natural equality the differences between man and man developed. In this connexion he stated that inequality sprang up from the differences of the size of a germ: the results of the gradual metamorphosis of the human organism.

He recognized that Man had changed in the course of history, and threw out the question what factors defined the changes which took place in Man in the course of history. Rousseau thought to have discovered two instincts serving evolution in Man, viz. the one instinct prompted Man to preserve his own welfare, and himself, the second created a natural disgust in Man against the suffering and loss of any living being, principally in one similar to him. Man acted in response to these two instincts.

He really raised a focal problem by exploring the causes of inequality of man and by this demonstrating the driving forces of the historical and cultural evolution of mankind. Although he chose the wrong starting point, still he made a number of discoveries in this field.

So his starting point, i.e. the rationalistic hypothesis that there was a natural, primitive man, who lived a solitary life and was an individualist, was wrong. Science later on established that the history of mankind began with primitive communism and not with individualism. (The arbitrary starting point makes it clear that Rousseau's goal was individualism.) It was due to the choice of this starting point that Rousseau was unable to explain the enormous progress in whose course Man conquered nature, created civilization, sciences, the arts, and unparalleled technics.

According to his doctrine primitive man possessed senses only but no reason, for reason was the product of civilization and of historical evolution.

Rousseau pronounced a severe, yet partly sound judgement on civilization. However, he was not right in what he eventually stated, namely that the reasoning Man was but a degenerated, etiolated animal, therefore the simple, uniform and solitary way of living as defined by nature for Man should be maintained.

Rousseau properly saw the situation developed in society, where inequality was dominant and where the class of the rich and poor stood in conflict with each other. However, he was wrong when he held human culture and civilization responsible for the decay of modern society. He recognized the antagonistic character of progress within class society, however, he was wrong when he denied progress and evolution in general.

However, it was wholly absurd to make the statement that as soon as Man began to think, he turned into a "degenerated animal". With this doctrine Rousseau held the natural state in higher esteem than a cultured or civilized state, which in his opinion "distorted" the true physiognomy of primitive Man. On the other hand, he had acumen enough to find that it was impossible to return to Nature.

The principal subject-matter of Rousseau's investigations was inequality which was closely associated with private property. In this investigation he dissociated himself from abstract rationalism and idealism, and came close to a materialistic concept of history. This made him one of the greatest thinkers of modern times.

He drew the picture of the gradual evolution of mankind, and wanted to demonstrate that the negligible inequality in the "natural state" grew with the gradual evolution of civilized society more and more in intensity. The social conditions took shape in which one part of men looted the other part, the strong suppressed the weak. He was right when he thought that inequality dominant in the civilized state relied on private property, the story of whose birth he told thus: "The first man, who enclosed a certain territory and took



the liberty of uttering the words «this is mine» and found people who were simple enough to believe this, was the true founder of civilized society.”

He stated that private property brought with it misery and serfdom.

He made it clear that competition and the resistance of interests, further the secret desire to earn a profit to the prejudice of others, were the first consequences of private property, and the inseparable concomitants of the developing differences. In civilized society a desperate struggle was going on (we should say class warfare).

Rousseau tried to explain the origins of the State (power) and of the laws (law) from a materialistic position. He explored the dialectic nature of the process. Therefore he may justly be called one of the precursors of the materialistic concept of history.

He recognized that man was not a social being by nature, i.e. nature did very little for the association of men, for in a blissful, idyllic, natural state men had no need of their fellow-men. (This idea suits the social ideal of bourgeois society, i.e. idealism.) Rousseau also recognized that his environment shaped Man and that Man had an active effect on his environments. Therefore he considered education an important condition of the creation of a good society.

With his fundamental idea that social inequality had its origin in civilization, he recognized the essence of the rococo or Baroque culture of the *ancien régime*, and divined the intensifying contrasts between physical and intellectual activity in an antagonistic society.

Rousseau wanted to discover the source of the differences among men, governments and peoples in richness. (Other sources of differences were noble birth, the social position, power and personal merit.)

The differences in wealth gave birth to political inequality and differences among private persons. Social inequality created political inequality and conditions of subordination. This political inequality intensified and developed inequality manifesting itself in private life.

According to Rousseau the evolution of inequality had grades. These were (a) the birth of the laws and ownership; (b) the creation of authorities; (c) the transformation of lawful power into despotic power (relying on arbitrariness). The tyrant turning up in the third grade of evolution should in his opinion be expelled. (With this statement he had France in mind, and the statement itself was an appeal to the people to rise in a revolution.)

According to Rousseau the progress of civilization inevitably leads to a total decay of the civilized state, society would return to the primitive equality of the „natural state”, which, however, was already contaminated by progress. Strictly speaking this stage of progress was already equal to regression.

As stated by Plekhanov, the gist of Rousseau's teaching was that equality dominant in the natural state would be upset as soon as mankind would make a noteworthy progress in the development of the productive forces. Each new step on this path increased inequality. The antagonism of the classes of the rich and the poor (according to his doctrine these classes were created by the processing of metals and agriculture) created the State, which was in the hands of the rich. The successes of the sciences and the arts only intensified inequality and consequently moral depravity.

Since mankind and so civilization advanced too far in the degeneration of the original (primitive) equality, there was no return to the original state, i.e.

the historical process of civilization was irreversible. Therefore it was natural that Rousseau contemplated culture and civilization in a pessimistic mood.

Rousseau did not believe in the restoration of equality (for he thought that inequality was becoming even more intense), and he took the position that further intensification of inequality had to be stopped or slackened down, i.e. property ought to be levelled up. To this end he favoured the middle estates, the middle classes.

According to Rousseau in his natural state Man had freedom relying on his physical strength. This freedom was in direct proportion to Man's physical power, i.e. all was his he could acquire. In the civilized State the freedom of Man was limited by the will, the law, and positive law. This was the starting point of Rousseau.

The transition from the "natural state" to a civilized state (the State) took place by way of the social contract. Accordingly the subjects entered into a covenant with the sovereign, who as leader guarded the freedom of Man. (Hobbes, too, was acquainted with the contract, still according to his doctrine Man resigned all his rights for the benefit of the sovereign by this "covenant".) Rousseau spoke of a bilateral contract, where the people and the sovereign opposed each other as parties of equal rights. In his opinion the contract could be terminated at any time, even by the people. The bourgeoisie took care of the safeguard of its property, therefore its ideologists worked out a variety of theories to this end. The social contract brought about radical changes in society: the institution of property was born, without which there was no bourgeois society.

What was the advantage of the social contract? It substituted formal equality for the earlier natural equality, moreover physical inequality, i.e. through the contract and the law all men became equal. With the birth of this contract Man did not forfeit his freedom, freedom was given a new sanction, according to the law Man became free and equal.

The theory of the social contract was a weapon against the sovereign governing by divine right already from the 16<sup>th</sup> century onwards. In the middle of the 18<sup>th</sup> century the absolutists said that certain men were born for government, at the same time an infinite number of men were born for obedience.

Rousseau stood undoubtedly on the soil of enlightenment. The intrinsic contradictions of his ideas follow from the revolutionism of the *petit bourgeois*. He represented a class which wanted to free itself of the feudal bonds, and at the same time it wanted to be protected against the menaces of the new bourgeois system of economy.

In Rousseau's notion the "law of the stronger" did not exist, because this expression was meaningless and would permit the reinforcement of the statement of the theologians, that all power came from God. To conform to the ideals of the age there was need for some sort of a covenant or contract to call to life a lawful power. Therefore Rousseau reverted to the primary contract, the social contract, which did not rely on violence or force. When Man could not live any longer in his natural state (owing to evolution) and for his subsistence he had to associate with other men, a form of association became necessary which guaranteed common defence for all. Hence in his work Rousseau tried to lay the foundations of civil freedom. He did not intend it as a means of tyranny or despotism, as many of his antagonists alleged. It is not true that Rousseau opposed the idea of progress. Engels wrote of

him that his work *Discussion* presented the history of evolution of Man grown out of the natural state. Naturally this evolution was fraught with contradictions.

The reason why it is difficult to understand his work is that Rousseau segregated the legal and actual situation. In his work *Discussion* he tried to present facts. In *Le contrat social* he laid down the ideal principles of law. i.e. the idealist method threw out problems. There are opinions saying that had not Rousseau expressed himself "thus", but in an open manner, then *Le contrat social* would have been a proclamation, an appeal to action. This is exactly what Rousseau did not want, as he was not a revolutionary, he was not the man of action. Still he yearned for blazoning abroad truth and for teaching the secret of happiness to mankind. *Le contrat social* described an ideal state, yet occasionally the ideal is commingled in it with reality, so that in some instances the revolutionary sense is camouflaged by logical absurdities.

*Le contrat social* was written for the City of Geneva. He wanted to create a system for this town which respected freedom. Yet he did not forget about the happiness of mankind. He criticized the monarchy (he was thinking of France of his age). He thought that his doctrines suited small states only, still he set a political ideal to all peoples which could be translated into reality perhaps in some distant future.

He believed that Man was inevitably unhappy in society and yet he praised a society where Man could alienate all his rights. Apparently this was inconsistent. If we analyze his methods, then this inconsistency or contradiction could be cleared. Rousseau's method was rationalistic in an abstract sense. All he traced back to a few principles based on „common sense“. He studied the law as a whole rather than particular laws. He explored the universal principles of public law, principles which in the ideal civil society had to be respected. This method again raised problems. Namely whether in the mind of Rousseau the social contract was a historical fact, or merely an ideal. He himself wrote that the contract which created a lawful power and transferred this power to elected leaders, was a dupery of the people and eventually the individuals became equal in a state of unlawfulness. Still if the people brought the tyrant to a fall, the path would stand open to the true contract.

*Le contrat social* confirms that political freedom is the inalienable right of all members of the State, which they have not waived and cannot even waive. Consequently the sovereign power was the due of the totality of the members of the state (the citizens).

The clauses of the covenant were perhaps never proclaimed formally, still tacitly they were recognized by all. This covenant alienated all rights of all contracting persons for the benefit of the community. However, nobody could exploit this state to the prejudice of the others, i.e. freedom was guaranteed by equality. The formula of the contract was of necessity the following: "Each of us subordinates his person and all his abilities to the supreme authority of the common will, and considers each member the inseparable part of the totality."

The social contract is of a peculiar character. Each individual covenants with himself, as he is part of the community with which he enters into a contract. Nothing binds the sovereign power in respect of its subjects, however, this situation cannot lead to despotism, as the sovereign power can have no interests conflicting with those of the private persons. Since apart from the

public will each individual may have private interests which might silence the voice of the public will, the sovereign power may in such cases bring pressure to bear on the individual and guarantee freedom for all.

On analyzing the forms of government Rousseau did not take an absolutistic position. According to his doctrine the forms of government could be relatively good. The form of government was a question of secondary importance for him. Going deeper into the study of "government", i.e. the form of government, he concluded that in history various governments or forms of government developed. These were according to his doctrine the aristocratic form (the case when several persons rose among themselves to about the same level and were then elected jointly to power), the democratic form (the case when the fate and abilities of those wielding power showed no disproportionateness, and the persons concerned did not move away from the natural state to any high degree). In his opinion time would show which form of government was the most beneficial for mankind.

The body politic (the supreme organs of the State) was composed of three elements: "The sovereign commands, the government carries out, the subject obeys."

On analyzing government Rousseau concluded that the legislative power belonged to the sovereign power, i.e. the people, while government was vested in the ruler.

"The leading principle of political life is hidden in the sovereign power. The legislative power is the heart of the State, the executive power its brain..."

There is no government which would be the best by itself: the forms of government change from one state to the other. However, Rousseau called forth attention to the thesis that "political institutions should never be made rigid to an extent that their power could never be suspended". Any risk of the upsetting of the public order should be undertaken only in cases of greatest danger and only for a short period of transition. If dictatorship becomes justified, the State would either perish shortly, or be saved. With the passing away of emergency the dictatorship would be apt to turn into tyranny, or become superfluous. Tyranny implied particular risks, because "... tyranny does not govern the subjects to make them happy, but to make them miserable in order that it might rule over them". Rousseau considered government a science and wrote of it: "In the course of history the most praised kings were not brought up for ruling; this is a science which we acquire the less the more we study it, and which can be acquired best by obedience than by commanding." To this he added the following: "If we wanted... to create a permanent (governmental) arrangement, we should not have in mind eternity at all. And if we wanted to reap success we should not strive for what is impossible..." However, success was wanted in politics. Results were needed in politics and in public life, they were needed for the achievement of the targets, for keeping the promises. "What should we believe of the doctor, who promises miracles and whose whole learning consists in warning his patients to patience", Rousseau asked academically.

According to his doctrine the best government is the one under whose leadership the citizens of the State continually multiply "without external supply, naturalization, colonization".

Every government advances towards degeneration, i.e. towards a state where it usurps sovereign power and breaks the social contract. Before it

reaches this stage, it narrows down continuously: democracy turns into oligarchy, this into a monarchy, then it reaches the state of tyranny. We cannot fight against this degeneration unless we convene popular assemblies as frequently as possible. "In general government degenerates in two ways: if it contracts, or if the State disintegrates. Government contracts, if it changes over from the large numbers to the small numbers, i.e. from democracy to aristocracy and from aristocracy to monarchy."

In the course of an analysis of the functions of the State Rousseau insisted on State interference with property relations.

Rousseau's ideal society was a more or less uniform distribution of social goods in a social order suiting the interests of the *petite bourgeoisie* in order that there might be neither poor nor rich in society. He did not oppose property in general, he opposed large fortunes only, i.e. he proposed their distribution. As a fighter of egalitarianism of the style of the *petite bourgeoisie* he considered small property the foundation of society.

He saw it clearly that formal equality as proclaimed in modern society was the means of preserving partly misery, partly wealth. All vices of class society had their origin in the institution of private property. There was the source of struggles and strifes in society: the wealthy with the social contract at a single stroke, once for all implanted the ownership and inequality. This called for an as uniform distribution of wealth among rich and poor as possible, because the uniform distribution of wealth guaranteed the stability and the duration of the system of government.

To Rousseau equality was not the uniformity of the degrees of power and wealth, on the other hand he insisted and urged a social order which would prevent power from becoming violence. Therefore he wanted to abolish the two extremes viz. immense wealth and dire poverty, in the sphere of property, and proposed their mutual approximation as only by such an approximation of the two extremes could stability be lent to the State.

Strictly speaking Rousseau's whole teaching centred round the problem of formal political freedom and formal political equality. This feature brought his teachings close to the doctrines of bourgeois liberalism.

In his political works Rousseau exposed the general theory of bourgeois democracy. (His theory was a continuation of the doctrine of bourgeois liberalism whose first representatives of renown were Locke and Montesquieu. The function of liberalism was to safeguard the property of the wealthy classes, the existing social and political order, which guaranteed property and the freedom of acquiring property and the exploitation of the workers with this property. The liberals demanded that the State should not interfere with economic affairs, the relations of capital and work, i.e. according to the liberal doctrine a state of freedom was where nothing prevented the bourgeoisie from exploiting the workers.)

Bourgeois democracy (as the continuation of liberalism) as a supplement to freedom moved the idea of democratism and equality to the focal point. This equality was formal, it did not lead out of bourgeois society, it consolidated this society even more. Although in a bourgeois democracy power was formally vested in the people, yet notwithstanding its formal sovereign power the people was virtually without rights.

According to Rousseau the principle of popular sovereignty was the foundation of the democratic social and political order. With this progressive theory Rousseau was the first to proclaim the full powers of the people.

Rousseau restated character and nature of human freedom in a novel form. He thought that human freedom was inalienable. He extended his idea of an inalienability of freedom to the people as a whole, to sovereign power, to popular sovereignty.

Rousseau segregates the notions of sovereign and government from each other. The sovereign is the holder of the fulness of the legislative power. The government is merely the executive power, which acts under a commission from the sovereign, and is the intermediary between sovereign and people.

He named democracy the most perfect form of government, yet not representative (indirect), but direct democracy. At the same time he doubted whether the establishment of the democratic method of government was feasible at all, and in a pessimistic mood he stated that such a perfect form of government was not for Man. In his doctrine, virtue i.e. the love of the common weal, is the actuating force democracy. When the people cease to show an interest in public life, democracy is possible no more. "When people begin to say of public affairs: what does it concern me? — then we should know that the State is lost." Then again in a pessimist mood he added: "In the strict sense of the word there never existed and there will never be true democracy. It is against the order of nature that the vast majority should govern and rule over the minority. It is unimaginable that the people should assemble at all times to manage public affairs." (It should be noted that Rousseau did not consider a system democratic if it relies on representation.)

He distinguished public will and the will of all on the understanding that the latter as a mechanical concept considered public interests only, whereas the former respected private interests. On the other hand, Rousseau denied the autonomous role of personality, he subjected it to the totality of society. This doctrine contradicted his concept as whole, which was decidedly of an individualistic character.

This statement of Rousseau was undoubtedly fraught with contradictions as the starting point was idealistic.

The question is often raised whether Rousseau was an adherer of etatism or of individualism. When Rousseau was thinking in a political manner, he was not an individualist, in particular when he is placed in juxtaposition to Locke. He must be given credit for his recognition that a seemingly free "covenant" eventually led to servitude, because it surrendered the individuals to other stronger individuals. He did not yet grasp class warfare. As spokesman of the *petite bourgeoisie*, which was suppressed by the *ancien régime*, and which was threatened in its property by the growth of the manufactures, he turned his attention to the exploitation of man by man. Similarly to other progressive thinkers of the age, he too called for individual freedom, still unlike others he believed that freedom was inseparable from equality. For the preservation of the equality of men he demanded the expropriation of all natural rights for the benefit of the community. "The individual has to remain as free as he was before" he wrote and would achieve this end by means of the theory of public will and the law.

If there is no freedom according to his notion, the State would disintegrate. A case of the disintegration of the State will be present when the sovereign ceases to govern the State in conformity with the laws and usurps the sovereign power. Another case of the disintegration of the State is when the members of the government one by one usurp power which otherwise they could exercise

only as a corporation, collectively. In both cases anarchy will follow. Rousseau regards any unlawful form of government as an anarchy.

He formulated the „great question of politics” in a letter written to the Marquis de Mirabeau on July 26, 1767 as follows: „We have to find a form of government which raises the law above Man”, then in his Neuchatel MS he clearly stated that freedom could be discovered in the obedience to the law. He also stated that freedom had no guarantees whatever unless the laws of nations were as adamant as those of nature. Freedom could survive only if the will of the individuals was given expression by the common will in the nation, i.e. if sovereign power was held by the people. Rousseau thought that popular sovereignty was the best guarantee of individual rights. (This was the concept of freedom of Antiquity.) The individual was free only in the State, therefore he had to adhere to the State with boundless devotion. The love of freedom was inseparable from patriotism and the democratic ideals.

In his social contract Rousseau raised the political ideas manifesting themselves in the most democratic strata of the bourgeoisie of the 18<sup>th</sup> century, viz. liberty, equality and popular sovereignty to a high theoretical level. In contradiction to monarchic tyranny he drew the outlines of the vision of a society where law did not depend anymore on the whims of the seignior and did not serve the narrow circle of the privileged.

How did he define his system? He declared that democracy in its pure form was impossible. He stated erroneously that each citizen devoted all his time to public affairs. In an exaggerated manner he rejected all representative systems, and eventually he found himself in a *cul-de-sac*. In the same way his thesis condemning the parties as if they might suppress the unfolding of the common will, also led him in a *cul-de-sac*. (By party Rousseau understood only the aristocratic party; he could not imagine a democratic party.)

His work, *Le contrat social*, was, as a typically idealistic work, characteristic of the age. In the same way as the notion of the social contract is also idealistic. It presupposes that the State is the creation of the conscious act of all members, as the community was looking for a reasonable solution for overcoming the risks implied in a natural state. These doctrines were then definitively rejected by Marxism. Rousseau himself was not sure whether the State had its origin in reality (i.e. it was not the product of reason, or some sort of an arbitrary decision).

According to Rousseau law and statutes were expressions of the common will, and were binding on the people as a whole. The statutes could not be unjust, as nobody could be unjust to himself. True freedom was implied in the abidance by the law, because the law was expression of our will.

The sole creator of the law was the people, yet even if the people wanted the common weal, it could not recognize it in all cases, therefore legislators were needed who would make clear to the people what common weal meant. "The individual sees the good, yet rejects it; the community wants it, but does not see it." Even if he did not despise the people, as regards legislation he was pessimistic about the abilities of the people. He wrote: "The sage, if he speaks in his own language to the common people instead of in theirs, will not be understood." Therefore the legislator applied the tricks of religion and deceived the people for its own benefit. Therefore for him the birth of a just society was something bordering on a miracle, for according to him "gods would be wanted to give law to the people".

The legislator had to possess the same properties as the gods in order that he might give laws to the people. Since the people was unable to appreciate wisdom, it was the proper course to appeal to the authority of religion.

"The great spirit of the legislator is the true miracle which has to confirm its vocation. Anybody may engrave stone slabs, may buy prophecies, pretend secret ties to some deity, teach tricks to a bird that it chirps into his ears, or invent any other clumsy method for the deception of the people. A man who knows only such things may by chance assemble a lot of fools round him, but will never lay the foundations of an empire, and his adventurous creation will soon perish together with him."

"Anybody undertaking the organization of a people will have to know also how to change human nature to a certain extent in order that he might convert each individual, secluded and an independent totality by himself, into part of a large community..." In addition to education Rousseau also urged legal measures: the segregation of ownership and the law of inheritance, restriction of inheritance to the nexts of kin, introduction of progressive taxation for the wealthy, and the imposition of excises on luxuries.

"Only the sanctity of the covenant can become the reason for existence of the sovereign power, therefore it cannot bind itself for a purpose which would violate this covenant." The sovereign power must not burden its subjects with any clog useless for the community, for under the law of reason, just as under law of nature, nothing can happen without a cause. The sovereign power has no strength other than the legislative power, therefore it can act only through the agency of the laws. The laws are the authentic manifestations of the common will. Therefore the sovereign power can step into action only when the people has assembled. However, the "assembled people" is a phantasm. It is impossible to convene the people at frequent intervals, though it can be represented. Still "... as soon as the people depends on representatives it ceases to be free, moreover it ceases to exist as a people at all". Modern democracy cannot of course be without a popular representation, still the representatives can be controlled continually, they may even be recalled.

According to Rousseau the sovereign power cannot be represented, being essentially identical with the common will, and will cannot be represented. With a certain metaphysical savour he states that the delegates of the people are not its representatives, they are merely its agents. Consequently the representative is the servant and not the master of the people.

The legislative system is directed towards two principal objectives, the one is freedom, the other equality without which freedom cannot subsist. Equality is not complete, however, the differences of power and property, i.e. inequalities, may be reduced. Hence the legislative system has to be adapted to the conditions in which the people is living. Even more important than the laws is the introduction of good morals.

In the wake of Montesquieu, Rousseau came to the conclusion that not all peoples were mature for freedom; "from the nature of things principles may be forthcoming which lead to servitude", further "Freedom is not the fruit of all climates, therefore it cannot be achieved by every people", he wrote.

According to Rousseau in reality the laws are beneficial for those who own something, however, to the have-nots they will be harmful. He wants to discover the reason for this in "poor government" what of course means that the law serves the interests of the wealthy, the possessors. In this connexion



Rousseau draws the following conclusion: "The social condition is beneficial only as long as everybody owns something and nobody has too much."

On entering into the social contract, Man placed all his property at the disposal of the sovereign power; the sovereign power left its property with Man and guaranteed its enjoyment. However, Man only possessed what he needed for his subsistence and what he could sell.

Notwithstanding the covenant, Man remained free as man, and was subject to the laws only as member of the State. Everybody gave up his own personality to that of the State and by this the will of all coalesced into a common will. As Rousseau wrote "Will is made a common will by the common interest uniting those endowed with a vote rather than the number of votes." This common will is the State, i.e. the sovereign. According to Rousseau the sovereign power is an absolute and indivisible power.

The State, and also legislation is guided by the public will according to the requirements of the common weal. Sovereign power, the manifestation of public will is inalienable, for will could not be transferred to another person. Sovereign power is the people itself, and the people could not be tied to the will of a man.

Common will is genuine if everybody has a share in it, if everybody submitted himself to all conditions — this was the guaranty of freedom. (However, there can be no united common will in class society.) To obey the sovereign power is tantamount to obeying ourselves, so through the agency of the social contract we merely exchange these natural rights for civic rights; but do not alienate them.

"Transition from the natural state to the civic brings about momentous changes, since in the conduct of Man justice replaces instinct, and in his acts the moral element missing before will come to the fore."

"The strongest even is not strong enough to remain master for ever, unless he exchanges his strength for law, obedience for duty." Strictly speaking the laws are the conditions of the union of society.

Rousseau considered also religion the condition of social coexistence, therefore he recommended a civic religion (or in his words, a confession), which would proclaim the pledge of conscience in a sense that those who did not believe its articles of faith could be exiled, and those who recognized them, yet with their conduct belied them should be punished with death. However, there were few positive dogmas only; there was a single negative dogma — intolerance: any denomination which did not tolerate the others must be exiled from the State.

The society of the age of Rousseau could instill only Utopian solutions into the public: the classes should be raised to a uniform level, measures should be taken that there should be neither rich nor poor. Rousseau's democracy could exist only in a patriarchal society. His theory of laws abstract to a degree that it appeared justified only in a society where a division of labour was very primitive. He, too, recognized that his principles could be applied in small states only.

Rousseau was aware of the approaching end of the monarchial system. His work *Le contrat social* was a tool only for the demolition of the monarchic feudal state. This work exceeded all others that had been published before (for its profundity, vigour, trend towards genuine democracy, the recognition of national reality). Rousseau wanted to throw a light on the path to happiness.

Therefore Saint Just said of him that this was the "new idea in Europe", i.e. that the end of society was the common weal. He transgressed the limitations of bourgeois thinking, for he dreamt of a realistic equality (in the face of bourgeois formal equality). He dreamt of a nation where there would be no disinherited, nor pariahs. Rousseau's endeavours pointed towards Jacobine movement, he himself was not a Jacobine revolutionary. So to present him in the history of ideas as if he had been a representative of romanticism, is erroneous. As a matter of fact he formulated the requirements of the age in the image of natural law, and called to the struggle against the decayed feudal system. Undoubtedly he was the thinker of the 18<sup>th</sup> century who wanted to go beyond the limits of bourgeois thinking, although he could take refuge only in Utopia. He strove after genuine democracy with a sincerity that no progressive-minded man of the present age can be insensitive to his oeuvre. The oeuvre of Rousseau is valuable for all friends of progress, for the ideal depicted in it is still waiting for being translated into reality in that part of the world which still suffers from capitalist exploitation. As one of his reviewers writes, his ideas cannot be put into practice, still they cannot be rejected thoughtlessly as long as his name will stand as the synonym of the idea of democracy. His work is timely even today, as the modern age has not as yet translated into fact Rousseau's programme in the proper sense of the term: the many-sided creative faculty of Man has not yet been freed from all social fetters.

[5.] Tradition wants to know of Kant that he lived in an extremely, scrupulously careful manner, on a very precise schedule to an extent that the citizens of Königsburg adjusted their watches to his walk beginning exactly at noon. However, one day Kant failed to appear in the gateway of his house, not even when the clock struck twelve. The burghers of the town surmised an extraordinary event. In fact on this day Kant received the news of the outbreak of the revolution in Paris.

This tradition is a symbol at the same time: partly because it is an indication of the systematic character of Kant's way of thinking, and partly because it may be an indication of his adjustment to the revolution, or as Marx said, the philosophy of Kant was the German theory of the French Revolution.

In the second half of the 18<sup>th</sup> century, in the wake of the evolution of capitalism and owing to the thrust the bourgeoisie made forward, far-reaching economic and social changes took place in West-Europe: Instrumental in these changes was the French bourgeois revolution of 1789—1794. A new social order was victorious, after the annihilation of the feudal order of society, wrote Marx. Bourgeois property prevailed against feudal property the idea of nationality ousted provincialism, the principle and requirement of competition triumphed over the guilds, the principle of partition remained victorious against entailed property, the domination of the owner of the land prevailed over the domination of the land over the owner, enlightenment was victorious against superstition, the family won the day against the family name, industry succeeded against heroic laziness, civil law triumphed over mediaeval privileges.

In response to the French Revolution an anti-feudal revolutionary movement sprang up in Europe and the evolution of the historically progressive bourgeois ideology set in. This ideology essentially taught that all men had a right to freedom, happiness, private property, things feudal ideology denied

to Man, although this ideology too recognized these rights as "natural" and inalienable.

The bourgeois ideologists following in the footsteps of the ideologist of the French Revolution taught that Man was the master of nature, and that there was nothing unknowable or inaccessible for reason.

The splendid idea of the regularity of the social process became a conviction of the progressive bourgeois philosophers, and so also the faith in the boundless progress of society. The thinking being was celebrated, the enthusiasm of the spirit made the world quiver.

The ideological concepts of feudal society fell down in a heap. The religious humiliation of Man was superseded by the deeply optimistic cult of reason.

Unfolding capitalist economy destroyed the feudal conditions, it created new branches of production, new social and individual needs moulded new classes of society, and encouraged the rapid development of the natural sciences. Historical progress was only accelerated by the industrial revolution in England at the end of the 18<sup>th</sup> century. The industrial revolution laid the foundations of industrial capitalism, of largescale production, it opened new vistas to the improvement of the productivity of work and to the accumulation of social wealth.

Naturally feudalism did not collapse, neither was it annihilated definitively. After the defeat of Napoleon the restoration of the Bourbon dynasty took place in France, and as the outcome of the Vienna Congress, Europe was swamped in the tide of political reaction. However, there was no way backward, the feudal monarchical governments had to adapt themselves to capitalistic evolution. However, attempts were made to stem bourgeois democratic changes (yet to a lesser degree capitalistic evolution).

At the end of the 18<sup>th</sup> century and in the opening years of the 19<sup>th</sup> it was becoming more and more obvious that the interests of the classes on which the new, bourgeois society rested, did not harmonize. The first revolutionary movements reinforced the forms of bourgeois ideology searching for compromises, forms which were oriented towards the non-revolutionary path, i.e. towards an alliance with the feudal ruling class and its ideology. This development of the bourgeoisie and of bourgeois ideology was characteristic mainly of the European states which entered the path of capitalistic evolution with a delay.

In the second half of the 18<sup>th</sup> century, and at the beginning of the 19<sup>th</sup> century, Germany was a backward feudal state compared to England or France. Germany was composed of a large number of petty principalities, which were separated by political frontiers from one another. Owing to the economic and political disunity, notwithstanding its common language and common culture, the German people did not form a united nation.

The bourgeoisie did not unite on an allnational scale, in the national sense it was not a united class, therefore it was unable to fight feudalism in a revolutionary way.

The awareness of its own weakness and the fear of the antagonistic consequences of bourgeois evolution, prompted the German bourgeoisie to strive for a compromise with feudalism and absolutism. The German bourgeois ideologists placed all hope in a spontaneous course of the events calculating that

history would anyhow compel the feudal classes and governments to make concessions to the spirit of the age.

Prussia and other German states were defeated by the revolutionary France, and then the problem loomed up before the monarchial German governments, how to carry through certain changes in a bourgeois sense, also in the interest of the increase of military power. Accordingly in several German states (even in Prussia) the personal dependence of the peasants on the landlords was abolished, facilities were granted to redeem feudal services, some encouragements and statutory guarantees were given to the commercial and industrial bourgeoisie.

Ideologists of Prussian feudalism proclaimed that Germany had to be united round the Prussian Dynasty of the Hohenzollern. Thus the conditions of a compromise were brought about between the German bourgeoisie and the nobility more and more venturing on the path of capitalistic evolution. This compromise had its ideological counterpart and received a background in the teachings of the German philosophers of the second half of the 18<sup>th</sup> and of the first third of the 19<sup>th</sup> century, namely in the doctrines of Kant, Fichte, Schelling and Hegel. The precursors of the revolution of German philosophy were idealists, therefore their struggle against feudalism was inconsistent, ill-assorted.

It is an experience taught by history that in economically and politically backward countries often more progressive doctrines will appear than in developed countries. This was the case in the middle of the 18<sup>th</sup> century in France, and the same happened also in Germany, where by applying the philosophical thinking of the earlier ages use was made also of the achievements of the natural sciences (geology, embryology, phytophysiology were already well established in the beginning of the 19<sup>th</sup> century).

For the bourgeois ideologists (and so also for the classical German philosophers) the crises appeared as if they were the regular movements of the all-powerful intellect. It appeared to them as if the intellect were capable of overcoming all obstacles and solve all contradictions on the path leading to freedom and perfection. Germany accompanied the evolution of modern peoples only with the abstract activity of thinking without taking an active part in the real struggle of evolution (Marx).

A prominent representative of this philosophy was Immanuel Kant (1724—1804), the sage of Königsberg, cultivator of philosophy and natural sciences. In the first phase of his activities (till the beginning of the 'seventies) he tried to solve the fundamental problems of philosophy (being, natural philosophy, the philosophy of religion, ethics, logic) on the assumption that philosophy could be elaborated and formulated as a speculative science, i.e. without empirical data. At that time Kant was still under the influence of the rationalistic philosophy of Wolff and his disciples. In the sixties Kant became acquainted with the agnosticism of Hume, and at that time he ceased to believe that the intellect could come to know the true essence of the things in a speculative way.

In the second phase of his activities (from the beginning of the seventies onwards) Kant tried to distinguish the "phenomena" from the "things in themselves", which according to him could not be given in experience. He tried to demonstrate that the things are in themselves unknowable, Man could come to know phenomena only, i.e. the manner how the things in themselves had an

effect on us. His teaching, which Kant called the *Critique of Reason*, was at that time agnostic.

The critical philosophy of Kant took a shape at the beginning of the eighties. His doctrines were developed in his works *The Critique of Pure Reason* (1781), *The Critique of Practical Reason* (1790) and *The Critique of the Faculty of Judgment* (1788). In his first-mentioned work he exposed his epistemology, in the second his moral philosophy, in the third his aesthetics, his teaching of the expediency prevailing in nature. The Kantian theory of the things in themselves and of the phenomena is underlying all three works. According to Kant there is a world of things independent of our consciousness (of perception, cogitation). These Kant called the things in themselves.

The presupposition of his doctrine of the existence of things in themselves was materialistic. For him it was not consciousness that was primordial, but the things of the material world. In his investigation of the sources and limitations of cognition Kant already turned his back on the materialistic position and offered an idealistic exposition. He considered the form primordial and believed that Man, with definite categories, introduced order into nature, although he recognized necessity in nature, whereas according to his doctrine in society the free will prevailed.

The social, political and legal doctrines of Kant are embodied by his moral philosophy. Namely moral philosophy may be divided into two parts, just as Man, too, may be split into two. Man is partly a sensuous being and as such part of nature, void of a freedom of will. On the other hand Man is a being of reason, a moral being, i.e. one in possession of a free will, yet his acts are dictated by an unconditional command of reason. Moral philosophy on this understanding deals with the internal life of Man on the one part (this is what is called the doctrine of virtues), and on the other with the external life and act of Man (this is called the doctrine of law).

The social, political and legal doctrines of Kant developed under the influence of French and English enlightenment, mainly by the effect of Rousseau. In connexion with the origin of the State Kant made the statement that the so-called social contract was an ideal construction, only an idea by means of which the State could be justified. In his opinion the natural state of things followed from reason, a construction of experience, because it was the logical precondition of the lawful state. So there could be no question of violence, of evil. In conformity with his doctrine of the unknowable character of the thing in itself Kant made it clear that the true origin of the State could not be explored, as this would impair the obedience due to the State, and even jeopardize its existence. He stated that popular sovereignty was unrealizable in practice and that the will of the people had to submit itself to the existing power, and that it had no right to resistance. Thus Kant juxtaposed to the democratic idea of popular sovereignty of Rousseau the ideal of Hobbes, i.e. the principle of the unlimited absolutism of the sovereign power, and brought forward the thesis that in the idea of the social contract it was out of the question as if men had reserved part of their natural freedom. Kant thought it was impermissible that the people should take part in the revolution, and also that the people should meditate on the method of the birth of the supreme power, because this would threaten the State with ruin. However, he did not deny that things as they were ought to be mended, i.e. he recognized the need for reform initiated from "above".

In his work *The thoughts of a cosmopolite about the universal history of Mankind* (1784) the ideas of the French Revolution were reflected; from a few lines even the voice of the suppressors of the revolution came to the fore.

It is a historical experience that every revolution begins with a denial; so the social content of Kant's criticism is negative. Kant introverted (he lived in Germany), he wanted to explore himself, he wanted to know where the limits of his faculty of cognition lay. This is the reason why he did not deal with the objects, but with the methods how to acquire cognition of the objects, in so far as this was possible in a manner independent of experience (*a priori*). This programme which Kant exposed in his *Critique of Pure Reason* (1781) was on the social level of dual significance. First, because before following in the wake of the French example, the German burgher assessed himself, his abilities, strength. Secondly, because our activity of cognition was not an adaptation to the things, but the other way round, the adaptation of the things to the mechanism of cognition. This was the attitude of the revolution, still at the same time there was the barrier of the existing and relatively strong order Kant reckoned with this limitation, made a compromise and did not ask how action was possible, but how safe, "pure" scientific cognition was possible, which might provide a foundation for action.

The adjustment of things to the mechanism of cognition could be revolutionary, still it could also mean that the intellect prescribed the laws of reality, i.e. that these laws were not objective, but the creations of reason. Hence the compromise consisted not merely in the endeavour to reconcile idealism and materialism, but also in the conclusion that accurate cognition was possible only in respect of nature, yet not in respect of society, or history.

This is the clear result of Kant's apriorism, i.e. even if he put the question, how history could be a *priori*, then his answer could be but what he himself wrote: i.e. "if the prophet makes the events himself, and translates into reality all that he has prophesied".

Where does Kant draw the limit for cognition? At the thing in itself (Ding an sich); this concept is also of a dual meaning: it designates that by the means of which the sensing faculty of Man may receive the masses of most varied stimuli, it means the chaos of feelings, where then the subjective forms of our intuition, i.e. space and time, will create order. And the thing in itself can also mean the limit to which cognition may advance. All that is beyond this limit is ungraspable essence, the unknown object of an indefinite desire, which would mean the final, the solid, the perfect in the face of the continuous change, relativization of the world of experience, and also the limit beyond which scientific cognition is impossible, i.e. where the world of ideas begins which the human intellect cannot grasp.

The sphere delimited by the thing in itself (Ding an sich) is essentially the world of the intellect, the great workshop of human cognition, where the intellect processes matter of experience, the objects of contemplation, i.e. converts the sensorial phenomena into concepts or notions with the aid of the categories of logic.

Two things are needed for all true cognition, viz. first, an empirical material given in the perceptions, and, secondly, a form given in the general forms of contemplation and in the notions where in some sort of an order the form of intuition of time must always be given.

Kant's compromise consisted in that under the pressure of reactionary conditions he was unable to stop at his original programme, viz. the demonstration of the possibility of intellectual cognition and that by valuating social pressure as the "human desire for knowledge" yielded to the endeavour "to find the unconditional for the conditioned cognition of the intellect". The means of the endeavour for the cognition of the unconditional, the absolute, the uniform and completed totality of the world was reason; reason contained such pure notions as could not be derived from either intuition or intellect. And in the same way as the intellect had its categories, so pure reason had also its ideas: these were notions whose function was the transgression of experience, i.e. notions which could not be used for helping to scientific cognition.

What is therefore the sense of ideas? They serve the endeavour of Man to break through the fences of experience and to arrive in the world of transcendence. The ideas offer no scientific acquisitions, still they satisfy certain spiritual needs, i.e. they do something which so far metaphysics had done; Hence Kant recognizes metaphysics as a spiritual demand, yet not as science.

Kant did not recognize dialectics in the world of experience, he showed dialectics into the realm of transcendence. i.e. according to Kant there was no contradiction in reality, hence the contradiction of reason was not a reflection of reality, but an error, an illusion, whereas dialectics were the "logic of appearances".

In his analysis of the form of government Kant took a stand for the absolute monarchy, yet considered the republic the ideal form of government. He made it clear that emphasis was not on the form of government, because even the monarch could govern in a democratic form and could satisfy the functions of the State, he could even prevent revolution. He wanted to reconcile the theory of Montesquieu of the division of the branches of the sovereign power with the idea of the ruler of the all-powerful State, the absolute monarch. Like his predecessors he divided power into legislative, executive and judicial power, however, only for the sake of a compromise, because he did not approve of the revolution. On the contrary he expressly opposed it and according to him only reforms should be introduced.

From the State-creating covenant some derived monarchic absolutism (Hobbes), others concluded that it remained the function of the State to serve the interests, the freedom and the equality of the few only. Naturally the interests, equality and freedom of those "belonging to the ruling class" were understood. It was from this notion that the idea of the constitutional state was born, one of whose representatives was Kant.

On examining the functions and the duties of the State, he defined them in the inner and outer spheres.

The State was created by the social contract in order that men might unite "under the law" to safeguard freedom. Thus intrinsically the principal function of the State was to safeguard "natural" and "inviolable" private property. As a matter of fact according to the Kantian doctrine private property had extra empirical sources, consequently it was eternal, universal and absolute. A characteristic, in particular intrinsically characteristic end of the State, was the guarantee of the abstract common weal, which did not coincide with the sensorial picture formed of it. The guarantee of the common weal would be the guarantee of the welfare of the subjects (many western theore-

ticians call the capitalist state the welfare state even today). Kant taught that the principal function of the State was to bring about peace among the peoples. He believed that to this end it should not be allowed that an independent state acquire another independent state and that in the course of time the standing armies should be disbanded. No State should be allowed to interfere with the domestic affairs or constitution or government of another State. An international organization (alliance of peace) should be created among the states to guarantee eternal peace. These ideas of Kant were remarkable achievements of the thinking of the 18<sup>th</sup> century, although his doctrine of peace was a moral ideal, not a concrete historical objective. Still its significance was that with his opinions of peace Kant criticized the armed adventures of the ruling classes of the Prussia of his days. His doctrines of peace were at a later time exploited by the pacifists. He defined the notion of the State as "the association of the multitude of men under legal statutes". Hence the State was a postulate of the command of reason in order that the basic rights of men were returned to them in a regulated form. The statement may be made that in this definition the demand of the German bourgeoisie for legality was reflected, moreover the demand for a united state against absolutism.

Kant derived the origin of the law (the statute) also from reason, i.e. he segregated law from reality, and so also from the classes of society. As a matter of fact in his opinion reason does not express the material conditions, so that it is independent of reality, in it the free will prevails. He taught that it was not the social and economic conditions, the objective situation of the social classes and strata, but reason (and faith) that set up postulates in dependence on experience. Kant rigidly segregated law and morals from each other.

He thought there was an unsurmountable contradiction (antinomy) between the empirical Ego craving for ideals, and giving laws, i.e. the *noumenon* Man and the *phaenomenon* Man, i.e. between the citizen of the world of essence, the *Ding an sich* and that of the world of phenomena. As a matter of fact the reality of the latter (of the *phaenomenon*) did not permit the laying of a claim conforming to the ideal of righteousness, the ethical freedom of the *noumenon* Man was methodological and not genuine freedom. Man could be methodologically only Burgess of two conflicting worlds at the time.

The moral antinomies can be solved only in the sphere of transcendence, and the regulating principles of pure reason become the postulate of practical reason (theses of necessity assumed, yet unprovable, e.g. the immortality of the soul, the existence of God). This means that when the moral postulates lay claim to a general character and universal validity, they can be only abstract and formal postulates. This is how we come to the Kantian moral law "act in a way that the maxim of your will could at any time become the general principle of law-making".

Since Kant gave the moral law the character of the categorical imperative (the character of an unconditional command), i.e. he placed natural inclination in juxtaposition to the striving for happiness, he betrayed by this the social, civic sense of the moral law. As a matter of fact in this age, when the rising bourgeoisie from below waged its battle against the ruling (feudal) powers, it could not be allowed that the single man should seek his own happiness. The class character of Kantian ethics manifested itself in an even more striking



manner in his disquisition according to which moral personality was the freedom of a rational being within the limitations of the moral law.

Kant thought that the antimony that Man ceased to be a beast was incontestable, Man in his endeavours did not anymore act under the impact of their instincts, yet they were not as yet "intelligent cosmopolites" who shaped their history fully according to plan and reason, "from their own intention".

Kant liberated the bourgeoisie from feudal dogmatism, however, with limitations. Man was for him not the end, but a means, a means of nature, which had a peculiar clandestine end with Man. Nature smuggled into Man the properties which served as the driving forces of evolution, the property, i.e. the inclination of Man, to create a society. Kant called it a "companionless companionship". (He did not discover the victorious bourgeois Darwinian watchword of the struggle for life, nor the Marxist notion of class struggle.) Kant did not see class instinct, still he described it, i.e. that Man wanted to materialize himself without clear consciousness, anarchistically, by experimenting, stumbling upon contradictions and overcoming them, struggling with himself and antagonistically, i.e. Man wanted to create external conditions under which the class instinctively found its way home. Man did not even hope the realization of the final home, of happiness, moreover he assumed the contrary of it. According to Kant it was not essential that Man achieved his objective, but merely to come nearer to it, for every approximation also meant the denial of the existing.

In the background of this statement of Kant the understanding lurked that under the conditions of the relatively strong feudalism in Germany it could not be hoped that bourgeois society, or as he called it "a perfectly just civil constitution" would come into being.

(The same idea manifested itself a century later, when the decay of bourgeois society began, yet in the proletariat the consciousness of victory was still uncertain, in the revisionism of Bernstein as "Everything is the movement, the end is nothing".)

Since Thomasius in the concept of natural law the tendency was making headway which wanted to derive natural law not from the natural instincts of Man, but from his moral nature, and which conceived the postulate of morality in the sense of utilitarianism. Kant segregated these two notions in a clear-cut way from each other. He rejected utilitarianism, and took the position that the moral principles had their origin in pure reason free from all empirical elements, all instincts, desires, efforts, inclinations.

According to Kant the moral law from which natural law as well as rational law may be derived, can be recognized from pure reason and not from the empirical nature of Man. This notion which without an analyses of the natural properties of Man wants to construct the system of ideal legal norms merely with the aid of reason, is usually called rational law in juxtaposition to earlier natural law. It is in this form that the school of natural law completely adopted the position of rationalism.

It was Kant who was exactly responsible for this turn in the history of natural law (although his epistemology was not rationalistic, but rather meant an ascendancy over the one-sidedness of rationalism and empirism). This is not surprising when we know that Kant's rational law was based on his ethics and not on his epistemology.

It is a characteristic trait of the school of natural law that it is blind to historical evolution. It derives the origin of law also from the free covenant of Man. Most of the followers of the school considered this covenant a historical fact, on the other hand others merely discovered an ideal structure in it which would justify the necessity of State and law.

Kant made the following statement of the notion of law: "Jurists are still in search for a definition of their notion of law."

He himself also offered a definition of law. He stated that law had priority before the State (this is founded on the belief in the omnipotence of the law and the concept of the constitutional State). He considered law the totality of conditions under which the freedom of the one man had a place by the side of the freedom of the other man, according to some sort of a general law of freedom. "Act in a way that your act should be the rule of the conduct of others or of the general conducts."

The realistic foundation and progressive tendency of the legal doctrines of Kant manifested themselves in his juxtaposition of the bourgeois "legal order" defined by ownership to feudal lawlessness and arbitrariness... In his legal doctrines the bourgeois concept of ownership is prevalent.

Of the relation of law and civic freedom, he taught that Man had freedom when he obeyed the laws to which he gave his consent. He considered this freedom the inalienable right and property of every citizen. He was an adherent of the equality before the law.

Hence the French bourgeois democratic revolution passed off under the socially backward conditions of Germany on the ideological level.

Kant, the creator of a speculative system of philosophy relying on the idea of the duality of the world, who not even in secret took refuge in faith, wanted to reconcile materialism and idealism. In his solutions he brought about a compromise because he did not believe that under a relatively strong feudalism bourgeois society could materialize.

His influence lasts even to these days and his compromise will for ever haunt in both thinking and philosophy.

[6.] Although as compared to West Europe the Germany of the 18<sup>th</sup> century and the beginning of the 19<sup>th</sup> century was economically and politically in a backward state, it could nevertheless record remarkable progress in political and legal thinking and even gave birth to another great thinker in the person of Georg Wilhelm Friedrich Hegel (1770—1831).

In the second half of the 18<sup>th</sup> century in Germany agriculture of a feudal character had a prominent role. This state of affairs was at the same time responsible for the economic dismemberment of the country. Economic dismemberment at the same time meant also political dismemberment. At that time in Germany the particular princes pursued a home and foreign policy of their own. The principalities had a common liege-lord, i.e. up to the Napoleonic wars the electors elected an emperor. The independent and autonomous princes exercised the sovereign power through their ministers and civil service. The civil servants were recruited in the first place from among the nobility. The peasantry keeping up the princes and the nobility was oppressed by an enormous tax burden. The situation of the German bourgeoisie then *in statu nascendi*, i.e. of the artisans, merchants who headed industrial development, was very much the same. The growth of the bourgeoisie was hampered by the

feudal ties. In the opening years of the 19<sup>th</sup> century liberal reforms were introduced in Germany, or rather in Prussia. These reforms were associated with the invasion of Germany by the armies of Napoleon. As a matter of fact the defeats suffered from Napoleon prompted the Prussian nobility to introduce measures which meant a change in the face of the earlier feudal restrictions. The reforms introduced between 1807 and 1813 abolished the personal dependency of the peasantry on the landlords, although all feudal services were left intact. The reforms extended the autonomy of the towns, although the autonomy was a limited one even afterwards. The reforms foresaw the modernization of public administration, and the establishment of a bureaucratic, centralized administration was planned. However, this latter plan could not be carried into effect owing to the opposition of Napoleon. In 1812 equal civic rights were bestowed on the Jews. Notwithstanding their limited character these reforms shook the feudal system in its foundations, operated towards its collapse, and at the same time were instrumental in the national rise of Germany and even threw out the idea of the unification of Germany.

However, the ideals of the bourgeoisie then taking shape were not revolutionary. In this respect they departed from the ideals of the revolutionary bourgeoisie of France. The German bourgeoisie thought that the abolition of the restrictions hampering its free movement could be hoped also from an enlightened ruler, i.e. it expected the limitation of arbitrariness, feudal anarchy from an enlightened prince. In this respect the German bourgeoisie resembled the section of the French bourgeoisie whose opinions were given expression by Voltaire, Helvetius and Diderot. Hence in this period the German bourgeoisie made the principle of compromise its political premiss.

Although certain changes took place in the wake of the liberal reforms, the situation of the peasantry, the artisans, the penurious population of the towns, further of the merchants did not improve fundamentally. Therefore various popular and social movements sprang up. These social movements gave an incentive to progressive thinking, which was encouraged by the intensification of the contradictions inherent in the feudal conditions and which was prompted also by the effects of the French revolutionary movement. Without exaggeration the statement may be made that at that time drama, music, poetry, painting, philosophy had their golden age. All this and in particular philosophy, gave expression to the contradictions between the feudal nobility and the bourgeoisie, in the form of the controversy between materialism and idealism, which notwithstanding all limitations and contradictions rose to a high level of evolution. German progressive thinking which took shape at that time became part and parcel of the ideological evolution of the bourgeoisie, i.e. it was of an international character, as it relied on the experiences of other peoples. Yet at the same time this thinking reflected its own experiences too, and consequently had also a national trait.

Hegel, born in 1770 as the son of a man holding a high rank in the Prussian civil service, studied in Tübingen in the beginning, later he taught in Jena, Nuremberg, Heidelberg, and then in Berlin. The ideas of young Hegel were progressive, a fact which manifested itself in his approval of the French Revolution. He believed that the Napoleonic measures opened a new phase in the evolution of mankind, hence Napoleon was the "spirit of the world". He approved of Napoleon's measures taken for the union of the German petty

states. However, after the collapse of the Napoleonic system Hegel changed his revolutionary opinions and openly went out in praise for the Prussian State. The radical change of his point of view was related to the doctrines professed by the nobility and clergy of the time, and also to the so-called Holy Alliance called to life against the revolutionary movements. In response to the influence of these factors, strictly speaking, Hegel tried to give expression to a dual class position in his theoretical theses. This duality on the one part meant the manifestation of the interests of the nobility, and on the other gave expression to the interests and tendencies of the weak and cowardish German bourgeoisie. Hegel was an idealist, he believed that objective dialectics were the reflection of thought, of reason, and of the idea. He made in clear in his *Science of Logic*, written between 1812 and 1816, that reason, idea, thought were the primaries, which in speculative parlance was but the so-called substance, that this idea or substance went through a phase of self-evolution, and that on the other hand it was this substance, which in fact was something suppositional, assumed, one may say God, manifested itself in the various natural and social phenomena. The idea, i.e. reason in its purity, was studied by logic. However, the idea manifested itself also "in its other being". The idea "in its other being" was the subject-matter of the philosophy of nature. Furthermore the idea returned "from its other being" to itself; with this question or problem he dealt in the sphere of the philosophy of intellect.

The ideas of Hegel expounded above were partly idealistic, partly dialectical. What is positive in Hegel's oeuvre is the sound foundation of his dialectical method of thinking. The classics of Marxism mainly appreciated Hegel's dialectical method of thinking. It was this dialectical method of thinking which was responsible for the contradictory nature of the system and method in Hegel. Marx and Engels accepted the rational core of Hegelian dialectics, stripped it of its idealistic envelopment, and enriched dialectics.

In 1817 Hegel moved to Berlin. As a matter of fact the official Prussian administration greatly valued the statement of Hegel, that the Prussian State relied on intelligence and one had to become reconciled to this, i.e. the State had to be revered as a terrestrial divinity. In the preface of his *Foundations of the Philosophy of Law* published in 1821, Hegel formulated his famous thesis, that "what is rational, is real, what is real is rational". This work of Hegel clearly gave expression to Hegel's dual class allegiance. As a matter of fact in his theory of the State Hegel expressed the interests of the nobility, in his philosophy of law he gave expression to those of the bourgeoisie. Hegel in his *Foundations of the Philosophy of Law* offered a uniform theory of State and law, although he did not discuss all problems of the State and law. His *Foundations of the Philosophy of Law*, in addition to analyzing certain categories of State and law, go beyond these categories and deal with a number of problems of economics and society. In the following part we shall by-pass the intrinsic system of Hegel's philosophy of law, and try to tackle the problems in association with the principal categories of the State and law, i.e. we shall investigate how the problems manifesting themselves in the modern system of the theory of politics and law appeared in Hegel.

In this connexion we shall first of all analyze the problems of the State and begin with the general statement that Hegel's doctrine of the theory of State was conservative.

Hegel also studied the problem of the origin of the State. According to his doctrine the State "is the reality of the moral idea". Further he thought that the State was the reality of the substantial will "which is in the special consciousness raised to generality, i.e. which is in and for itself rational". He made it clear that the historical origin of the State did not belong to the idea of the State itself. Hence philosophy was concerned only with the intrinsic, cogitated notion. In this sense he opposed the theory of the contractual origin of the State. He recognized that credit must be given to Rousseau for defining the will as the fundamental principle of the State. He also pointed out that the State was above Man, and Man owed to the State what he was, and that the existence of Man could be imagined only within the State. i.e. Man had a value through the State. Furthermore Man was a moral being only in so far as he was a member of the State. He believed that the foundation of the State "is the power of reason materializing itself as will", which lived in the citizens. Hence Hegel's ideas of the origin of the State were unequivocally idealistic. In fact he detached the origin of the State from the actual social, economic and class relations, and also with him the so-called moral idea was conditional and independent of the real conditions.

In his "*Foundations of the Philosophy of Law*" Hegel analyzes the problem of property, and commodity production associated with it. He appreciates that society is divided into several strata. In this connexion he states that the so-called bourgeois society is split up on the one hand into wealthy and the "mob", and on the other into the estates. Since he analyzes the property relations and also the relations of distribution and exchange associated with property, further the stratification of society, he comes close to the problems of the notion of the type of State. He believed that property relations, i.e. private property were carried by the particular estates, and condemned joint social property. He considered the estates the moral roots of the State, one of the foundations of the State (the first foundation of the State was the family). In his doctrine the estates together with the corporations as organizations of labour constituted the moral roots of the State. According to his doctrine there were three estates in bourgeois society, viz. the first estate was that of the tillers of the soil, the second that of the artisans, manufacturers and merchants, the third that of the civil servants and the army. Hegel called the first the substantial estate, the second the industrial estate, and the third the general estate. He believed that the division of society into estates was an eternal trait of society.

He analyzed the concrete forms in which the State materialized, and explained that the first concrete form of the realization or materialization of the idea of the State was the internal political mechanism (which was brought under regulation by the constitution and the internal political law). The second form of realization of the State idea manifested itself in the relations of the particular states to other states, etc.

On investigating the problems of the sovereign power and of the internal political sovereignty Hegel rejected the doctrine of Montesquieu of the division of the sovereign power and Rousseau's theory of popular sovereignty. He believed that in conformity with the nature of its concept the State internally differentiated its own activities. In §. 273 of his "*Foundations of the Philosophy of Law*" Hegel pointed out that "in this manner the political State dissociated itself into the following substantial differences: (a) into the power of its

general definition and determination, i.e. into the legislative power; (b) into the power of the arrangement of the particular spheres and particular cases under the general, i.e. into governmental power; (c) into the power of subjectivity as the power of the final decisions of will, i.e. into the sovereign power, where the units of the differentiated powers are merged into a unity, which is therefore the summit and the beginning of all, viz. the constitutional monarchy."

According to Hegel the different powers are not for balancing one another, but "each of these powers is totality itself", and for that matter these powers constitute a solid organic unity.

Hegel believed that in the constitutional monarchy as form of government the moral idea could manifest itself in the best way. He declared that the monarchy, aristocracy and democracy were the lower stages of the evolution of the form of government.

On analyzing the problems of the mechanism and the intrinsic sovereignty of the State, he set out from the thesis that the State as an autonomous alliance was a peculiar organization. Marx appraised this statement of Hegel positively, however, he thought that the thesis itself ought to be developed.

The monarchical power was embodied by a political organ as a unified person, therefore this power had to be made hereditary. However, as Hegel pointed out, the prince must not interfere with all matters, on the other hand in a unity he would have to embrace all unique parts and elements of society. In the constitutional monarchy it was again the prince who was at the head of the State. He represented the sovereignty of the State. In internal relations sovereignty meant that all parts of the State were subject to the prince as the unified power and that any private end in society was subordinate to the uniform end of the alliance. This notion of internal sovereignty was in conflict with Rousseau's theory of popular sovereignty, which stands to reason if it is remembered that Hegel called the people an amorphous mass. Hegel believed that sovereignty was the State's due as the embodiment of the world spirit, i.e. he attributed sovereignty to the State since the State was a homogeneous person, and for that matter this homogeneous person could be only a physical person, so that with Hegel the sovereignty of the State was essentially the sovereignty of the prince, i.e. the sovereignty of the "crowned" person. He believed that popular sovereignty had its origin in the sovereignty of the monarch and not the other way round. To Hegel the prince was the personified sovereignty, so that the prince or the monarch was identical with the State, the notion of the State.

According to Hegel the organization of the legislative power had to be embodied by the representation of the Estates. The first chamber should be that of the nobility, composed of noblemen or landowners, who would become members by the privilege of birth. As a matter of fact Hegel looked at the nobility as if it were called for political activities in the first place. This organization of the nobility was created with the function to conciliate between prince and people. Undoubtedly this organization was called to give expression to the interests of the Prussian junkers. The members of the second chamber would be the industrialists and their corporations, further the representatives of the communities and the civil servants, appointed by way of election. The principal function of the second chamber would be the mediation between the executive power and the people. Strictly speaking the second chamber would

include the communities of the bourgeoisie whose function was to intergrate Man into the State. Hegel believed that although the representation of the Estates had to give expression to the interests of the people, still because the people was incapable of cognition and insight, it did not know what it wanted, therefore the estates had to act as intermediaries between government and people. This mediation was the guarantee for the State's "entering" into the consciousness of the people. According to his position representation by Estates was the pledge of universal freedom, because with its activities this representation could reconcile conflicting interests.

As regards the organization of the executive power, Hegel thought that the executive power had to be embodied by the hierarchy of civil servants appointed by the prince. Hegel went out in praises for the civil service, and stated the civil servants had the best abilities for managing the affairs of the State. As a matter of fact the civil service was capable of guiding the State by itself, still there was need for the bicameral parliament, in particular because it could organize public opinion for the support of the State. He considered the civil service the organization embodying all governmental interests and concentrating all public affairs. The function of the civil service was to guarantee the observance of legality, to enforce the decisions of the monarch, and to perform certain policing and judicial functions. However, the civil service did not attend to all affairs, although the affairs were concentrated in the units of the hierarchically organized service. Besides the civil servants, so-called corporations should also attend to public affairs, corporations in which the particular estates were grouped; also the communities managed their affairs through the agency of leaders, representatives. The leaders of the corporations or the communities would be either appointed from above or elected from below. However, in this case their confirmation from above was needed.

In connexion with the executive power or civil service Hegel also raised the problem of an abuse of power. He recognized the potentiality of abuses of power. Therefore he believed that the hierarchy of the civil service, translating control and calling to account from above into reality, further the so-called corporations or the administrative rights of the communities guaranteed a control from above and below, and that this structure prevented an abuse of power and the commingling of subjective arbitrariness with the executive power exercised by the civil service. Hence Hegel believed that the executive power should be well trained and hierarchically organized. Hegel sympathized with the omnipotent bureaucratic political mechanism, and consequently the bureaucratically directed absolute Prussian monarchy was his ideal of an executive power. In Hegel the true spirit of the executive power was the bureaucracy, i.e. a political organization built up in a definite manner. Marx discussed the Hegelian position taken in the question of bureaucracy in his critical work in detail. Marx emphasized, what Hegel failed to point out, that bureaucracy was needed because society was dismembered into separate groups having their private interests, so that the groups of conflicting private interests had to be united and subjected to a common end. This was, however, illusory, since neither a civil service could eliminate the conflicts of interests of the various groups of society, as in fact the existence of the bureaucracy relied on these conflicts. All that the bureaucracy did was to introduce the differentiation of interests of the social groups confronting one another into the management of governmental affairs. Consequently, Marx pointed out, the civil

service would become the tool of certain persons wielded against others, i.e. the civil service would be forced to represent the formal as content and the content as formal. (In our opinion the ideas developed by Max Weber of the peculiarities of an organization hierarchically built up may be discovered not only in Marx, but even in Hegel.) Hegel believed that the State would be threatened by risks if women would be placed at the head of the government. According to Hegel, women were subjective, and would act under the impetus of their subjective ideas and inclinations.

Hegel also studied the problems of the external and internal functions of the State, and in this connexion those of governmental coercion and the external sovereignty of the State.

He wanted to discover the internal end or functions of the State in the draining of the contradictions accumulating in "bourgeois society", in the reconciliation of the controversies, and this beyond the deference of private property. He believed that the State could reconcile all contradictions within society. He tried to prove that through its activity the State could marshal the instinctiveness of bourgeois society into barriers. However, in this question Hegel came into contradiction with himself. As a matter of fact he made the statement that the State as embodiment of the moral idea was limited and finite. This meant that in the course of time the State might perish owing to the intensification of the internal contradictions. This was confirmed by the revolutions and the plots. In connexion with the governmental solution of contradictions, Hegel also analyzed the problem of governmental coercion. He set out from the thesis that in his relation to the State the single man was insignificant. He pointed out that a single man was compellable, i.e. he could be subjected to the power of others. Hegel attached coercion to individual will and made the statement that free will was compellable only in so far as it wanted to be compelled. Hence the State could restrict the citizen or the individual only according to his own will, so that apparently external government coercion was in fact internal constraint. Or in a simpler form: the State could restrict the individual only in accordance with his own will, i.e. coercion was eventually self-constraint. Consequently in the relation between State and citizen there was coercive rule in the one side, and the instinctive obedience of the subject on the other. Strictly speaking, this is the point at which Hegel's concept of freedom joins in. He believed that it was the function of the State guarantee the freedom of the citizens more and more. He declared that the Prussians had already attained their freedom and that there was no need for a revolutionary subversion of the existing order, only reforms were needed. Hence in Hegel the relation of the particular citizen to the State meant a total subordination and superordination. He thought that the genuine freedom of man consisted in his submission to the State and in his identifying himself with the State. The supreme virtue of the citizen was commitment to obedience, discipline and that his object of life was not wealth or individualistic freedom. Since the Prussian State already guaranteed freedom, there was no need for a revolution against the State. He declared that action must be taken against those harbouring hostile thoughts and feelings against the State. Hegel with the idea of human freedom as conceived by him, i.e. essentially the complete submission to the State, meant a step backwards as compared to earlier thinkers.



Hegel deduced the external end and function of the State from the character of the relations among the states. He set out from the thesis that these relations could be friendly as well as hostile. He believed that wars could be useful, because they could prevent internal strife from becoming dangerous. Wars put up barriers to the growth of internal dissension. He analyzed the problem how the contradictions between capital and labour could be settled. These resulted partly from the process of concentration of capital, partly from the growth of misery and penury. He pointed out that the contradictions between capital and labour might lead to the bursting of the national framework and by this internal contradictions would become transplanted to the international plan. Hegel considered this metastasis necessary. This also explained the need for the establishment of colonies, however, such a policy was prompted also by the increase of the population in conjunction with the contradictions between production and consumption. However, he stated that this process would at the same time bring about a struggle between the parent state and the colony. The reason was that unequal conditions were apt to develop for the subjects in the parent state and the colonies. The struggle would eventually lead to the independence of the colonies, i.e. the tendencies of the colonies towards independence were as necessary as colonization itself. These processes give expression to the dialectics of the internal evolution of bourgeois society. Hence Hegel absolutized war, and justified a policy of expansion, and was in favour of colonial depredation. Yet at the same time he considered national movements of liberation a necessary development. Hegel rejected the Kantian idea of eternal peace, and also Kant's ideas of a federation of states, or the creation of a so-called "league of nations", yet he took a stand against the introduction of a standing army. Further he thought that the State was a total intellectual organism and in this also its sovereignty consisted in its relations, he stood for the idea of the absolute sovereignty of the State. He explained that the State had not a judge and therefore when no agreement could be reached, the dispute could be settled only by war. It was the moral duty of each citizen to sacrifice his life and his material wealth for the defence of his country.

According to Hegel, law was also a manifestation of the objective intellect. In his opinion law appeared in several spheres. In the sphere of abstract law certain rights and duties abhered to Man, these rights and duties were the due of Man by equal shares. Here Hegel distinguished the concept of Man from that of the citizen, and in him these rights and duties were attached to Man and not to the citizen. In the sphere of abstract rights Hegel dealt with property relations, contractual relations, and in this connexion with the problems of wilful damage and delinquency. He emphasized that the various legal relations were relations of the will, and that the one will came to the decision to enter into a contract merely because other wills also came to the same decision. Erroneously he saw the content of economic relations in the relations of will, although properly it should have been the other way round, because the content of the relations of will were hidden in the economic relations. Hegel believed that according to abstract law the individual was entitled to economic rights only, but not to political rights. Hegel contrasts the sphere of morality to abstract law. In this connexion he dealt with the problems of intention and of good and evil, etc. In his analysis of the incentives of human acts he came into conflict with Kantian doctrines and stated that in his acts Man

satisfied his desires and passions. Hence Hegel did not demand the mastering of feelings and did not think that feelings humiliated Man. According to Hegel Man had a full right to happiness and nobody could condemn him if he had made the achievement of his happiness his goal. Hegel associated the problem of intention with that of consciousness. One may say that the notion of morality is associated with the consciousness of law, i.e. with the notion of morality Hegel tried to grasp the content of consciousness which influenced the conduct of Man in his legal relations. He further emphasized that it was the duty of the individual to become acquainted with the circumstances within which he acted. Hegel analyzed other problems turning up in connexion with the law in the sphere of morality. Within this sphere he analyzed the problems of the family, the bourgeois society, for in his opinion morality manifested itself in these directly. While in the realm of abstract law and morality the individual was confronted by the State, in the third stage of the objective intellect the unity of highest order of the mutual relations among the independent entities of bourgeois society materialized and the contradictions among them would be balanced. He pointed out that in the State the universal will found expression and that this universal will defined individual will in its content. It is clear therefore that in Hegel for the definition of the ends of the State individual interest and will have no function or significance whatever. This also means that participation in the life of the State is mere formalism.

In connexion with the other categories of the theory of law the statement may be advanced that Hegel studied also the relations of law and morals, of law and economy. He believed that law and freedom were also associated, that law was the existence of freedom, and that law and property were but manifestations of freedom. In the relation of law and economy Hegel set forth that law governed the structure of a society of estates and defended the property and work of each member of society. In his opinion law defined the norms of behaviour recognized by everybody.

In Hegel the problems of the creation and application of law find a place in their philosophical generality.

[7.] Strictly speaking the origins of Hungarian political and legal thinking lie somewhere between the period of Turkish feudalism and the unfolding of the struggle for independence waged against Habsburg domination. In the war against Turkish feudalism and in the conduct of the war of independence against Habsburg power, Miklós Zrínyi, and then Ferenc Rákóczi II, as the executor of Zrínyi's testament had prominent roles. Ideas of moment were exposed by Ignác Martinovics, József Hajnóczy, Ferenc Kölcsey and István Széchenyi. However, the most prominent figure of Hungarian political and legal thinking was Lajos Kossuth (1802—1894).

After the collapse of the war of liberation of Rákóczi, Hungary became part of the Habsburg empire, in semi-colonial dependence on Austria. Slowly and in a limited form bourgeois evolution began also in Hungary, where the positions of feudalism were particularly strong. The aristocrats, with their pro-Habsburg feelings, stood up in defence of reactionary feudalism. In its foundations Hungarian political and legal thinking became linked up with Austrian political and legal thinking, based on the doctrine of natural law of Christian Wolf, in this period. However, in addition and in response to bourgeois evolution, an enormous intellectual upswing passed off in Hungary, whose political

radiation gave the incentive to the conspiracy of Martinovics. However, the conspiracy failed exactly owing to the fear from new ideas.

The evolution of social and economic conditions called for new elements. Since the end of the 18<sup>th</sup> century seigniorial domestic economy began to develop. This development is accounted for by the rapid growth of the demand for agricultural produce during the Napoleonic wars. As a matter of fact seigniorial domestic economy was as for productivity by far superior to husbandry on fee estates. In addition to higher productivity, the landlords could dispose of the total produce. All this brought about an increase of the area of seigniorial lands, and a large portion of the peasantry was gradually ousted from the lands formerly tilled by it. This process of evolution passed off slowly, and partially only, in particular the transformation of the peasant into wage-earner, his deprivation of the means of production, and his being drawn into the circulation of commodities. At that time in Hungary the feudal relations of production remained unchanged. This stagnation was closely associated with the fact that owing to the colonial conditions of the country the accumulation of capital took place in a protracted manner. What was characteristic of evolution in this process in Hungary was that the growth of capitalistic relations of production was lagging by far behind the growth of the productive forces. Under the feudal conditions in Hungary the peculiarities of the capitalist method of production made their appearance, still at that time the bourgeoisie was extremely weak and also capital was wanting. Consequently the nobility of a bourgeois mentality began to develop, which in the struggle for bourgeois transformation of the country took the leading role with its peculiarly feudal means and methods. Under the effect of the economic coercive forces, the nobility tended towards bourgeois civilization, however, by its attitude to life and way of living it remained linked up with feudalism, i.e. the nobility was eager for capitalistic evolution and by this for an improvement of its economic situation, still it refused to forgo its privileges and instead of a radical revolutionary action tried to patch up its situation by introducing reforms. However, the situation of the nobility was becoming a precarious one owing to the growing discontent of the oppressed masses of peasants and the dissatisfaction of the non-Magyar nationalities. The representatives of the nobility were aware of that colonial oppression hampered the bourgeois evolution of the country, therefore they tried to loosen the ties binding the country to Austria, but abhorred radical measures. They did not even demand the full sovereignty of the country, for in the ties to Austria they saw a bulwark against the peasantry and the nationalities, and also economically Austria was a good market for their produce. Part of the nobility also saw that it had to modify its position taken in the peasant problem. The peasantry ought to be won over to their camp and so also the nationalities, as this would be the precondition of the achievement of full independence. However, the nobility failed to recognize this to its full extent and in its struggle for independence made no advances to the peasantry. It was this narrow-mindedness and egotism which intensified the conflict between nobility and peasantry. The discontent of the peasantry found an outlet in the peasant rising of 1831, in which about forty-five thousand peasants took part. During the rising the Habsburgs declared without disguise that they had their hands on the sluices, could let loose the flood on the nobility, and had them slain by the peasants. This utterance gave the nobility to think in its efforts for attain-

ing sovereignty and independence. The nobility yielded to the demands of the peasantry only later and it was Ferenc Kölcsey who insisted that the nobility should waive its claims to feudal services. He recommended the emancipation of the serfs by way of redemption of the feudal burdens, in order that the nobility might change over to the capitalistic methods of husbandry easier. This notion was accepted by several members of the Upper House in the Diet of 1839/1840. However, the act of compensation proved inadequate for a consolidation of the interests of nobility and peasantry. As a matter of fact the act failed to decree the contracts of compensation in an obligatory form. Yet not only the efforts to bring about an alliance with the peasantry were abortive, no agreement could be reached with the nationalities either.

The continuer of the reform schemes was Lajos Kossuth. Son of a poor noble family, he studied law and was admitted to the bar. He appeared in the Diet of 1825 for the first time. In the Diet of 1832/1836 he took part as delegate of Baron Samuel Vécsey. There he excelled as editor of the reports of the Diet. These reports gave summaries of the speeches and they were circulated in the form of MSS. In general the speeches of the members of the opposition were reported in full, whereas those of the government party were published in an abridged form. After the prorogation of the Diet of 1832/1836 Kossuth edited a newspaper "Törvényhatósági Tudósítások" (Municipal Reports). For his journalistic activities he was imprisoned in 1837. This only added to his popularity. In 1840 he was set at liberty and was made the editor of Pesti Hírlap. Kossuth made journalism a means of the political struggle and put the press in the service of a campaign for revolutionizing the masses. The revolutionary tenor of his speeches startled even Széchenyi. Against Széchenyi he defended his position, an act which again increased his popularity. In 1842 he organized the first Hungarian industrial exhibition. This enhanced his hegemony over public opinion. He considered his most important function the activization of the nobility, because in his opinion the nobility was the leader of the transformation of the country and its mainstay. In contrast to Széchenyi he believed in the decisive role of the landed gentry also in the coming state. Naturally to this end the nobility would have to resign its privileges as these could not be reconciled with the ideas of freedom or the interests of the people. He made it clear that the law had to provide the means of the redemption of the feudal burdens, in a way that this should be obligatory for all. This would not violate the sanctity of private property. He clearly recognized that the serf problem was one of public law and not of private law. His idea of a redemption of feudal burdens was to grant a loan to the peasantry from the means of the State. As a matter of fact in this case the nobility would also find itself in an improved financial position, as their lands would now be free. All this would promote the switch-over of the nobility to the capitalistic methods of economy. He took a position for the abolition of entailment, and for the introduction of equal taxation, which again was associated with a transition to the capitalistic method of production. He tried to persuade the nobility to waive their exemption from taxation. However, here his efforts failed and exemption from taxation was abolished only in 1847. Kossuth recognized that the opposition of the nobility could not thrive without the alliance with the bourgeoisie. Therefore he launched a campaign for the institution of popular representation. He wanted to encourage the spirit of enterprise, the foundation of factories and commercial companies. He created

a society for the promotion of industry, however, this scheme miscarried. In 1846 Kossuth launched an attack against tendencies of centralization. He tried to make clear the advantages of the system of counties, as in his political doctrine the counties were the strongholds of Hungarian independence. In 1847 he stood for the Diet as the official candidate of the Opposition. In the Diet he criticized the so-called administrative system and appeared as the champion of municipalism. However, in this question he was defeated, and this defeat even shook his hegemony in public opinion. At the news of the outbreak of the revolution in Paris Kossuth took the initiative. On March 3 he demanded the organization of the imperial government on a constitutional basis, and insisted on the appointment of a responsible government for Hungary.

In the first Hungarian government Kossuth was made minister of finance. His principal target was the introduction of general taxation. However, his position was a rather precarious one, as the imperial court demanded military and financial contributions. Kossuth recognized the need for rejecting the demand. When he received information of the assembly of hostile troops on the frontiers of the country he appealed to the Diet to vote an army of two hundred thousand and the money needed for the organization of this army. In the turmoil of events the radical left wing of the Diet gathered strength. The members passed Kossuth's army and finance bill. Kossuth's surmise of an impending attack on Hungarian independence proved true and in the autumn of 1848 a counter-revolutionary army headed by the Banus of Croatia, Jella-chich, invaded Hungary. The Committee of National Defence was formed under the presidency of Kossuth.

At the initiative of Kossuth, in particular in response to the promulgation of the constitution of Olmütz, the Hungarian Diet voted the Declaration of Independence. The achievement of national sovereignty and independence was the guiding principle of Kossuth's political ideas. However, in the beginning he did not interpret sovereignty and independence in an absolute manner. In this respect his ideas departed from the wording of the declaration of independence. A tendency towards complete political independence became prevalent with him only when he recognized the duplicity of the imperial court. However, not even then did he become an opponent of the absolutistic monarchical form of government. For Kossuth the republican idea was rather a matter of tactics and not the ultimate goal. His ideal of a government was the national constitutional monarchy and only in the last resort did he advance to the political form of a liberal republic of the nobility and the bourgeoisie. His class allegiance determined his policy. As a member of the landless nobility he carefully attended to the financial interests of the land-owning nobility, because he saw in this class the future backbone of the country. This explained also why he was reluctant to meet the demands of the peasantry going beyond the emancipation of serfs.

The roots of the political and legal thinking of Kossuth go back to the world of natural and rational law. While in prison, he became acquainted with French and English doctrines. In the Hungary of these days his ideas could be termed as progressive. These ideas provided the ideological justification of the new order of production, and the legal and political superstructure. As a matter of fact natural and rational law was the foundation from which the struggle against the Habsburg state could be launched, whereas the idea of

popular sovereignty justified the rising against the ruling dynasty. Kossuth took a definite stand for the safeguarding of human rights. Under the influence of the ideas of natural law he believed that violence was also justified against a ruler who ignored human rights. He even wrote: "Man cannot forfeit his human rights in the same way as the people as a whole cannot do through the agency of the governmental system of bourgeois society lose the rights and power which are concomitant of its nature and are therefore inalienable." He defined the notion of freedom by setting out from the Kantian categorical imperative. In his opinion freedom was but "the faculty to act in a way that if everybody acted, the right of action of the one person should not frustrate the right of action of the other".

It has already been mentioned that Kossuth stood up for the county system, and here he came into antagonism e.g. with Baron József Eötvös, who belonged to the centrists (the promoters of a centralized government). The centrists attacked the autonomy of the counties, for they saw in the counties the drag on progress, the hotbed of abuses. They considered the centralization of public administration, the representative parliament and the responsible government the guarantees of progress and the safeguards of Hungarian national interests. The centrists based their doctrines on conclusions drawn from a comparison of conditions in Hungary and in the western constitutional countries. They demonstrated that in comparison to these, there were essential differences in Hungary in both legislation and public administration. They pointed out that in Hungary only 1/20<sup>th</sup> of the population belonged to the nobility, whereas 19/20<sup>th</sup> were not nobles. In their opinion constitutional rights were the due of the nobility, whereas the obligation of the upkeep of public life burdened the nonnobles. They emphasized that as regards legislation there were several relations of life which did not come within the purview of legislation "notwithstanding the constitutional character of the nation". Thus only a small part of public affairs came within the competence of the legislation, whereas as regards the rest, the nation was living under absolutistic conditions. Analyzing public administration they pointed out that administration at the same time performed also judicial functions, the judicial and administrative competences were not segregated. They also pointed out that, unlike developed countries, in Hungary public administration was not uniform, as its functions were performed partly by the government, partly by the municipalities in a manner void of uniform principles and independent of one another. In connexion with public administration they recognized that the principle of responsibility was absent from it. They found that owing to its structure the present system of legislation was unsuitable for the service of progress and could serve only the preservation of the actual situation. They believed that through the conjunction of judicial and administrative functions the principle of the independence of the judiciary would prevail and at the same time the principle of the interdependence of the civil servants would cease to dominate. They made it clear that the county system was opposed to progress, it did not guarantee its preconditions, i.e. there was no well-organized legislation which, by recognizing the needs, could take the lead of progress. Therefore there was no order and no genuine freedom. They recognized the doctrine of the municipalists that under existing conditions the county was one of the principal constitutional guarantees. Still under conditions of a responsible government, and a parliament, the maintenance of the

obsolete county system was not needed. The centrists thought that popular representation was necessary and believed that the precondition of progress was order. To this end the unity of public administration, and within it the precise definition of jurisdiction and competence were essential. They analyzed the ideas of centralization and responsibility in close association with each other and came to the conclusion that in the absence of a responsible government the centralization of public affairs would bring about absolutism and that without centralization it was absurd to speak of the responsibility of the government, although they considered the preservation of the monarchy necessary, as they saw in it the safeguard of common interests. They were convinced that the most vital means of the introduction of reforms, and even the only means, was the legislature. Hence the reforms could be carried through only in the joint presence of two conditions: the guarantee of the independence of the legislature and the subordination of the executive power to the legislative power. In our opinion, the centrists, and not Kossuth, were right in their question.

Another grave error of Kossuth was the misjudgment of the non-Magyar nationalities. In the beginning he threw charges against the Slavs and Rumanians and recognized only the Croats as a nationality. Later Kossuth became aware of his mistake, and from 1849 onwards he initiated negotiations with a democratic group of the Serbs and the great Rumanian leader, Balcescu. If belatedly, still an agreement could be reached which received its confirmation in the Nationality Act passed by the Diet in Szeged.

After the defeat of the War of Liberation, Kossuth was forced to go into exile, where he launched various political manoeuvres for the restoration of Hungarian independence. However, Kossuth set out from incorrect ideas and methods. His opinions were far from being realistic, they were illusory merely and not even revolutionary. Marx pointed at the wavering weakness, the inextricable contradictions and the ambiguity permeating his political career. He wrote: "In him we may find all attractive virtues of an 'artistic' character, yet at the same time its feminine errors. He is a great artist "en paroles." However, this Marxian valuation cannot mean a depreciation of the prominent role of Kossuth. Even in exile Kossuth tried to restore the independence of his country and what he created between 1851 and 1862, i.e. the plan of a Danubian confederation, a scheme transcending its age, was of particular significance.

#### BASIC LITERATURE

*Antalffy György*: Állam és demokrácia. Budapest, 1967.; *Antalffy György*: Machiavelli és az állam tudománya. Születésének 500 éves évfordulójára. „Állam és Igazgatás” N° 12. 1969. (Budapest); *Бакрадзе, К. С.*: Система и метод философии Гегеля. Тбилиси, 1958.; *Barkhausen, H.*: Montesquieu, ses idées et ses oeuvres. Paris, 1907.; *Barta István*: Kossuth ismeretlen politikai munkája 1833 elejéről. „Századok” IC—1966. (Budapest); *Benda Kálmán*: A magyar jakobinus mozgalom irodalma és forrásai. A magyar jakobinusok. Iratok, levelek, naplók. Budapest, 1957.; *Bihari Ottó*: Az államhatalmi képviseleti szervek elmélete. Budapest, 1963.; *Bónis György*: Montesquieu jogi és politikai nézetei. „A Magyar Tudományos

Akadémia Közleményei" Vol. VII. 1956. (Budapest); *Chambers, R. W.: Morus.* Fordította: Nyilas Vera. Budapest, 1971.; *Cotta, S.: Illuminisme et la science politique: Montesquieu, Diderot et Catherine II.* "Revue International de l'histoire politique et constitutionnelle", 1954.; *Crocker, L. G.: Rousseau's Social Contract: an interpretativ Essay.* Cleveland, 1968.; *Crosa, E.: Il principio della sovranità popolare del Medioevo alla Rivoluzione francese.* Torino, 1915.; *Cromwell (Oliver) beszédeiből, leveleiből.* Összeállította és a magyarázatokat írta: Makkai László. Budapest, 1960.; *Csizmadia Andor: Széchenyi István törekvései a feudális jogrend átalakítására. „Akadémiai Közlemények” 1967.* (Budapest); *Dante, Alighieri: Összes Művei.* Szerkesztette, a szöveget gondozta és az utószót írta: Kardos Tibor. Budapest, 1965.; *Dedieu, J.: Montesquieu.* Paris, 1913.; *Derathé, R.: Jean-Jacques Rousseau et la science politique de son temps.* Paris, 1950.; *Fenyő István: Korai szocialista eszmék jelentkezése a reformkori magyar sajtóban.* (Adalékok) „Magyar Tudomány” Vol. LXXIV. 1967. (Budapest); *A francia enciklopédia. Szemelvények.* Összeállította és a jegyzeteket készítette: Gyóry János. Fordította: Komoly Péter. Budapest, 1962.; *Friedrich, H. E.: Martin Luthers Glaube und der Staat.* Frankfurt a. Main, 1933.; *Gramsci, Antonio: Filozófiai írások.* Fordította: Rozsnyai Ervin. Budapest, 1970.; *Grzybowski, Konstanty: Historia doktryn politycznych i prawnych.* Od państwa niewolniczego do rewolucyj burżuazyjnych. Warszawa, 1967.; *Gyeborin, A. M.: Az újkor társadalmi és politikai tanai.* Fordította: Józsa Péter. Budapest, 1962.; *Hajnóczy József közjogi-politikai eszméi.* Szerkesztette: Csizmadia Andor. Budapest, 1954.; *Hegel: A filozófiai tudományok enciklopédiájának alapvonalai, Vol. I—II.* Budapest, 1950.; *G. W. F. Hegel. A jogfilozófia alapvonalai vagy a természetjog és államtudomány vázlat.* Fordította, utószóval és jegyzetekkel ellátta: Szemere Samu. Budapest, 1971.; *Hegel: Grundlinien der Philosophie des Rechts.* Berlin, 1956.; *Hegel: Principes de la philosophie du droit.* Paris, 1967.; *Heller Ágnes: A reneszánsz ember.* Budapest, 1967.; *Hill, Christopher: Az angol forradalom évszázada. 1603—1714.* Jegyzetekkel ellátta: Makkai László. Budapest, 1968.; *Hobbes, Thomas: Leviatán vagy az egyházi és világi állam anyaga, formája és hatalma.* Budapest, 1970.; *Horkay László: Magyar hegelianusok. „Magyar Filozófiai Szemle” N° 5—6.* 1971. (Budapest); *Horváth Pál: A felvilágosodás hatásának főbb területei a magyar jogi gondolkodásban. „Acta Facultatis Universitatis Scientiarum Budapestiensis de Rolando Eötvös Nominata” Tomus IX.* 1971., Budapest; *Kant, I.: Die Metaphysik der Sitten. Einleitung in die Rechtslehre.* Leipzig, 1868.; *Kant, I.: Einleitung in die Rechtslehre. Das angeborene Recht.* Werke, Berlin, 1922.; *Kant, I.: Idee zur einer allgemeinen Geschichte in weltbürgerlicher Absicht.* Vol. IV. Leipzig, 1868.; *Kant, I.: A gyakorlati ész kritikája. („Kritik der praktischen Vernunft”).* Pest, 1788.; *Kant, I.: A tiszta ész kritikája („Kritik der reinen Vernunft”).* Pest, 1781.; *Kant, I.: Az örök béke.* Fordította: Babits Mihály. Budapest, 1918.; *A klasszikus német filozófia.* Összeállította: Sándor Pál. Fordította: Rózsahegyi Zoltán és Timár Ilona. Budapest, 1966.; *Klenner, H.: Rechtsphilosophie Hegels heute. „Einheit” N° 1.* 1967. (Berlin); *Kossuth Emlékkönyv.* Vol. I—II. Budapest, 1952.; *Kossuth Lajos Összes Munkái.* Vol. 1—6. Sajtó alá rendezte: Barta István. Budapest, 1957—1958.; *Kossuth Lajos válogatott művei.* Sajtó alá rendezte és bevezetéssel ellátta: Kossuth Ferenc. Budapest, é.n.; *Kovács József: A magyar felvi-*



lágosodás társadalmi-politikai nézeteihez. (Hajnóczy József és Bessenyei György államkoncepciója a marxizmus fényében.) „Tájékoztató. Filozófia, Politikai gazdaságtan, Tudományos szocializmus” N° 2. 1968. (Budapest); *Lasky, H.*: Political Thought in England. Locke to Bentham. Oxford, 1955.; *Locke, John*: Two Treatis on civil Government. 1689.; *Lőrincz, L.*: Nicolo Machiavelli koncepciója az államról. „Studii și Cercetari Juridice” N° 2., 3., 4. 1969. (Bucuresti); *Machiavelli, Nicolo*: Értekezések Titus Livius római történetének első tíz könyve fölött. Pest, 1862.; *Machiavelli, Nicolo*: A fejedelem. Fordította és a jegyzeteket írta: Lutter Éva. Az utószó Kardos Tibor munkája. Budapest, 1964.; *Machiavelli és Nagy Frigyes a Fejedelemről*. (Machiavelli: Il Principe; Nagy Frigyes: Antimachiavelli.) Kiválogatta, fordította és a bevezetést írta: Juhász Vilmos. Budapest, 1942.; *Marx, K.*: Zur Kritik der Hegelschen Rechtsphilosophie. 1843/1844.; *Mátyás Antal*: A polgári közgazdaságtan rövid története. Budapest, 1961.; *Montesquieu*: A törvények szelleméről. A bevezető tanulmányokat írták: Hajdú Gyula és Mátrai László. Fordította: Csécsy Imre és Sebestyén Pál. Budapest, 1962.; *Mosca, Gaetano—Bouthoul, Gaston*: Histoire des doctrines politiques. Depuis l'antiquité. Paris, 1969.; *Müller Lipót*: Francia politikai eszmék a reformkor irodalmában. Budapest, 1923.; *Нерсесянц, В. С.*: Философские учение Гегеля о государстве и праве „Советское Государство и Право” № 9. 1970. (Moscow); *Нерсесянц, В. С.*: Концепция Гегеля о праве. „Советское Государство и Право” № 10. 1969. (Moscow); *Pándi Pál*: Deux réponses. L'accueil du socialisme utopiste en Hongrie à l'époque des réformes nationales. „Acta Litteraria Academiae Scientiarum Hungaricae” Tom. 8. (3—4), 1966. (Budapest); *Ovszjannyikov, M. F.*: Hegel. Budapest, 1963.; *Peschka Vilmos*: Hegel jogalkotáselméleti koncepciója. „Állam- és Jogtudomány” Vol. 9. 1966. (Budapest); *Prélot, Marcel*: Histoire des idées politiques. Paris, 1960.; *Rondolfo, M.*: Rousseau e la coscienza moderna. Firenze, 1954.; *Rousseau, J.-J.*: Az emberek közötti különbségek. Budapest, 1905.; *Rousseau, J.-J.*: L'origine de l'inégalité parmi les hommes. Paris, 1753.; *Rousseau, Jean-Jacques*: A társadalmi szerződés. Fordította és a jegyzeteket írta: Mikó Imre. Budapest, é. n.; *Samu Mihály*: Rousseau államelmélete. J. J. Rousseau születésének 250. évfordulójára. „Állam és Igazgatás” N° 10. 1962. (Budapest); *Saint-Just*: Beszédek és beszámolók. Fordította: Remsei Flóra. Budapest, 1969.; *Sándor Pál*: Martinovics Ignác filozófiája. „Valóság” N° 4. 1968. (Budapest); *Sötér István*: Eötvös József. Budapest, 1967.; *Spira György*: A magyar forradalom 1848/49-ben. Budapest, 1959.; *Szabó Imre*: A burzsoá állam- és jogbölcselet Magyarországon. Budapest, 1955.; *Széchenyi István válogatott írásai*. Szerkesztette és a magyarázatokat írta: Barta István. Budapest, 1959.; *Szotáczy Mihály*: Montesquieu nézetei az államról és a jogról. „Jogtudományi Közöny” N° 11. 1956. (Budapest); *Szöveggyűjtemény a felvilágosodás és a reformkorszak irodalmából*. Part I., Budapest, 1952.; *Touchard, Jean*: Histoire des idées politiques. Vol. I—II. Paris, 1959.; *Volgin, V. P.*: A társadalmi eszmé fejlődése Franciaországban a XVIII. században. Fordította Révai János—Gráff György—Kende László. Budapest, 1967.; *Widgery, Alban G.*: Les grands doctrines de l'histoire. Paris, 1967.; *Wróblewski, J.*: Teoria prawa Monteskiusza, in „Monteskiusz i jego dzieło”. Wrocław, 1956.

### PART THREE

## BEGINNINGS, SCIENTIFIC EXPRESSION AND EVOLUTION OF THE POLITICAL AND LEGAL THINKING OF THE WORKING CLASS. CRITICISM OF SOME OF THE BOURGEOIS POLITICAL AND LEGAL VIEWS.

1. Owen; Saint Simon; Charles Fourier; E. Cabet; M. Stirner; W. Godwin; Bakunin; A. Lorenzo. — 2. Marx; Engels. — 3. Lenin. — Basic Literature.

[1.] In England and in France the so-called technical revolution resulting from the rapid growth of capitalistic production not only permitted largescale industrial production, its concentration, and the birth of large-scale producing plants, but at the same time unleashed enormous changes in society. Social metamorphosis in the wake of the technical revolution changed the structure of society. This meant that new classes superseded the historical classes, i.e. the class of capitalists and that of the workers, or in other words the industrial proletariat were born. The new trends in the evolution of capitalism were responsible for changes in the methods of exploitation and in the earlier forms of social struggles. Evolution of industrial production at the same time brought about an increasing impoverishment of the masses. The working class sold their working capacity on the labour market, and consequently here, too, the principle of free competition prevailed. This principle hampered the organization of the working class, an organization with the goal to improve the situation of this class. Pauperism and the prohibition of combination and assembly of the proletariat of necessity led to tendencies towards socialism.

In England and in France, a variety of doctrines sprang up describing the society of the future. These doctrines fundamentally envisaged the elimination of the disfunctional phenomena of capitalist society. However, the doctrines of Utopian socialism had no contact with social and economic reality. Utopian socialism was estranged from reality and its creators ignored the social force which historically was called to overthrow the capitalist society. It is true that at that time the labour movement was not strong enough and consequently Utopian socialism had a certain effect on the working classes. Still it is also true that to the extent that the labour movement gathered in vigour and in consciousness, the doctrines of the Utopian socialists withdrew to the background. Among the most prominent representatives of Utopian socialism, the names of Robert Owen (1771—1858), Saint-Simon (1760—1825), Charles Fourier (1772—1837), Étienne Cabet (1788—1856) deserve to be mentioned.

Robert Owen criticized the existing social order and made the reform of the capitalist order of society his goal. In his reform scheme essentially so-called communistic communities had to be organized which would overwhelmingly become engaged in agriculture. As a matter of fact it was in this way that Owen wanted to demonstrate the superiority of the socialist form of economy and society. He pointed out that changes ought to be brought about not only in the economic form, but also in social education which had to be reformed. He believed that juvenile work must be prohibited, the working

hours had to be cut down, old age pensions, disability insurance and the unemployed relief had to be introduced. All these ideas of Owen were built upon the abolition of private property. His principal work, was published in 1820. To translate his communistic ideas, into reality in 1824 Owen bought a property in the United States of America, where he tried to bring his doctrine to fruition. The attempt proved to be a failure. However, his ideas became the foundations of the cooperative movement. The consumers' cooperative of the Rochdale weavers also relied on Owen's ideas. He did not believe that the working class or proletariat would transform society. He thought that society would change with the enlightenment of the human, i.e. he wanted to discover the absurdities of the capitalist society, of misery, of unemployment in ignorance.

Among the French Utopian socialists Charles Fourier occupies a prominent position. He pointed out that in society, too, evolution prevailed, and distinguished eight phases in it. In his opinion the natural state corresponded to the paradisaical state. According to him the second phase was the era of fierceness where robbery, friction and the want of foodstuffs dominated. The third phase was the age of the patriarchs. Here private property and the subjection of women were predominant. The fourth phase of social evolution was barbarism, where feudalism made its appearance and also industry and trade began to take a shape. The fifth phase of social evolution was civilization. From Fourier's description of civilization it appears that he identified this phase with the capitalism of his age. He taught that in a "civilized" society men become detached from one another, everybody tried to prosper to the prejudice of his neighbour. Individual interest disregarded public interest, workmen lived in mental darkness. Fourier also made it clear that in this society keen struggles were going on between workers and the class of entrepreneurs. Fundamentally this was the age of unhappiness. On this understanding he believed that a new phase of evolution had to set in, which in point of fact would be seventh phase of evolution. In this phase men would be living in so-called phalansterics, where capitalists and workers would coexist and would have an equal share in the results of production. In this community, land would be the property of all and the means and tools required for work to be performed in community would be secured by the floatation of shares. In his opinion each phalanstery or community should be formed of about 1600 to 1800 persons, who would be living in huge hotels and do centrally organized work. In the phalansteries, which presented a picture of a society in a period of transition, the incomes would be distributed on the following scheme:  $\frac{5}{12}$ th would go to the workers,  $\frac{4}{12}$ th to the capitalists,  $\frac{3}{12}$ th to those in charge of management. According to Fourier, in these communities children would be brought up by the community and monogamous families would be superseded by free love. In this period of transition private property would not be abolished completely and even the right to inherit would remain. In the phalanstery people would have seven meals a day, after their daily work people would spend their leisure with artistic occupations. These conditions of living would bring about circumstances where the average span of life would be 144 years. Fourier recognized the existence of a state in this era, and considered the education of the members of the phalanstery the principal function of the state. (Madách in his Tragedy of Man adopted Fourier's ideas of the phalanstery with certain modifications.) Fourier spoke also of the sixth

phase of social evolution. Here the middle classes would receive state credits at easy terms, whereas the workers would enjoy an extensive insurance scheme. However, in his opinion his phase could be by-passed. He believed that social evolution had an eighth phase, where almost complete harmony would reign. After it society, or mankind, would perish he concluded.

Fourier's doctrines are void of a scientific quality. Still he seemed to have treated dialectics, similarly to Hegel, in a masterly way.

A prominent figure among the French Utopian socialists was Saint-Simon. Society stood in the focal point of his investigations. This is what at least his works betray. He made it clear that ownership exercised the greatest influence on the life of society. There were two kinds of property in society. The origins of feudal property were associated with violence, whereas bourgeois property relied on production or acquisition. He recognized the existence of classes in society and discovered that the history of France was the history of class warfare. However, the term worker in his usage denoted the capitalist and not the proletarian. Giving expression to the interests of the bourgeoisie, he believed that the sovereign power ought to be transferred to the producing owners of property, i.e. he wanted to discover the class basis of sovereign power in the economic power of the bourgeoisie. He believed that persons were needed who had means of production, and were doing work themselves. The class practising and industry should occupy the leading positions in society. He believed that those engaged in industry were the most valuable class of society. He did not believe in the possibility of a classless society. Only a society was possible where the interests of all other classes would be subordinated to the ruling class, in a peaceful manner, without any violence, merely on the ground of a sober comprehension of reality. According to Saint-Simon, the function of the State was to guarantee the welfare of the masses. In the society of the future, as imagined by him, Christian humanitarianism would prevail. Namely this would produce a new morality, a new order of work, i.e. Paradise on earth. Saint-Simon also spoke of the workers, i.e. the paupers. Still their conditions of life could be improved only by means of a social policy.

Two other prominent figures of French Utopian socialism were Cabet and Blanc. Cabet summed up and at the same time advanced the ideas of Utopian socialism. His most prominent work was published in 1842. In this work he made it clear that before all brotherhood should be created among men, which was closely related to the elimination of inequality. Inequality could be eliminated by creating a community of goods in a peaceful way and by temporary measures. The new society could be established in about 30 to 50, or perhaps only in 100 years. In the period of transition there would still be private property, there would be bourgeois democracy. Cabet tried to carry into effect his doctrines in Texas. His attempts ended in complete failure. When his second attempt also came to naught, he wanted to restore order by a dictatorship.

Cabet's doctrines were very popular among the workers. Therefore he tried to come closer to them. Later his popularity began to decline also among the workers.

Among the Utopian socialist, also Blanc brought forward doctrines describing the society of the future. Since he was member of the French government, he organized a variety of national workshops, which were in public ownership.

He believed that workers had a right to work. However, his experiments miscarried. Experiments of this type were apt to create illusions in the workers as if socialism could be reached in a peaceful way, or as if the peaceful way were the only to achieve the goal. However, experiences of history did not confirm this opinion.

Besides Utopian socialism, also Utopian anarchism made its appearance. Unlike Utopian socialists, Utopian anarchists came to the conclusion that not only the capitalist legal order, not only capitalist society should be rejected, but, in general, an end should be put to all governmental systems and legal order, because all evil had its root in the organized character of society. The anarchists believed that any power restricting the activities of the individual should be abolished and guarantees should be provided for the complete freedom of the individual. On the other hand, the Utopian socialists expected the reorganization of economic and social life from the change of the existing legal system and the regulating activities of sovereign power. However, the doctrines of the Utopian socialists merely led to day-dreaming. The principal representatives of anarchism were Max Stirner (1806—1856), Mikhail Aleksandrovitch Bakunin (1814—1876), William Godwin (1756—1836), Anselmo Lorenzo (1841—1915).

Anarchistic doctrines first emerged in Britain where they were given expression in the ideas of William Godwin. His most outstanding works were "*An Enquiry Concerning Political Justice*", published in 1793, and "*Caleb Williams*". In these works Godwin took a stand first against the State, and, secondly, for the abolition of the law or the statutes. He believed that the principal obstacle in the way of moral and social life to be brought about was the sovereign power and at the same time private property. He made it clear that in a society universal welfare could not be brought about unless we accepted and obeyed the commands of justness. Hence the life of society had to be organized according to certain moral principles, and if in this way the freedom and welfare of men were guaranteed, social harmony would come true. In the wake of this metamorphosis the State, and its government, further external coercion exercised by the government, would become superfluous. Thus the society of the future could be built up without the organization of State and law as an external power. The relations among men could be brought under regulation by norms which would be formulated voluntarily and freely, and whose sanction would be general contempt. From this he drew the conclusion that State and law would be superseded by the rule of reason.

Another prominent figure of anarchism was the German Max Stirner, or as Marx called him, the "Holy Max". Stirner's principal work was "*The Unique and His Property*" published in 1844. In this work he exposed that the State, further morals and law, and even property and religion were products of subjective consciousness. Hence Stirner followed the line of Fichte of classical German philosophy. He was a subjective idealist. In Stirner the Unique appeared as the creator of reality. The class character of the State remained concealed to him. Namely he believed that no form of the State could be reconciled to "My Uniqueness". From this the conclusion suggested itself that the individual and the State, the will of the individual and of the State, were in irreconcilable contradiction to one another. Namely the State wanted that Man should be moral i.e. it insisted on the performance of the duties towards the community by Man. It followed therefore that the State banned Man's

egotistic nature. Consequently there would be enmity between State and Man. Instead of the State some sort of an association, some sort of a corporation, or self-management should be called to life. However, Stirner failed to offer a definite answer to the question of what sort this association or self-management would be. Strictly speaking Stirner gave expression to the ideas of the German *petit bourgeois* who was afraid of losing his small property, which he wanted to keep in all circumstances. Therefore Stirner acted as an egotist or individualist and opposed discipline and organization.

A well-known representative of anarchism was Bakunin, whom Engels called the father of anarchism. Bakunin was a Russian. He exposed his doctrines on State and law in his works "*Statehood and Anarchy*" (1873), "*God and the State*" (1882), "*Federalism, Socialism and Anti-Theologism*" (1895). He believed that the State, which owed its existence to the spontaneous action of the masses, was the antithesis of a free, collective society. In his opinion the State ought to be abolished, as the abolition of the State was the only way to liberate society. He advanced the thesis that the State created capital and consequently the capitalists owed their capital to the State. This doctrine contradicted the Marxist teaching of the foundation and superstructure. As regards political activity Bakunin believed that any political activity was synonymous with the affirmation of the State. From this thesis he drew the conclusion that any participation in politics was injurious because it only increased the confidence in the State, or in other words, participation in politics consolidated the State.

The anarchist doctrines made headway within a wide sphere in the various countries. So e.g. in Spain Anselmo Lorenzo had a considerable part in spreading anarchistic doctrines. Lorenzo adopted the theory of Bakunin which in fact was a "mixture of Proudhonism and Communism". Lorenzo's most prominent work was "*The fighting proletariat*". In his opinion the State was a phenomenon which maintained the property of the exploiters, and since it usurped the natural rights of the workers, it also prevented the workers from creating the institutions of society unhampered. Furthermore Lorenzo believed that, irrespective of its form, sovereign power meant violence against the members of society. Consequently he came to the conclusion that even the proletariat need not create the revolutionary state of its own in the struggle for socialism. Lorenzo did not understand the class character of the State. Therefore in his opinion the goal of the revolution of the proletariat was the complete abolition of the State, and for the period following upon the victory of the revolution, he recommended the creation of the anarchist federation of "free associations" in Spain.

The absurdity of the theory and practice of anarchism was confirmed by the class struggle that had taken its course those days. We may safely say that the disorganizing activities of the anarchists were responsible for the collapse of the Commune of Paris in 1871, and even for the defeat of the Spanish Civil War. Marx and Engels were aware of the need for demonstrating the counter-revolutionary antiproletarian character of the anarchist doctrines of the denial of all statehood. Engels e.g. in his work "*On authority*" offered an annihilating criticism of anarchism and made it clear that in all circumstances the revolution was the most imposing thing in the world. It was an act in which a section of the population by means of rifles, bayonets and guns, all respect-commanding means, imposed its will on the other section. The rule of the

victorious party had to be maintained by the fear which weapons instilled into the reactionaries. Had not the Paris Commune relied on the authority of the armed people against the bourgeoisie, it could not have survived even for a day. On the contrary, the remark may be made that it made too little use of authority. Engels therefore concluded that after the revolution the working class had to create the State of its own. In this connexion Marx's work "*Political Indifference*" is of particular interest. Here Marx pointed out that anarchism was in fact equal to treason, for the watchword that after the revolution no new State would be needed, practically meant that the proletariat should lay down arms. Marx suggested that the theoretical and practical consequences of their doctrine ought to be made clear by the propagandists of anarchism. However, this they dared not, for in this case the working class would send them to hell, as it would be clear to the workers that the anarchists strictly speaking denied them the true means of the struggle, viz. State and law, means for which the anarchists offered autonomy, self-management and doctrines of anarchistic freedom as substitutes.

The Marxist thesis is amply confirmed by the movements of an anarchist character which are in progress in a number of western countries (e.g. Cohn-Bendit).

[2.] Capitalist social and economic conditions reached a stage of evolution where mechanized big industries and a mass of wage-earning workers sprang up. The social character of production and the individual nature of exploitation called forth a struggle between workers and the bourgeoisie, i.e. appropriators. The working class or proletariat had no definite idea or theory on which it could rely in its warfare against the appropriators. Consequently it was inevitable that the proletariat should clarify its position and role theoretically. The theoretical clarification of the situation of the proletariat and the definition of its tasks were what Marx and Engels accomplished.

For the theoretical clarification of the position of the proletariat, which in view of the economic, political and scientific exigencies of the age could not be postponed any longer, Marx and Engels had recourse to earlier scientific conclusions, i.e. to doctrines of State and law, which have been analyzed in the foregoing discussion. Marx and Engels gave special attention to the natural sciences, geography, physics, chemistry and biology, from which dialectic and materialist reasoning so to say emanated. At the same time they relied also on the results of historical research. Marx and Engels revealed the division of society into classes and, as the outcome of this division, the function and significance of class interest and class will (Guizot, Thiers and Mignet). They made it clear that the capitalist social and economic formations or State and law, were not the final forms of society (Owen, Saint-Simon, Fourier). After Hegel had formulated the principal categories of dialectics and demonstrated that dialectics extended to all and everything, i.e. were universal, it was easier for them to tackle their task. Hegel, by setting up the categories of dialectics, extended theoretical and methodological aid to Marx and Engels, in particular in their investigations of State and law. However, in addition dialectics had to be stripped of their idealistic ornaments. In fact Hegel did not conclude from reality on the concepts, but applied the dialectics of the concepts to reality. Namely Hegel believed that the world was tied together by reason, i.e. that it was reason, and not matter, what was common in the world. Con-

sequently, for him being and consciousness became identical, although he borrowed what was called the "objective intellect" from reality, from epistemology. Marx and Engels relied also on the materialistic doctrines of Ludwig Feuerbach, which understood Man as part of nature and the material world. However, they criticized Feuerbach because he failed to speak of Man as a social phenomenon. Further they criticized Feuerbach also for his doctrines advanced in connexion with the new religion and also for his rejecting dialectic reasoning.

Here we are interested in the political and legal ideas of Marx and Engels. Referred to the previous periods, these ideas have laid the foundations to a new way of political and legal thinking. This new political and legal thinking manifest itself in all problems of State and law, and in all categories associated with State and law.

Marx and Engels laid the foundations for their theoretical investigations of the problems of State and law in their early works. Of Marx's early works on the investigation of State and law in his "*Debates on the freedom of the press*", "*Debates on the law of wood theft*", "*In defence of the Moselle region reporters*", "*Critique of Hegelian political law*", "*The German—French annuals*", "*Economic-philosophical manuscripts*", deserve special mention. In these early works Marx developed the following principal theses, mainly in connexion with the type of State and law in relation to State and class interest: the so-called State interest, i.e. the interest of the capitalist State is in reality private interest. Consequently, he pointed out, in a capitalist society the customs of the rich and not those of the poor became law.

He emphasized that the State had to guarantee rights even for the poorest classes to provide the foundations for the real conditions of their life. Consequently the law ought to recognize the customary law also of the poor, whose existence was also a mere custom of society. It was a deception only to imagine that the State was the sole and exclusive possessor of reason and morals. The truth was that the State belonged to the proprietors, and it was active in their interest.

Unlike Hegel, Marx believed that the State was secondary only, and not primary, i.e. it was the creation of so-called social spheres. He concluded from this that it was merely appearance that the State ruled the material spheres. He then drew the fundamental conclusion that if a change should be achieved, this change should in the first place be made in the material spheres, i.e. in what was called "bourgeois society". It was not sufficient merely to speak of the democratization of the State. These ideas of Marx did not contain his thesis of the primary character of social relations which he developed in a later phase. In fact at that time society and family were still intellectual realities for him, i.e. in this period Marx was still an idealist in this respect.

In contrast to Hegel Marx makes it clear that the State is the product of the self-estrangement or alienation of bourgeois society, i.e. the result of the growth of contradictions in society. i.e. the State has become a reality segregated from the people's life, it has become opposed to the people, as the subject of the historical process, so that from the popular aspect the State is an extraneous, foreign, transcendent power ruling the people. It stands to reason that here Marx still harbours abstract ideas of the State, moreover in the feudal State he wants to discover the unity of "people and State".



In his early works Marx subjects to a study the form of government. He values the doctrine of Hegel that the State is an organism, i.e. the totality of a variety of organs and functions, in the positive sense. However, he makes it clear that a distinction should be made between a political and another, e.g. animal organism. In connexion with the governmental form of the State Marx points out that the true base of the State is not the monarch, the individual, the person, or the personality of the prince, but the people, i.e. men. In connexion with the political system of the State Marx analyzes the problems of democracy. He points out that a State conforming to his notion is equal to a democracy which is identical with the self-determination of the people. He writes that democracy is a genus of arrangement, the monarchy merely a species, and for that matter a bad species. Consequently the State conforming to his notion is not a monarchy.

On analyzing the notion of democracy in his early works Marx still set out from the thesis that the State was the realm of freedom, i.e. in his concept it ought to be. He believed that governmental arrangement was the free product of Man, and that democracy was the essence of all governmental arrangement. However, the Marxian idea as if the State were the realm of freedom presents an idealistic, i.e. Hegelian influence. From what has been set forth earlier it followed that according to Marx the non-democratic State contradicts the essence of the State.

Marx discovers in democracy his own social ideal. He believed that this democracy could solve the social problems, i.e. it could carry the social liberation of the workers into effect. In this sense in a true democracy the political State would cease to exist. At that time Marx was already aware of that the struggle between monarchy and republic was merely a struggle within the abstract State. He also saw it clearly that the monarchy was the accomplished expression of the alienation of Man, and that the republic was merely the negation of this alienation within its own sphere. He also pointed out that the political republic was merely a democracy within the abstract governmental form.

In his early works, in connexion with the organization of the State, Marx analyzes bureaucracy as the power mechanism. According to his doctrine the causes of the existence of bureaucracy must be sought for in the fact that society is split up into groups of isolated interests. Marx emphasizes that the purpose of bureaucracy is to unite the groups of mutually opposing private interests and to subject them to a single end. He concludes that bureaucracy can guarantee the unity of these different groups formally only, but is incapable of eliminating the clash of interests. Namely the existence of bureaucracy relies on these clashes of interests, because it introduces the differences in the interests of the various contending groups into the management of the governmental affairs. This manifest itself in an attack which bureaucracy launches against the various groups. Marx points out that earlier bureaucracy fought against the corporations in the Hegelian sense, in order to create a living-space for itself. Later (in the 1840's) bureaucracy tried to maintain the corporations by force, in order to save itself and its spirit. Going on with the analysis of bureaucracy, Marx writes that in principle bureaucracy serves the general, fundamental interests of the State, yet in reality it is hostile to the true ends of the State, i.e. the interest of the people, the interest for which the State has to find an expression. As a matter of fact, Marx continues, since the

State has a bureaucracy, it has ceased to serve its original end, and has become the means of certain persons wielded against others. At that time Marx thought that the rule of one class over the other contradicted the essence of the State, i.e. its ideal essence. At that time he thought this phenomenon was possible only owing to the bureaucratic distortion of the essence of the State. (At that time Marx did not yet recognize the class essence of the State, i.e. the economic basis of the dictatorship of a single class.) The State, since it has a bureaucracy and has ceased to serve its original interest, is forced to represent the formal as content and the content as formal. Consequently in the State "the State ends change into bureau ends, and the bureau ends into State ends". All this leads to a point where the State turns into spheres from which nobody can escape. In fact the spirit of bureaucracy "is the formal spirit of the State" (i.e. the voidness of spirit), which in fact is the categorical imperative of bureaucracy. Since the State has a bureaucracy and has ceased to serve its own end, its structure has become a hierarchical one, where the hierarchy of knowledge is of fundamental importance. The hierarchy of knowledge finds an expression in the arrangement that the summit entrusts the lower circles to inspect the unique, whereas the lower circles entrust the summit to inspect the general. As Marx points out the outcome is that the two deceive each other.

Hence Marx came to the conclusion that the contrast between power and people was in the oppressor State inseparable from the bureaucratic system. At that time to Marx the State was apparently independent of private interest. Also the statement may be made that the true basis of the oppressor State was not formed by the bureaucratic system, but by the interests of private property. Marx had pointed out this earlier, and so unveiled the bourgeois illusions relating to the ideal essence of the State. Namely Marx recognized that in the presence of private property the State was the mechanism of class rule. He wrote that state interests changed into a specific private end in the face of other private ends. Consequently with the State the private proprietor acquired political domination, so that the State ceased to rule over private property. Not the State was the cause, and private property the causation, but the other way round: private property was the cause and the State the causation. Marx reached the point of necessity where he had to sever ties with the idealist notion of the State of Hegel, and discovered that in the power of the political State the power of private property found an expression for itself and that it was merely an illusion that the State decided, in fact the State was the subject of decisions.

In his early works Marx also studied the problems of the functions of the State. Here he subjected to a sharp criticism the Hegelian notion as if the function of the State were the resolution or termination of the various contradictions. Hegel alleged that the State was a power which would solve the social contradictions and reconcile the conflicting interests. Naturally what Hegel had in mind was not the contradiction between exploiters and exploited, but was the contradiction between the various estates. Hegel who for his part wanted to perpetuate the classification by estates, held that the mediating activities of the estates would solve the contradictions between government and people. Marx laid down as a fact that the feudal representative monarchy did not only fail to eliminate the contradictions between government and people, but was of necessity the product of these contradictions. He pointed out that the causes of this contradiction lay in the fact that the political State

merely reflected the interests of the wealthiest strata of society and that the State was organized by the estates for safeguarding these interests. According to Marx, the significance of feudal representation was that it brought to the surface and intensified the contradictions and so provided facilities for their solution. Hence, according to Marx, the social contradictions can be solved in principle and in a revolutionary way, still not by stages, as Hegel would have it. However, Marx made it clear that merely for the sake of a reconciliation of the contradictions their keenness could not be blurred. In fact their sources had to be explored and these sources had then to be presented as the essence of given phenomena. The development of these contradictions had to be traced to their origin. his conclusion is all the more important because in Hegel's view the contradictions by-pass one another, they do not join issue, i.e. they avoid clashes.

There are three more works of Marx which have to be taken into consideration for the understanding of the evolution of his early doctrines. First of all, his work "*The Jewish Problem*" has to be mentioned. In this work he made it clear that any form of alienation could be terminated only by the revolution through the agency of a new type of political state. In this work he also points out that private property could be eliminated only by a revolution, and that the abolition of private property would lead to the emancipation of Man. To the question of class which would be the leading force of the revolution, Marx failed to offer a reply at that time. In his "*Criticism of the Hegelian Philosophy of Law*" Marx offered a reply to the question as to the realistic force which could carry through the annihilation of private property. He declared that the proletariat would have to accomplish this revolution. In this work Marx emphasized the leading role of the proletariat, still he failed to raise the problem of class alliance. He analyzed the problems of class alliance on the ground of the experiences of the revolution of 1848—1849. In 1852 he insisted on the destruction of bureaucracy. The third work, also important for the evolution of the ideas of the young Marx, bears the title "*Economic-philosophic MSS*". This work is of special interest owing to the analysis of the problem of alienation. In this work Marx lent a historical and social sense to the category of alienation, a phenomenon which emerged also in Hegel and Feuerbach. Marx filled it with economic, historical and class content. Marx made the termination of alienation the goal of the practical revolutionary struggle. This problem is associated also with the State and law.

By way of summing up the statement may be made that Marx traced the struggles of political life back to the interests and conflicts of the particular classes of society and that at this point the complete formulation of the Marxist theory of classes, class warfare, the State and law has its origin.

Engels, too, analyzed the problems of State and law in his early works. Of these the following deserve mention as bearing on State and law: "*Letters from Wuppertal*", "*The internal crises*", "*The Point of View of the Political Parties*", "*Progress of Social Reform on the Continent*", "*Outlines of a critique of political economy*", "*The situation of England*", "*The English constitution*". "*The situation of the working class in England*", "*The government and opposition in France*".

Engels recognized that the State was in the service of private property, that in the background of the struggles of the various political parties there was the struggle of the classes of the bourgeois society. He analyzed the doctrine

of popular sovereignty, the relation of State and absolutism, the problem of popular will in connexion with the relation of the Commons and the people.

Marx and Engels wrote works in cooperation which must be considered their early works and in which they discussed the problems of State and law in detail. Of these the following deserve special mention: "*The Holy Family, or the critique of critical critique against Bruno Bauer and associates*", "*German ideology*". The criticism of latest German philosophy in the persons of its representatives, Feuerbach, B. Bauer, and Stirner and the criticism of German socialism in the person of their various prophets". In these works, on the ground of the philosophic categories of appearance and essence, Marx and Engels make it clear that the apparently free work of the proletarians is but a new type of serfdom, which is formulated by the law in legal relations. They demonstrate that the State does not unite the individuals and does not reconcile their interests, and that society does not owe its existence to the State. They call the position, according to which the State unites and reconciles the interests of the individuals, a political superstition. They point out that the members of society are kept together by interest, that their real tie is civil, i.e. economic, and not political life. Marx and Engels speak of the revolutionary role of the proletariat and of its socialist mission. They emphasize that the aim and historical action of the proletariat have been marked out irrevocably. Setting out from the thesis that class warfare and class antagonism constitute the real basis of the State, they point out that the interest-will of the ruling class stands for the dominant will in the State, i.e. the personal rule takes shape as average rule. This means that the interests of the individuals of the ruling class change over to common class interest and this gives expression to the common economic conditions of life of this class irrespective of potential contradictions between the personal and common interests of the members of the class. e.g., on the whole, observance of the law is in the interest of the ruling class, i.e. the law is the expression of the will determined by the common interests of the members of the class. However, individually the members of the ruling class try to evade the law. Hence it is the essence of the State that, owing to the economic structure of society, a definite class is in a ruling position. Consequently in the antagonistic class societies the State will serve the interests of society as a whole on the surface only, whereas in reality it will display activities in the interest of a definite class. The State is the form where the individuals of a definite ruling class will bring to fruition their common interests. (It is even possible that none of the ruling classes will have full control of political power, e.g. in the age of German absolutism.)

From what has been set forth so far it stands to reason that the problem of the State is in the first place not the problem of the form of government, but merely a question of the class which governs and holds power. Hence the question of the form of government cannot camouflage the class character of the State, although there is a difference between monarchy and republic. Marx and Engels make it clear that a class striving for power, even if — as in the case of the proletariat — its rule presupposes the extinction of the earlier form of society as a whole and of domination at all, will have to conquer political power first of all. Namely political power may appear in a new form and the proletariat will for a period of transition, until the classes have been liquidated, even need this form. Therefore the working class has to acquire political power even when in the beginning it will act as the representative of society as a

whole. In fact at that time its interests will coincide with those of the other non-ruling classes. As Marx and Engels express it, every new class will establish its *régime* within a sphere wider than that of the earlier ruling class. On the other hand later the antagonism between the now ruling class and the non-ruling classes will grow in intensity. This means that the class basis of the bourgeois State is wider than that of the feudal State, still the contradictions of a bourgeois society are greater and keener than those of its predecessor.

Marx and Engels formulated as early as 1844 that the revolution of the proletariat would overthrow the political power of the bourgeoisie. They raised the idea of the dictatorship of the proletariat, i.e. they believed it was not enough to overthrow the dictatorship of the bourgeoisie. In fact a new socialist state would have to be created. The stress laid on this thesis was at the same time the criticism of the anarchistic doctrines.

On analyzing the evolution of the political and legal opinions of Marx and Engels, we find that they divested themselves of all idealistic traits in 1847. "*The misery of philosophy*" of Marx and "*The principles of Communism*" of Engels may be considered the first mature works.

Marx and Engels developed their political and legal doctrines in their purity in a number of works and studies. Without any pretence to completeness the following writings may be mentioned: The Communist Manifesto (1847—1848), Class struggles in France (1853), Political manoeuvres (1853), The situation of factory workers (1857), Introduction to The criticism of political economy (1857), The criticism of political economy (1859), The Capital, Vols I, II, III (1867—1894), The civil war in France (1871), Critique of the Gotha programme (1875), To the housing question (1872—1873), On the watchword of the abolition of the State and the German friends of anarchy (1850), Evolution of Socialism from Utopia to Science (1876—1878), Anti-Dühring (1876—1878), The origins of the family, private property and the State (1884), Ludwig Feuerbach and the disintegration of the classical German philosophy (1886), Critique of the Erfurt programme (1894). Beyond these Marx and Engels dealt in a number of papers with the general problems of State and law, the problems of the capitalist State and law, and those of the socialist State and law. They discussed questions relating to State and law in letters addressed to a number of persons.

The Marxist doctrine of the origin of the State has been laid down in the work of Engels "*Origins of the family, private property and the State*". In connexion with the origin of the State Engels sets forth that in the beginning men lived in clans which were formed of so-called primitive hordes. The clan, in point of fact, united the kindred and guaranteed husbandry and livelihood in a community. In the period of clanship the productive forces and conditions of production were on a very low level. Tools of vital importance were made in common and the products of work done in common were consumed in common. Within the clan a variety of agencies managed the internal and external affairs of the community. Within it the whole population was armed, i.e. the whole armed people defended the common interests of the clan. The leaders of the clan were elected by the whole community, these were the first among equals, still they enjoyed no fixed privileges. The leaders commanded considerable respect, however, they relied on no violence or force in the government of the clan: their power was merely a paternal one. The affairs of the clan were discussed in the assembly of the clan, where also the decisions were made, and where any of the members of the clan could freely give expression to his

opinion. The assembly could at any time remove the leader of the clan. The members were bound to mutual aid, they had to defend their fellows in danger, and avenge injuries committed to the prejudice of their fellows. Engels believed that this primitive self-government of the clan was an admirable organization, however infantile and simple it was. All went one's own way without authorities, gendarmes and police, nobility, kings, lieutenants, prefects, judges, prisons, litigation. Any dispute or discord was settled by the community of those concerned: i.e. the clan or tribe or between the clans. The organization in clans prevented the interests of individuals from coming into prominence before those of the others, i.e. in the organization of clans an identity of interests was a reality. However, by the action of the productive forces, social-economic conditions continued to develop. In the organization of clans and their associations, social division of labour became established. This division of labour brought about the improvement of the productivity of work and the inequality of property. It opened the path to the accumulation of wealth. In consequence of these developments, the property of the clan broke up and the path was opened to the creation of private property. Wealth began to accumulate in the form of family property and economic power made the wealthy families masters of the clan. At that time property was already praised and honoured as the greatest benefit. Only one thing was still missing according to Engels, namely that society not only guaranteed the newly acquired property of certain persons against the former communistic traditions of the clan system, or sanctioned the formerly so little respected private property and declared this sanctioning the principal purpose of all human community, but at the same put the seal of general social recognition on the rapidly developing new forms of the acquisition of property, i.e. of the institution which not only perpetuated the splitting up of society into classes, but at the same time recognized the right of the propertied classes to exploit the non-propertied classes and to rule over them. The institution now became a reality. The State was invented which attacked the constitution of clans by creating a detached power, which did not coincide with the totality of the armed people. Further it destroyed the system of kinship and divided the population by domiciles i.e. by territory. As a matter of fact the State owed its existence to the need to curb class antagonism, as with the development of private property also the class of proprietors was born and with it, as the outcome of the clashes between the propertied and non-propertied, the State, as the State of the most powerful and economically dominant class. This class then became through the State the ruling class also in the political sense. In the hands of the propertied class, the State became the instrument for curbing and exploiting the oppressed class. As Engels wrote this was the reason why the most wretched police agent of the civilized State commanded greater respect than all agencies of the clan society put together. Yet the most powerful prince and greatest Statesman or general of the civilized State could envy the smallest of the leaders of clans for the spontaneous and self-evident respect with which he was surrounded. Engels also emphasized that the creation of the State was the outcome of the intrinsic evolution of the social and economic conditions, within which the economic factors were predominant. Hence the State was not an organism which was forced on society from outside, but the product of the intrinsic evolution of society.

The State changes together with social evolution. This means that in the evolution of the State various phases or periods may be distinguished according

to the underlying economic and social evolution. Science discusses the problems of the State types with due regard to this evolution. Engels wrote that the State of Antiquity was in the first place the State of slave-holders, for curbing the slaves; the feudal State was the organ of the nobility for controlling the serfs and the dependent peasantry; the modern representative State is the instrument of capital for the exploitation of wage-work. This is why we distinguish slave-holder, feudal and capitalist types of State. Engels also calls attention to the fact that, exceptionally, there are periods when the contending classes balance one another to the extent that sovereign power as the seeming mediator for a moment acquires a certain degree of independence in respect of both parties. Hence the question of the type of State is closely associated with the question of the class whose interests are safeguarded or guaranteed by the State. If the State upholds the conditions of life and rule of the exploiters against the oppressed class by applying violence, writes Engels in his *Anti-Dühring*, then the State may be called one of the exploiter type. In this respect the work of Engels on the housing question is of particular interest. In this he says that the State is but the combined organized power of the propertied classes, the landowners and capitalists against the exploited classes, peasants and workers. As regards the question of the types of State, the work of Marx "*Preface to the criticism of political economy*" deserves special attention. In this work Marx states that the totality of the conditions of production constitute the economic order of society, the true basis on which a legal and political superstructure is erected. This means that within the conditions of production the property relations have a decisive influence on the political superstructure, namely the organization and operation of the State. In the same matter, in a letter to F. V. Annekov he sets forth the following ideas: "Presuppose a definite stage of development of production, turnover and consumption and you will have a definite social system, you will have a definite organization of the family, the estates, or classes, i.e. a definite civil society. Presuppose a definite civil society and you will have the corresponding political organization, which is only an official expression of the political society." This means that the given order of the relations of production defines the political formula of society, defines the classes which form society, defines who and by what means acquires the goods necessary for livelihood, what function a person performs in the historically given social organization of production, the position a person occupies on the authority scale of society, i.e. whether that of an oppressor or oppressed, of a leader or of one led. Consequently the states built up on uniform relations of productions and expressing a uniform class content are assigned to the same type. Since relations of production have four basic types, on which the governmental organizations of a class dictatorship of four types are built up, there are four types of State. The type of State will in each case be different owing to the evolution of the productive forces and the relations of production.

The doctrines exposed by Marx and Engels on the types of State are associated with their responses to the essence of the State. Accordingly the State is but the mechanism serving for the oppression of one class by the other. (Introduction to the Civil War in France by Engels.)

The problem of the form of government occupies a prominent position in the oeuvre of Marx and Engels. In connexion with the form of government, they analyzed the problems of *régime*. Engels, in a letter to F. Mehring, pointed

out that the form of government sprang up from the form of economy and its appropriate management as inevitably as a child from the intercourse of a man and a woman. Strictly speaking, the problem of the form of government is associated with the State as an organism. Namely, the continued social division of labour brought about the segregation of the activity directing the administration, acts and organization of men from economic activity. On analyzing the question in Anti-Dühring, Engels came to the conclusion that in addition to the overwhelming majority toiling in work a layer exempted from direct productive work came into being which took care of the common affairs of society, viz. management of work, administrative duties, administration of justice. In another letter written to K. Schmidt Engels demonstrated that society produces certain common functions which are indispensable. Men entrusted with the performance of this work form a new branch of the division of labour within society. By these they got hold of special interests even against their employers, they gained independence. In a letter to Cuno, Engels made the statement that the sovereign power was but an organization created by the ruling classes, landowners and capitalists in order to safeguard their social privileges. Marx in particular made subject to a study the problems of the executive power, and in his work "*The 18<sup>th</sup> of Brumaire of Louis Bonaparte*" he wrote that the executive power with its enormous bureaucratic and military organization, ramified administrative machinery, an army of about half a million civil servants, together with an army of another half a million, was born in the era of the absolute monarchy, at the decay of feudalism.

Engels studied the problem of the best possible form of government and came to the conclusion that the best form of government was the one where the social controversies were not hushed up, where these were not fettered in a violent manner, artificially, i.e. only apparently. The best form of government was where these controversies matured to an open fight and so to a solution.

Marx in his "*The Civil War in France*" analyzed the problem of the monarchy and the democratic republic. He stated that unlike the monarchy, whose name in itself meant the predominance of one bourgeois group over the other, the victory of one party over the other (the glory of one and the humiliation of the other party), the republic was the nameless joint stock company of the united bourgeois groups, or all allied exploiters of the people. Their class rule was in a straightforward and open manner antagonistic to the emancipation of the producing masses. The only *raison d'être* of their direct activities was the oppression of the people. This republic was the terrorism of class rule. Engels then studied the relations of the struggle between bourgeoisie and proletariat to the republic. He believed that the struggle between the two classes could be fought to the end only in a republic. As a matter of fact, the survival of the republic was an intensification of the direct, undisguised class struggle between proletariat and bourgeoisie, up to a crisis. In this connexion he made the statement that the proletariat needed democratic forms for seizing political power. The democratic republic was always the last phase of bourgeois domination, a formation in which the bourgeoisie perished.

In connexion with the problems of the State, Marx and Engels also analyzed the functions of the State. Here Marx brought forward his ideas in the first volume of *The Capital*, in particular as far as the economic functions of the bourgeois State were concerned. In a letter to Schmidt, Engels, analyzing the relations of State and economy, wrote that the repercussions of the sovereign



power on economic evolution were of a triple type, viz. the sovereign power proceeded in the same direction as economy advanced and then evolution would be accelerated; it could proceed in the opposite direction, and then the sovereign power would sooner or later become bankrupt in all major nations of our days; or the sovereign power could put up barriers to certain trends of economic evolution, whereas it could prescribe others. In the last resort this case could be traced back to either of the two earlier mentioned cases.

Marx and Engels also dealt with the question of the withering away of the State. In this connexion Engels made it clear that the task of vital importance of the proletariat was the seizure of sovereign power and the transfer of the means of production to public ownership. This meant at the same time that the proletariat would cease to exist and so also the State. However, the State would not cease to exist unless class antagonisms and class differences came to an end. As Engels stated, the exploiting societies needed a State. In particular for the forceful curbing of the exploited classes. When there would be no more classes to be oppressed, and therefore no more clashes between the oppressing and oppressed classes, there would be no need for a State either. At that time the management of affairs and the guidance of productive processes would supersede the rule over persons. The State would not be abolished, the State would simply wither away. This statement may be read in the work "*Evolution of socialism from Utopia to science*". As early as 1850. Marx and Engels defined the meaning of the abolition of the State. It was a necessary consequence of the abolition of the classes. Together with the classes also the need ceased for one class to wield power over the other classes. Finally Engels in his work "*The origins of the family, private property and the State*" made it clear that the State had not existed from times immemorial. There were societies which existed without it. The State owed its origin to the disruption of society into classes and when the existence of classes became an obstacle to production, the classes would disappear, and together with them also the State would disappear inevitably. Society which at that time would reorganize production on the ground of a free and equal association of the producing forces, would put the governmental mechanism to its proper place, viz. the museum of antiquities by the side of the spinning wheel and the bronze hatchet.

Marx and Engels made a number of further statements in connexion with the State. In his work "*The Civil War in France*" Marx, analyzing the Paris Commune, again pointed out the need for the destruction of the bourgeois political machinery, a thesis which he had already advanced in his work "*Class struggles in France*". In the "*Critique of the Gotha Programme*" Marx took a stand against the doctrines of the State of Lassalle and Liebknecht and set against their watchword of a free State the dictatorship of the proletariat. At the same time he demonstrated that this dictatorship would be a transition from the capitalist society to the socialist or communist society, i.e. it was not a permanent dictatorship.

In connexion with law, Marx and Engels laid down a number of fundamental theses. Speaking of the essence of law they exposed its class character. "Your ideas are in themselves the products of bourgeois production and property relations, just as your law is but the will of your class raised to the rank of a law, a will whose content is given in the material conditions of life of your class", they wrote in the Communist Manifesto. Engels, in his work on the housing problem, understood law as the system of common rules, and

outlined the process of the birth of law. He wrote that at a very primitive stage of development of society the need emerged for a consolidation of the daily recurring facts of production, the distribution and barter of products in a common rule, and also for taking care that each man submitted himself to the common terms of production and barter. This rule first became a moral custom, and then law. Engels studies the State in close connexion with the Law, and puts forward the statement that it is the State that is entrusted with the enforcement of the law. He then continues with the problems of the making of the law or legislation. Since, parallel to social evolution, legislation has grown in volume and complexity, Engels believes that the more complicated legislation is the more its forms of expression draw away from the manner in which the ordinary economic conditions of the life of society are expressed. In connexion with legislation, or the making of the law, Engels makes the statement that legislation tries to detach itself from economy. Consequently many are in the belief as if the further evolution of law were in no relation to the economic conditions, but had its own specific intrinsic causes or notion of "will" independent of the economic conditions. In the course of law-making men are apt to forget that the law is the result of the economic conditions of life. Engels also points out that the complexity and extension of law-making are responsible for the birth of the profession learned in law and, with it, of jurisprudence. He emphasizes that in the course of law-making also certain comparative studies have to be made, because law-making draws on the legal systems of various peoples and ages. In this connexion he calls attention to the fact that the law has to be compared as the reprint of the economic conditions at any time, and not as a system whose justification may be found in itself.

In connexion with the law and law-making, Engels raises the problem of justness. He writes that natural law incorporates all that is more or less common in all legal systems, and if a norm conforms to natural law, this norm will be just. Marx in connexion with law-making exposes that the laws of succession are not causes but results, legal consequences of the existing economic organization of society, which relies on the private property of the means of production, i.e. the soil, raw materials, machinery, etc.

Marx in his work "*The conditions of factory workers*" speaks of the formulation of statutes. He makes the statement that the laws are shameful and deceitful, because they are formulated in a way that they frustrate the achievement of their ostensible end and disarm the men entrusted with their enforcement. He makes it clear that the controversy between the masters of the factories and the workers is rapidly advancing to the point where veritable social wars will break out.

Engels refers to the fact that for the jurists the evolution of law is the tendency to bring human conditions nearer to the ideal of justness. He remarks that justness is a category which is the idealized expression of the existing economic conditions viewed from their conservative as well as revolutionary side. Consequently the idea formed of justness will vary with the given age or place. In everyday life the notion of justness may be used without the risk of misinterpretation, however, this is not the case in scientific investigations. In *The Capital* Marx solves the problem by laying down that where economic transactions make their appearance as the acts of volition of the participants, or the manifestation of their common will, or in contracts enforceable against one party through the agency of the State the legal forms are mere forms, and

consequently cannot define their own contents. They are mere expression of this content. The content is just when it conforms to the method of production, i.e. it is in harmony with it. It will be unjust, if it contradicts this method. Viewed from the aspect of the capitalist method of production, slavery is unjust. Similarly, a fraud associated with the quality of the commodity is also unjust.

In connexion with legal relations Marx made it clear that these were rooted in the material conditions of life, similarly to the forms of government. Consequently, as soon as the means of production would be transferred from private ownership to public ownership, the law of succession would die off of itself. In Volume I of *The Capital*, Marx made the statement that legal relations were relations of will and that in these relations of will the economic conditions out that it was not the title which conferred power on the landlord, but the economic conditions recognized in the form of legal titles.

Marx in his works "*Elections*" and "*Political manoeuvres*" analyzes the problems of the application of law. He makes the statement that property is equal to robbery and points out that in the course of the application of law the servile class of bourgeois lawyers are doing an enormous service to the transformation of property into private property for the deception of the people, and also demonstrates the class character of bourgeois lawyers and the bourgeois judiciary.

Engels deals with the unity of the legal system of the bourgeois states and says that the law does not merely correspond to the economic situation, it is not merely an expression of this, but has to be a coherent expression of the economic situation also by itself, an expression which does not deceive itself with intrinsic contradictions. This cannot be achieved unless the law reflects the economic conditions in a less and less truthful manner. In this connexion he points out that the Code Napoléon was the code which reflected the attitude to law of the revolutionary bourgeoisie of the period from 1792 to 1796. However, this notion of the law was falsified. The evolution of law manifested itself in the fact that attempts were made to eliminate the contradictions of the Code and to create a harmonious legal system. The objective ground of the endeavour to create a harmonious legal system is the fact that the effects and coercive force of continued economic evolution repeatedly break through the system and drag it into new contradictions. According to Engels the reflection of economic conditions in the form of principles of law takes place without becoming conscious to the participants. "The jurist thinks that he works with *a priori* theses, yet it is a case of economic reflections only." However, it may be stated that the bourgeois legal systems are not free from intrinsic contradictions.

In his "*Critique of the Gotha Programme*" Marx dealt with the new type of law coming into being with the socialist revolution. Here he enlarged on the character of the law that comes into being in the first phase of communist society, and attached his comments to the theses of the Gotha Programme relating to the distribution of the goods according to a uniform law. He pointed out that in the first phase of a communist society, i.e. in socialism, in the distribution of the goods in fact the "uniform law" mentioned in the programme would dominate. This was associated with the principle of distribution prevailing in socialism according to which everybody would work according to his abilities and everybody would receive the goods according to his work.

He pointed out that equality meant in socialism that here measuring was by equal standards, i.e. work. However, it was also true that content and form had changed, because, owing to the changed circumstances, nobody could give anything else but his work, and because, on the other hand, apart from goods for personal consumption, nothing else could be in private ownership. Marx went on declaring that for the distribution of consumers' goods still the same "equal law" was valid which brought under regulation the exchange of commodities. This equal law was still the same civil law. This equal law was still restricted by the bourgeois framework. Hence distribution depended on the method of production, i.e. as regards distribution and work, "civil law" remained, still it relied already on the new relations of production. The "civil law" in parentheses is already the new type of socialist law, although this new law still tied up with certain features of "civil law".

Marx and Engels also dealt with the relations of State and law, or State and morals. In his "*Anti-Dühring*" Engels made it clear that there were three types of morals in a capitalist society, viz. the morals of the feudal aristocracy, the morals of the bourgeoisie and the morals of the proletariat. He stated that in a society, which moved in class antagonism, morals were always class morals, i.e. they always justified the power and interests of the ruling class. In his foreword to the 1885 German edition of "*Das Elend der Philosophie*" Engels emphasized that if the moral consciousness of the masses declared an economic fact unjust, like once slavery or serfdom, this was an evidence of the obsolescence of the fact, and of the intervention of other economic facts. Consequently the former became unbearable and untenable. This statement is noteworthy also in connexion with obsolete legal rules. From the point of view of morals and legislation, in particular the statements are of importance which Marx and Engels advanced in connexion with the freedom of will.

By way of summing up it may be stated that Marx and Engels reached the following novel scientific conclusions as regards State and law: they pointed out that both State and law are categories of history, i.e. that State and law existed not from the beginnings, and that with the disappearance of classes both would wither away. They demonstrated that the doctrines of State and law are in the last analysis defined by the relations of production. They pointed out that State and law are the instruments of the power of the ruling class, that law expresses the will of the ruling class as the totality of the rules of conduct, and that the State is but the power-enforcement organization in the hands of the ruling class. They made it clear that there is an interaction between State and law on the one, and the relations of production on the other side, i.e. that State and law are superstructures on the economic basis, that State and law are defined by the relations of production, i.e. the underlying economic basis, but State and law have repercussions on the economic basis. They concluded that the types of State and law emerging in the course of social evolution always give expression to the political power and will of the economically ruling classes, in whatever form they manifest themselves. They made it clear that a transition from the one type of State and law to the other type of State and law is possible only with the aid of a revolution, and that with the revolution always a new class ascends to power, which class creates its own political power, i.e. its own State and legal system. They revealed that the bourgeois State and bourgeois law are not the final forms of manifestation of State and law. As a matter of fact the State and law of the capitalist society

would be superseded by the socialist State and law, whose State would be the dictatorship of the proletariat, and its law would be a socialist law. The State of the dictatorship of the proletariat and socialist law are merely of a transient character between capitalism and communism. Finally they demonstrated that with the birth of the communist social and economic system the socialist State and law would wither away. It cannot be argued that these doctrines meant something novel in political and legal thinking, because they reflected the objective rules of the evolution of State and law.

[3.] In the closing years of the 19<sup>th</sup> century and the beginning of the 20<sup>th</sup>, far-reaching changes took place in the economic life of the capitalist countries. In the course of the normal evolution of the social and economic conditions, capitalism turned into imperialism. Imperialism is an evolutionary stage of capitalism, the most striking feature of which is the domination of the monopolies. In this period, as the result of the growing concentration of capitalist production, the monopolies, cartels and trusts come into being.

Several thinkers studied the problems of imperialism. In particular I. A. Hobson's *Imperialism* and R. Hilferding's *Das Finanzkapital* are of importance. Lenin, arguing with these works, and based on the analysis of a definite set of facts, stated that imperialism had the following five criteria: (a) concentration of production and capital, which bring about the monopoly organization of capitalism; (b) the finance-capital formed of the intertwining of bank capital and industrial capital, whose holder is the financial oligarchy; (c) exportation of capital which gains the upper hand over commodity exports, as the new form of colonial exploitation; (d) the formation of the economic spheres of interest by the international monopolies; (e) the end of the process of the territorial partition of the world and the beginning of the struggle between the various groups of interest for a territorial reshuffling. These processes converted imperialism also into the new era of the proletarian revolutions.

In the preceding period the teachings of Marx and Engels, and hence their doctrines of State and law, were spreading and struck root in the working classes. Simultaneously, in particular what was called official science, i.e. "bureaucratic professors in a bureaucratic spirit" tried to refute and annihilate the Marxist doctrines. Naturally not only official science launched attacks against Marxism. Marxism was attacked also from within the labour movement. In order to gain a foothold in the labour movement Marxism had to fight against the young Hegelians, Proudhonism, Bakuninism, the positivists. As the outcome of this struggle, the influence of these doctrines lost ground in the labour movement, and the international organizations of the movement, i.e. the periodic international congresses of the labour movement took sides with Marxism in all essential points. However, within Marxism, a new trend sprang up in opposition to Marxism. Revisionism within Marxism continued its struggle against Marxist political and legal theory on the general ground of Marxism. Revisionism followed the Neo-Kantians. This school of philosophy emerged in Germany in the middle of the 19<sup>th</sup> century. It emphasized the most reactionary idealistic theses of Kant and rejected the materialistic elements in his philosophy.

The most prominent leaders of revisionism, E. Bernstein and K. Schmidt, subjected the doctrines of Marx and Engels of the class warfare and the dictatorship of the proletariat to a revision. Bernstein explained his point of

view in his work *Die Probleme des Sozialismus*, published between 1896 and 1898 and at the same time revised Marxism in general and also its philosophic, economic, political and legal doctrines (of which the latter two are of interest for our purpose). Lenin, criticizing the doctrines of Bernstein in his work "*What to do*", said that Bernstein denied that could be substantiated scientifically, and that, on the ground of a materialistic concept of history, the necessity and inevitability of socialism could be demonstrated. Bernstein denied the fact of growth of misery and proletarianization and of the intensification of capitalist contradictions. He declared the notion of the "ultimate goal" to be untenable and unconditionally rejected the idea of a dictatorship of the proletariat. He denied the conflict between liberalism and socialism, and the theory of class warfare. The doctrines of revisionism were spreading even in Russia, where the so-called legitimate Marxists and the "economists" gave their support to the doctrines of Bernstein. Bernstein's above-mentioned work was translated into Russian, and published in three editions. Zubatov, the chief of the secret police of Moscow, thought this book ought to be read by the workers. This was not by mere accident, because the Russian propagators of the doctrines exposed in this book, e.g. P. B. Struve, S. M. Bugakov, etc. wanted to deprive the working class of its revolutionary theory.

In Russia, Lenin took a stand against the Bernsteinian correction and revision of the Marxist political and legal doctrines as the "protest of the Russian social democrats" in his works "*What to do*" and "The economic contents and critic of Narodism in Mr. Struve's book" (The reflexion of Marxism in bourgeois literature, 1895). Before Lenin, also Plekhanov criticized the doctrines of Bernstein and Schmidt and branded them as reactionary.

Lenin made it clear that the opinion of Bernstein "the final goal is nothing, the movement is everything" in fact expressed the essence of revisionism. He also set forth that from this formulation the clear outlines of a revisionist policy unfolded themselves, a policy which was an occasionally defined position taken to the daily events, accomodation to trivial political changes, the disregard of the vital interests of the proletariat and of the principal traits of the whole capitalist order and capitalist evolution, the sacrifice of all vital interests for the sake of momentary, real or supposed benefits. Lenin pointed out that this policy could put on an infinite number of forms and that any somewhat "new" question, any unexpected or unforeseen turn in the trend of events, even if it changed the general line of evolution slightly only or for a very short time, would at any time inevitably produce the one or the other variant of revisionism. Lenin also reminded that revisionism had its class roots and therefore it was an international phenomenon. He made it clear that, along with the proletariat, there were in all capitalist countries the petty bourgeois, the small proprietors, and that capitalism would inevitably thrust back these new small-scale producers into the ranks of the proletariat. It was quite natural that the ideas of the petite bourgeoisie would manifest themselves in the ranks of labour parties with a large membership. Lenin took a stand against the theses of revisionism according to which there was no need for a dictatorship of the proletariat, the destruction of the bourgeois political apparatus, according to which the bourgeois State and bourgeois law were not the means of exploitation. He bitterly criticized the doctrines according to which the capitalist State was the representative of the common interest of society, and that it was void of a class character.

Lenin developed his ideas of State and law in the following works: *State and Revolution* (1917), *On the State* (1919), *The Proletarian and the Renegade Kautsky* (1918), *Three constitutions or the three forms of the political order* (1905), *Report on the work of the Council of the Commissars of the People to the third All-Russian Congress of the soviets of the worker, soldier and peasant delegates* (1918), *Leftism as the infantile disorder of Communism* (1918), *Once more on the trade unions, the present situation, the errors of Trotsky and Bukharin* (1921), *Reporter's speech on foreign policy in the joint session of the Moscow soviet* (1918), *Reporter's speech in the Tenth Congress of the Russian Communist (bolshevik) Party on the replacement of the obligatory delivery of the surplus crops by a tax in kind* (1921), *The Task of the New Economic Policy and the committees of political popular education* (1921), *On democracy and dictatorship* (1919), *The great initiative* (1919), etc.

Lenin, in the first place, expressed his view on the State. In connexion with the type and origin of the State he demonstrated that the State was the product of the irreconcilable nature of class antagonism and that the State came into being when, where and inasmuch as it was impossible to reconcile class antagonisms. Consequently the State was not the organ created for the reconciliation of classes, for if it had been created for this purpose, i.e. if this reconciliation had been effected, then the State would have ceased to exist. He further set forth that the State was a power which had its origins in society. However, it gained the ascendancy over society, and in the course of evolution it became more and more alienated from it. Lenin emphasized that the State as a power consisted of the special formation of armed men. This he explained by the fact that with the birth of the State this public power ceased to coincide with the armed population, for if this were the case then armed conflicts would develop between the members of the population. According to Lenin the army and the police were needed only because society split up into irreconcilably hostile classes. He criticized the doctrines as if the State had been born owing to the growing complexity of the life of society and the differentiation of social functions as philistine dreams. If society had not been split up into conflicting classes, the spontaneous armed organization of the population would exist under much more complicated conditions even today. He made the statement that the special formations of armed men gained ascendancy over society and became estranged from it. It was by no means accidental that every revolution tried to demonstrate in an illustrative form how the ruling class endeavoured to set up the special formations of armed men serving the purposes of this class, and how the oppressed class made efforts to set up a similar new organization for its own purposes. In this connexion Lenin emphasized that the proletariat had to get hold of the governmental machinery in order to overthrow capitalism. The doctrines as if the State meant universal inequality had to be discarded. He called the doctrine that the State is the tool of universal popular rule, a fairy tale. Speaking of the origin of the State, Lenin pointed out that the State was born at a time when society could not have survived without "power", and, for that matter, without a power which seemingly was above society, and to some extent segregated from it. Hence the State as organized coercion was born of necessity at a definite stage of the evolution of society.

Lenin referred to the relations between the various governments and the economically ruling classes, and explained that, as taught by history, a govern-

ment could not stand outside or above the classes of society. The ties between government and classes of society are illustratively demonstrated by the contents of legislation and information relating to the personal data of the different politicians. This information confirms the indissoluble unity of economic and political rule. In this scope Lenin also dealt with the civil servants and made it clear that in an exploiting society the civil servants were not the servants of society, but its masters. Lenin studied the problem of the type of State in conjunction with the relations of dictatorship and democracy and advanced the statement that the State was partly dictatorship, partly democracy, however, in each case one had to make sure for which class it was a dictatorship and for which a democracy.

He analyzed the socialist type of State in all its details. He pointed out that the socialist State was the means of the dictatorship of the proletariat, whose need emerged temporarily. On tying up the functions of the State with the problems of class warfare, Lenin categorically declared that the State was merely a means of the proletariat in the class warfare. A queer cudgel, *rien de plus*. Hence Lenin took a stand for the need for a socialist State, whose essence was the revolutionary dictatorship of the proletariat. He wrote that the proletariat needed the sovereign power, the centralized organization of power, the power-enforcement organization, also in order to suppress the resistance of the exploiters and also to guide the huge masses of the population, the peasantry, the petite bourgeoisie and the semiproletariat in the system of socialist economy. In connexion with this thesis Lenin criticized the anarchists and revisionists.

In connexion with the form of government Lenin set out from the thesis that the State was a machinery or organism, whose forms were extremely variegated. In his work "*On the State*" he explained that the forms of the State could be extremely varied. The State is a machinery which serves for the suppression of one class by the other, and whose function is to teach all subordinate classes obedience to one class. For the performance of these functions the organization of the State had to be built up in a peculiar manner. Lenin, in "*Three constitutions, or three forms of governmental order*", analyzed the structure of the highest level of the political organization in detail and made it clear that on the highest level the political order had three forms, viz. (a) the absolute monarchy, the form wanted by the police and the civil servants; (b) the constitutional monarchy, the form preferred by the most liberal bourgeois; (c) the democratic republic, preferred by the self-conscious workers.

In a democratic republic there was no Tsar, no Upper Chamber, there was but one chamber elected by general, direct, equal and secret ballot. Furthermore the democratic republic meant the complete subordination of the police and the civil service to the people, i.e. they would wield no special power. The democratic republic neither granted privileges to the capitalists or the landowners. In a democratic republic the people had to exercise the whole power, i.e. in it the people had a united and indivisible power. A democratic republic was needed in order that the enlightened people might learn to manage its own affairs. It was the most suitable form for the free struggle of the working class for socialism, for a system where there would be neither rich nor poor, where the whole soil, all factories would be the people's own. Studying the question of the governmental form Lenin pointed out that the forms of government were changing in the course of history, however, the essence of the various forms was in each case the dictatorship of one class or another. In this



respect he pointed out that every State where the private ownership of land and means of production existed, where capital was ruling, however democratic it was, was a capitalist State, a machinery in the hands of the capitalists, used for the oppression of the working class and the poor peasantry. On this understanding it could not be disputed that the representative organs were mere forms which did not change the essence. i.e. the doctrine as if the various forms of representation and the franchise associated with them expressed the will of the people as a whole, or the representative organizational forms embodied the decisions of the people, was untrue. The representative organizational forms and the elections associated with these were, first, mere puppets, secondly, toys. He made these statements with reference to a definite country, viz. the United States of America. He stated that, as generally known, the United States were the most democratic republic of the world, still in this republic the capital and not the people ruled, i.e. there the representative forms of organization did not express the will of the people and did not enforce the decision of the people. "How does the rule of capital prevail?" Lenin asked the question, and answered it: "The rule of capital manifests itself brutally, in the form of open corruption, cynically and cruelly; it is exercised by a handful of millionaires." Lenin drew the conclusion that no democratic republic could work changes on the rule of capital, not even franchise, although, as compared to feudalism, this meant progress. i.e. under capitalist conditions the State was not called to safeguard the interests of all, but merely served as a means for the oppression of others by the few.

In his "*Caricature of Marxism*" Lenin stated in connexion with the form of government that imperialism, whose economic essence was the replacement of free competition by the monopolies, was a turn from democracy to political reaction. This meant that in the era of imperialism the bourgeois State denied democracy in both home and foreign politics. e.g. it denied the election of the civil servants by the people and also the right of self-determination of peoples. However, it could not be argued that the republic was the most democratic form of the political superstructure of capitalist society. In this connexion Lenin analyzed the contradiction between imperialist and democracy. First, he made it clear that each political form, and thus also the republic, had an economic content, i.e. in this respect economy and politics were correlated. Consequently the contradiction between imperialism and democracy was the contradiction between an economic and political thesis, or, more precisely, the contradiction between the economic order of imperialism and political democracy in general. Therefore the election of the various representative organs by the people, or the right of combination and assembly contradicted imperialism. Imperialism then drew the conclusion that its economic system had to be reconciled with democracy or the republic, and this in a peculiar manner. This reconciliation took place in a way that, officially, the differences of the pecuniary circumstances were ignored, i.e. rich and poor were raised to the same level. Reconciliation manifested itself in a republic in a form that wealth wielded power indirectly and not directly, partly in the form of a direct "corruption" of the civil service, partly in the form of an alliance between government and stock exchange. Thus the reconciliation of imperialism and republic, or democracy, had these two economic means which guaranteed the enforcement of the power of capital.

In his work "*The proletarian revolution and the renegade Kautsky*" Lenin analyzed the problem of dictatorship, and explained that dictatorship was a state where one class exercised revolutionary coercion over the other. The distinction recommended by Kautsky, viz. that a line should be drawn between the given state or situation and the form of government was mere nonsense, because everybody knew that in a bourgeois system the forms of government were bourgeois dictatorship. Therefore the fact that any form of the structure of the governmental organization served merely for the suppression of one class by the other, could not be argued. However, Lenin emphasized that the form of oppression was not indifferent for the proletariat, for it could make easier, or hamper class warfare.

Lenin analyzed the problems of the form of government also amidst socialist conditions of society and economy. His great merit was that under the historical conditions of Russia, and by taking into account the experiences of the revolution of 1905 and the revolution of February 1917, he discovered the new form of government of the dictatorship of the working class, viz. the republic of the Soviets. In 1905 Lenin wrote that the soviets should be considered the germs of the provisory revolutionary government, the independent revolutionary creation of the working class. This remained his belief also when in the February revolution the soviets began to organize. In April 1917 Lenin formulated the watchword "No parliamentary republic". A return from the soviets of the workers delegates to a parliamentary republic would be a step backwards. What was needed was the republic of the soviets of the delegates of workers, farm workers and peasants from below all over the country. Lenin enriched the thesis of Engels on the governmental form of a dictatorship of the proletariat as laid down in the "*Critique of the Erfurt Programme*", and by this he showed the path to the Russian working classes and the toiling peasants in their struggle against the bourgeois-landowner system.

In connexion with the problems of the form of government, Lenin analyzed the leading role of the party of the working class in the socialist State. He further studied the internal structure of the socialist State, in particular the problem of federation in its bearing on the problem of nationalities.

As regards the functions of the State, Lenin in general analyzed the function of the State and in this connexion the function of the capitalist and socialist State. In association with the classoppressing functions of the State, he pointed out that the goal of the State was the creation of an "order" which would mitigate the clashes between the classes merely in order to legalize and perpetuate oppression. i.e. the State deprived the oppressed classes of certain means of the struggle for overthrowing the oppressors. He emphasized that the function of the State to maintain a certain order in society and to dampen the clashes between the classes did not mean the reconciliation of the oppressing and oppressed classes. The ruling class could not be reconciled with its antagonist, the oppressed class. Fundamentally the content of the socialist State meant that it was the means of the dictatorship of the proletariat and this defined its relations to society as a whole, and also the functions of the State. The socialist State as the instrument of the dictatorship of the proletariat was an active factor and governmental activity exactly advanced the objective evolution of the conditions of society. Consequently the socialist State performed not only class-oppressing functions, but also economic-, organizational and cultural-educative functions.

In connection with the dual function of the State, viz. first, that the socialist State performs class-oppressing functions, and, secondly, that the socialist State sets as a target the omnidirectional transformation and development of society, i.e. displays activities to conform to the needs of a communist society, and therefore performs economic-organizational and educative function, Lenin made the statement that the dictatorship of the proletariat was a stubborn struggle, a bloody and bloodless, a violent and peaceful, a military and economic, a pedagogic and administrative fight against the forces and traditions of the old society. Lenin also analyzed the external functions of the State, or rather the socialist State, and laid particular stress on a study of the foreign policy of the socialist State. Lenin's doctrines on the foreign policy of the socialist State were laid down in the Decree of Peace and in the resolution on the international situation passed by the Eighth All-Russian Conference of the Communist Party and the Seventh Congress of the Soviets.

In connexion with the external and internal functions of the State, Lenin analyzed the notion of politics. In this analysis Lenin enlarged on the relations between politics and class interests, and pointed at the relative independence of politics and the peculiarities of revolutionary politics. In a letter to Inessa Armand he wrote that politics were the relations of nations, classes, etc. and prior to this, in notes compiled for the never-written article "*Materials for the question of the function of the State*" (1916) he wrote that politics were a participation in the affairs of the State, the definition of the forms, functions and contents of governmental activity. In several works Lenin analyzed the problems of politics. e.g. he stated that politics were concentrated economy, or the concentrated expression of economy, and pointed out that politics had unconditional priority over economy. Anybody thinking differently was oblivious of the alphabet of Marxism. He evolved ideas of significance also in his work "*Once again of the trade unions, the actual situation and the errors of Trotsky and Bukharin*" when he stated that if the problem was not tackled politically, then the class in question would not be able to retain power, and consequently, would not be able to perform its task of production (1921). In his speech in the All-Russian Conference of the committees of political enlightenment organized with the provincial and district divisions of popular education (1920) Lenin explained that politics were a struggle of the classes, politics were the attitude of the proletariat fighting for liberation, against the bourgeoisie of the world. This meant that politics had two sides, viz. the inner side of the political struggle was the destruction of the legacy of the bourgeois régime, or the crushing of the counterrevolutionary attempts of the bourgeoisie, and building, i.e. following an economic policy which was for practical purposes directed to the building of socialism. In this connexion Lenin stated that politics and economy had in the eyes of the bourgeoisie drifted away from each other. As a matter of fact the trend of thought of the bourgeoisie was: go on working and in the market you would get everything, while economic policy is the business of your masters. Lenin made very instructive statements of the roots of foreign and home policy. He made it clear that both foreign and home policy were associated with the economic interests of the ruling class, i.e. both were defined by economic interests. In political activities this fact should go astray in the maze and labyrinth of the intrigues of diplomacy. Nor could we discover in the background of statements and promises the interests of one class or another. Without the knowledge of the class association of interests

we become victims of deception and self-deception. This was explained also by the fact that every institution relied on the forces of one class or the other. In his work *"Relations with the bourgeois parties"* Lenin explained that he who rejected the theory of class warfare and failed to explore (a) the class whose interests defined the policy of the various parties and (b) what dominant interest defined them, was not a true Marxist. In his writing: "On the occasion of an article of the paper of the Bund" he emphasized that politics had their objective logic, and that this objective logic was independent of the preliminary setting of targets by persons and the targets of the parties. He also made it clear that there could be certain technical agreements between the parties representing different class interests, still these would not bring about political blocks, so that special attention had to be paid to these agreements. In fact behind the veil of "technical" agreements the idea of a political block might stubbornly push through. In connexion with politics Lenin declared that politics required elasticity, skilful transition, therefore the complete subordination of the policy-enforcing state machinery to politics must be guaranteed. It should be remembered that the firmer the machinery was as an aid, the better and appropriate it was for manoeuvring. If a machinery became rigid, it would merely hamper the enforcement of a definite policy. Lenin analyzed the peculiarities of a revolutionary policy. He emphasized the following: (a) A political standpoint means that in the name of the organization the given situation must be appraised, a fighting slogan suiting the situation must be sounded, and the activity of the masses must be guaranteed; And evaluation must be carried out by the vanguard. (b) Only exactly confirmed, i.e. irrefutable facts could be accepted as the premise of a policy. Only facts should be accepted as the basis which permit an accurate and objective study; (c) Policy is the best if it is straightforward and open. A principal policy is always the most practicable policy. Questions of principle should always be settled beforehand, because questions of detail arise, the principles are always needed; it would be unprincipledness to rule without them; (d) There are errors in politics, the frank admission of a political error always yield profits when it is an error in which whole parties participate and when these parties have a strong influence on the masses; (e) Politics are closely associated with the positive moral properties of the individual. In particular one must be sincere, vigilant, consistent, etc. in politics. Sincerity in politics means the harmony between words and deeds. This is of utmost importance because in politics one has to do with millions of people and not with individuals, and what must be sincere in the first place is politics rather than the individual. There is also treason in politics. Treason can occur for several reasons. It might occur from weakness, yet also intentionally, i.e. from calculation. This distinction between the causes of treason appears from the side of individuals, but in politics there is no difference between the two, for politics decide the lot of millions of men, and it is immaterial for the lot of millions whether people are betrayed because of weakness or calculation; (f) In politics, personal influence is of enormous significance, and so is the addressing of meetings. Lenin made the statement that without these two factors there is no political activity, moreover even writing loses of its political vigour. Consequently politics is a science and an art at the same time. As an art politics consist in a proper assessment of the circumstances in and the moment at, which we are acting; (g) In his work *"The new economic policy and the functions of the committees for the political*

*education of the people*" written in 1921 Lenin explained that politics have two conditions at least, first, that there should be no illiteracy, as this would frustrate a comprehension of the actual policy, and instead false rumors, gossip, fairy tales and a variety of prejudices would be spreading, and, secondly, it should not degenerate into corruption, for corruption was apt to thrust measures expressing the correct policy to the background, and condemn them to failure. From this point of view it cannot be argued that the precondition of a comprehension of policy is the raising of the cultural standards of the masses.

Lenin also analyzed the problem of the withering away of the State. It was particularly in his work *"State and Revolution"* that he exposed his ideas of this theory. He pointed out that the economic basis of the complete withering away of the State is the rise of communism to a stage of evolution where the antagonism between intellectual and physical work disappears, and consequently one of the principal sources of the present inequality of society also disappears, a source which cannot be eliminated merely by the transfer of the means of production to social ownership or the expropriation of the capitalists. Thus Lenin saw the economic basis of the complete withering away of the State in the disappearance of the antagonism between intellectual and physical work. He stated that the State could wither away completely when society had translated into reality the rule "all according to their abilities, all according to their needs", i.e. when men would get used to the observance of the fundamental rules of coexistence and when their work would be fruitful to an extent that they would do work according to their abilities of their own accord. From what has been set forth it is evident that Lenin linked up the disappearance of the antagonism between intellectual and physical work and the translation of the principle "all according to their abilities, all according to their needs" into reality with the technical development of communism to the highest possible degree, this being the precondition of a prevalence of the principles referred to above. Lenin made in clear that it is the enforcement of these two principles that could persuade men to observe the fundamental rules of coexistence, or from another aspect, the enforcement of these principles is the condition of the needlessness of a state machinery, which at the time of transition to communism is still needed although the State of the period of transition is no longer a State in the proper sense of the term. In this work Lenin also pointed out that from a bourgeois point of view it was easy to call this social order a Utopia, and mocking the socialists for their promise that in the new society anybody would have a claim to truffles, motor cars, pianos, etc. of any quantity without their work being submitted to any control. This was ignorance, because the new social order did not presume the actual productivity of work nor the petty bourgeois of these days, who for mere fun would be capable of damaging social property and put forward unreasonable demands. Lenin also emphasized that the term "withering away" suggested a gradedness and spontaneity of the process. In addition Lenin intergrated the withering away of the State with the withering away of democracy. In fact communism would be capable of guaranteeing a true democracy and by that time the problem would be no longer interesting. Finally he made it clear that only communism would bring about conditions in which the State would become wholly superfluous; for there would be "nobody to be oppressed", there would be nobody to be oppressed in the interest of a class in the sense of an

organized campaign against a definite section of the population. Lenin said that we are no utopians, we do not deny the contingency, moreover inevitability, of the commission of offences by certain persons and also that such offences must be prosecuted. Still, in the first place, for this purpose no separate mechanism was needed, or a separate power-enforcing system, this would be done by the armed people (here it should be remarked that Lenin considered the soviets of the worker and soldier delegates to be the organization of the armed masses) in as simple and easy a manner as actually any group of civilized persons would separate a crowd of ruffians, or prevent women from being raped. Secondly, everybody knew that offences consisting in the infringement of the rules of social coexistence had their cause in the exploitation, misery and penury of the masses. With the elimination of these principal causes also the offences would begin to "wither away". Nobody knew how rapidly and gradually this would take place, still everybody knew that the causes would eventually wither away. Together with the withering away of these causes also the State would wither away.

In his works Lenin exposed a number of fundamental theses not only such as related to the State, but also those concerning the law.

In connexion with the essence of law, Lenin set forth that the law was the expression of the will of the ruling class, and pointed out that no law whatever could restrict the ruling classes in the expression of their will. In his writing "Controversial standpoint" he emphasized that the will, if it was that of the State, must find expression in the form of a statute promulgated by the sovereign power, or else the word "will" is but a vibration of the air produced by mere sound. In his work "*State and Revolution*" he made the momentous remark that any law meant the application of a uniform standard to various men, who in reality were unequal. In connexion with the exploiting type of law he stated in his writing "*A noteworthy affair*" that it is the landowners who make the statutes, and it is they who in practice applied or rescinded them. Hence the landowner class made and repealed the law. Consequently the landowners were also zealous backers of the law, yet of the law of landowners, of their class. Consequently it was ridiculous to speak of law in these circumstances. Further he made it clear that capitalist law paired formal equality with social and economic equality and did not recognize the inequalities openly, although it even failed to carry through the formal i.e. legal equality in any consistent manner. Studying the problems of the bourgeois type of law in "*The proletarian revolution and the renegade Kautsky*" Lenin criticized Kautsky, because he, Kautsky, failed to notice that the reactionary bourgeois jurists worked out statutory provisions going into the minutest detail to "squeeze" the working man.

On analyzing the socialist type of law, Lenin by referring to the "*Critique of the Gotha Programme*" of Marx, made it clear that in socialism there was need not only for the State but also for the law and that in socialism bourgeois law would cease to exist partially only and not altogether. Namely bourgeois law brought under regulation the distribution of goods and also of work, and in the course of this process it allotted an equal quantity of goods to unequal persons for work of an actually unequal amount. This was, Lenin pointed out in the "*State and Revolution*", a hangover of the earlier type of law in the new type of law. Lenin then drew the conclusion that in socialism we do not yet surpass the narrow horizon of bourgeois law. In his "*Letter to the American*

workers" he emphasized that politically the law carried into effect true equality, as in fact it guaranteed the freedom of combination and assembly for the partisans of socialism, i.e. the equality of the workers and peasants, however, it suppressed the enemies of socialism.

Lenin also analyzed the questions of lawmaking or legislation in all its details. He expressed his opinion that in a socialist society legislation was quick enough. No other powers knew such a high-speed legislation as that of Soviet-Russia. Time would show whether the near future would not compel these powers to follow a little in the wake of Soviet-Russia.

On analyzing the class content of legislation he also stated that e.g. the constitution, i.e. the fundamental statute of the State also expressed the power relations as they actually existed in class warfare and that in certain circumstances the constitution, too, openly recognized inequality. In connexion with the emancipation of women, Lenin made it clear that statutes by themselves were as a matter of course insufficient, and that Soviet-Russia would by no means be satisfied merely with the promulgation of decrees. But as concerns legislation Soviet-Russia did all she had to do in order to guarantee for women a legal position equal to that of men, and Soviet-Russia could pride herself for this. It was evident that statutes by themselves were not sufficient, still they meant a considerable force, first, for reasons of propaganda, and, secondly, for their actual enforcement. In this connexion Lenin referred to the fact that the Soviet statutes were landmarks on the path of the evolution of a new form of living, that they provided facilities for the unfolding of "the decisive factor of the new society", i.e. of the living creative force of the masses, which in turn would make up and translate into reality the process indicated by the statutes. Lenin exposed this idea in his *"Answer to the questions of the leftist socialrevolutionaries"*. In the Seventh Congress of the Russian Communist (bolshevik) Party Lenin, in connexion with legislation, stated that there were men who said that there was no need for compiling this enormous number of decrees, and reproach the Soviet government for its undertaking to compile decrees before it knew how these could be carried into effect. Strictly speaking these persons did not notice how they had sunk to the level of the white guardists. We should be idiots if we believed that rural life as a whole would change because of the promulgation of a few hundred decrees. Still we should become the traitors of socialism if we waived to mark out the path to socialism in decrees. The decrees which could not be carried through at the time and in their entirety, had a considerable function for the purpose of propaganda. If earlier universal truths were used for propaganda, now it was work which was propagated. The decrees of the Soviet power were as many appeals to the masses for practical work. The decrees were instructions which called the masses to practical work. This was of importance. Let there be much useless things in these decrees, which would never be carried through in life; but there was still enough for practical activity, and it was the function of the decrees to teach the hundreds and thousands and millions of men who listened to the word of the Soviet power, to take practical action. Lenin clearly indicated the propagandistic nature of law, however, this did not mean the blurring of the coercive nature of the law. Lenin drew the conclusion that law existed only in the State and only the State could lend a compulsory force to the law. Therefore customs could not acquire legal significance unless they are sanctioned by one of the agencies of the State. Namely one can speak of law only

at a definite stage of historical evolution, from the moment when classes and the State came into being. In fact, without a law-enforcing organization law was nothing.

Lenin also analyzed the problems of the application of the law. On studying the application of law he set forth noteworthy theses in connexion with the interpretation of legal provisions. In his work *"The proletarian revolution and the renegade Kautsky"* in connexion with the bourgeois application of the law, he set forth that the lawyers and civil servants knew to interpret the law in such a way as to prevent the worker and the peasants from breaking through the barbed-wire defences of the law. This is but arbitrariness. Furthermore in his "Account rendered on the work of the Council of the People's Commissars" he wrote that the bourgeois administration of justice was in reality the blind, crafty, cunning tool of the unrelenting oppression of the exploited. The bourgeois administration of justice always protected the interests of the moneybag, or, in other words, in the capitalist society the judiciary was the mechanism of oppression and exploitation. Of the socialist administration of justice he said that its organization demanded the destruction of the institutions of the earlier bourgeois administration of justice and that the judges had to carry into effect the will of the proletariat. In his writing *"The draft programme of the Russian Communist (bolshevik) Party"*, published in 1919, he declared that if there was no statute, the judge must be guided by the socialist consciousness of law. If the law hampered the evolution of the revolution, one must not flinch from its sanctity, but must quash it. The earlier statutes must be liquidated, however, this was merely a clearing of the soil, but no construction work. He declared that after the proletariat had taken all power into its hands the judges must be elected from among the workers and only by the workers. This had in fact been carried through in the whole organization of the judiciary. In connexion with the judiciary he emphasized that there was the enormous task to educate the masses to discipline of labour. Such courts had to be organized within as wide a scope as possible, by extending their activities to the whole productive life of the country. Provided that only the broadest masses of the toiling and exploited population took part in them, such courts would in democratic forms, in conformity with the principles of the Soviet power, achieve that discipline and self-control did not remain mere desires. Only these courts could achieve that there should be revolutionary power in the country, which in words was recognized by all who spoke of the dictatorship of the proletariat, yet instead often some sort of an amorphous mass appeared in the guise of dictatorship.

Lenin too analyzed the problems of legality in all their bearings. In the first place he dealt with socialist legality. In 1919 he declared that the most rigorous revolutionary order must be maintained, the statutes and decrees of the Soviet power must be observed strictly and the enforcement of these statutes and decrees should be made the duty of everybody. He stated that legality was not that of Kaluga, or Kazan, but that it must be uniform throughout Russia, moreover in the entire Soviet Republic. In his appeal *"To the Population"* he insisted on the strict observation of legality. "Create as rigorous a revolutionary order as possible, unrelentingly suppress the drunkards, hooligans, the counter-revolutionary cadets, the Kornilovists and the anarchistic tendencies of persons similar to these." In his *"Letter to the workers and peasants on the occasion of the victory over Koltschak"* he made it clear that the



slightest unlawfulness, the smallest infringement of the Soviet order was a gap of which the enemies of the worker would make immediate use, and in particular the partisans of the former systems hiding in the various agencies of the sovereign power. Lenin emphasized that with the aid of the law the war had to be carried on against bureaucratism and protracting tactics, and also against corruption. To this end the statutes must be enforced which guaranteed the participation of the workers in public administration and the raising of the educational level of the workers. At the same time Lenin demanded that corruption, i.e. bribing and lobbying, should be punished with imprisonment of ten years at least and with forced labour of another ten years.

In his work *"The two worlds"* (1910) Lenin stated that although the struggle of the proletariat could be carried out on the soil of bourgeois legality, still the final goal of class warfare must be discovered "behind the tinsel of constitutional legality". As a matter of fact, in order to keep its power the bourgeoisie cannot but disregard its own legality. The period of the exploitation of legality created by the bourgeoisie would be superseded by the period of fiercest revolutionary battles, and essentially these battles would amount to the destruction of bourgeois legality and bourgeois order as a whole, and as for their form they would inevitably begin with the bourgeoisie's catching at every straw to rid itself of its own-made, yet unbearable legality. Hence for keeping its power the bourgeoisie would be forced to disregard its own legality. The revolutionary party must avail itself of bourgeois legality, for that matter it has no reason whatever to ignore the advantage implied in the fact that the enemy was now entangled in its own legality, that the enemy was forced to "fire" first, and disregard its own laws. Naturally, as Lenin made it clear in his *"Conditions of admission to the Communist International"*, the proletariat could not trust bourgeois legality, as the bourgeoisie could decree a state of siege and introduce emergency statutes. Therefore the proletariat must organize an underground machinery and combine lawful and unlawful operations. This was the only way in which the party could act in the interests of the proletariat and perform its duties towards the revolution.

Lenin also analyzed the problems of legal relations and the legal system. As regards legal relations he drew a line between the two categories of social conditions and threw light on their peculiarities. He emphasized that the material social relations were those which came to life without penetrating into the consciousness of men. Men, while they bartered their products, entered into production relations without being conscious of the social relations implied here. Lenin pointed out that ideological-social relations were such as had passed the consciousness of men before their formation.

In connexion with the division of the legal system Lenin in a letter addressed to Kursky explained that there were no private affairs; in the sphere of economy everything was of public, and not of private law. This was his fundamental statement as regards the division of the socialist legal system.

In his oeuvre, Lenin enriched the Marxist doctrines on State, politics and law. The expansion of the Marxist doctrines manifested itself in the first place in the light he threw on the mutual relations of democracy and dictatorship, on their contrast and unity, and demonstrated the relations and the differences between the essence and the form of the State. In association with the problems of the type of State he pointed out that, exactly on the grounds of the experience of the Russian revolution of 1905, in the course of the transition

of the capitalist state to a state of the socialist type of democratic dictatorship of the working class and the peasantry might come into being. The conclusions of Lenin in this matter were of significance also for the popular democracies. Lenin discovered the Soviet form of the socialist State and developed his theory on the soviets, by emphasizing that the soviets were a new form of the dictatorship of the working class which in their operation relied on a number of social organizations and associations of the workers and consequently they too manifested themselves as mass organizations. Lenin, while working out the Soviet form of the State, set out from the thesis that the socialist State needed a form of government which would draw the broadest masses of the workers into governmental work. He demonstrated the new peculiarities of socialist democracy in the face of bourgeois democracy, and analyzed the conditions of the prevalence of socialist democracy. He developed the socialist theory of the machinery of the State, exactly by setting out from the statements of Marx on the Paris Commune. He emphasized that in the course of the socialist revolution the earlier machinery of the State must be annihilated and that a new, socialist type of machinery must be created. As regards the State he enriched the theory of Marx and Engels on the withering away of State and law, and in particular defined the economic conditions of this withering away. He cleared the function and significance of socialist law in the regulation of the distribution of products and labour, in particular in its association with the problems of law and equality. He worked out the socialist theory of legality, and emphasized that socialist legality was indispensable in the whole process of the dictatorship of the proletariat. In this connexion he explored the methods of activities of the socialist State and the management of government, and laid special stress on the particular importance of control by the masses in the life of the socialist State.

In the fundamentals of *State and law*, Lenin enriched the teachings of Marx and Engels on the proletarian revolution, and the dictatorship of the proletariat, and worked out a number of theoretical problems relating to the realized socialist State and law.

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Today the principal trend of the evolution of society may be described as the revolutionary transition from capitalism to socialism. This provides the content of the present period. The socialist world system of which various phases may be observed, emerged after the World War II. The birth of the socialist world system may be dated back to 1949. The first phase lasted till 1956. The second phase extends from 1956 to 1961. The third phase began in 1961 and still lasts. In this period new experiences have accumulated in society, whose theoretical generalization has been accomplished in the party platform accepted by the XX<sup>nd</sup> and XXII<sup>nd</sup> Congress of the Communist Party of the Soviet Union.

The XX<sup>nd</sup> and XXII<sup>nd</sup> party congress was the forum where, in association with the principal problems of policy, i.e. the problem of political power, the relations of the working class to the bourgeois state were made subject of an analysis. In the programme it was made clear that in the bourgeois countries the creation of the socialist state of the dictatorship of the proletariat remained the fundamental task of the proletariat, its fundamental strategic goal. It was pointed out that the working class of the western countries and its leading force, the communist parties, did not hope to overthrow the capitalist state

in the revolutionary situation created by a third world war, nor did they reckon with achieving their goal at the expense of a destructive economic crisis. Actually the conditions for the peaceful creation of the socialist state in a parliamentary form had improved, although the armed revolutionary path to socialism was not abandoned. The party programme and other documents made it clear that the socialist state could not mean a "personal dictatorship", it could not mean a system of the abuse of power, nor that after the establishment of the socialist state those taking sides with the communists for the creation of a socialist state would fall victim to what was called "salami tactics". Since a socialist state could be created also by peaceful means, possibly even in a parliamentary way, the communist parties operating in the bourgeois world have worked out their platforms accordingly. The Italian Communist Party has laid down the lines on which it intends to carry on its struggle for "structural reforms". The party insists on the extension of the controlling functions of the bourgeois legislature and believes that the power of the great capitalists can be crushed even before the establishment of the dictatorship of the proletariat. In fact, with the expansion of democracy and with the struggle for state intervention according to a national plan, much can be achieved in property relations. The Italian Communist Party further gives considerable attention to the proper enforcement of a policy of alliances and its consolidation. The French Communist Party has also laid down the principal trends of the struggle for "true democracy". They insist on the restoration of popular sovereignty and in this connexion the extension of the controlling functions of the bourgeois legislature. They also lay stress on the proper enforcement of a policy of alliances with the other parties. In either case the goal is to place the management of governmental affairs under popular control. And this control would bring about the transition from a capitalist state to a socialist state. In order to achieve their targets the communist parties have to carry on an ideological struggle with revisionism and in particular with social democratic ideology. Proclaiming so-called "democratic socialism" social democracy believes that socialism can be achieved also without the creation of the socialist state of the dictatorship of the proletariat and without the transfer of the means of production to public ownership. It cannot be argued that this ideological concept of social democracy reevaluates the notion of socialism, waives the dictatorship of the proletariat and the abolition of the private ownership of the means of production. Social democracy is convinced that by managing a parliamentary majority the just operation of society can be achieved. However, this is a mere illusion, as the bourgeoisie and the financial oligarchy give up power of their own accord on rare historical occasions only. The birth of a socialist state has fundamental regularities and these regularities cannot be ignored. These regularities are the socialist revolution, the guidance of the working people by the Marxist party, which gives expression to the leading function of the working class, further the crushing of the bourgeois political machinery and the revolutionary creative role of the masses in shaping the new state. In this process the dictatorship of the proletariat can be brought about in many forms and the dictatorship itself may have a variety of features.

In the XXII<sup>nd</sup> Congress of the Communist Party of the Soviet Union, the relations of the working class to bourgeois law have also been analyzed. Namely it is the policy of the various communist parties to continue their

struggle for "structural reforms", i.e. so-called "true or genuine" democracy on the ground of present bourgeois constitutions. i.e. the working class makes use of bourgeois law, but it does not identify itself with the underlying capitalist interests and will. The various documents oppose the doctrines according to which bourgeois law, its enforcement and observance, i.e. bourgeois legality, fully serve the interests of the working class. Naturally the existence of bourgeois legality is more for the benefit of the working class than e.g. fascism, where legality was trampled upon. The documents explain that the problems of the class content of bourgeois legality cannot be replaced by the question whether or not the existence of legality or its absence is more favourable for the working class. Undoubtedly, in certain periods, the working class joins in the fight for bourgeois legality and its enforcement. However, the working class cannot accept bourgeois law as its own, and cannot accept bourgeois legality either as its own. In fact the contents of both bourgeois law and legality have a class character, i.e. the two are not "class-indifferent" norms, although the class character will not be obvious in each provision. Hence neither bourgeois law, nor its resultant legality has two parts, the one being of public interest, the other being associated with class warfare. Fundamentally, capitalist law, too, has a duality of functions; first, it has class oppressing functions; and, secondly, functions finding an expression in the maintenance of order. The duality of functions manifests itself in the dialectic unity of content and form, and the class function cannot be segregated from the function expressed in the maintenance of order. Viewed from another angle, this means that the safeguard of bourgeois law and bourgeois legality by the working class has its limitations. It is true that the labour movement may exploit, and even exploits, bourgeois legality for the creation of the socialist state, and the introduction of the dictatorship of the proleariat, still behind the "tinsel of constitutional legality" there is lurking class warfare. This means that the turning to good account of bourgeois legality can never misled the working class as to the class character of bourgeois legality, because in the order of bourgeois legality the share of the working class is a "serious, deepreaching, vital state of war". What follows is that for the working class the advantages afforded by bourgeois law and bourgeois legality have a relative value only, because no trace will remain of bourgeois legality as soon as the existence of bourgeois private property is in jeopardy. Hence socialism has no place within the framework of bourgeois legality. Namely the bourgeois will, as soon as its reason for existence is called into doubt, give up its own legality. Hence the denial of bourgeois legality on principle and the dialectics of its contingent use are but the dialectic of the proclamation and rejection of bourgeois legality. Hence the working class cannot adopt bourgeois law. As soon as it will come to power it will have to create a new legal system, in whose creation the broad masses will have to take part. If, for a period of transition, statutes dating back to bourgeois times will be salvaged, these will have to be interpreted so as to suit the interests of the working class or the whole toiling people.

The XXII<sup>nd</sup> Congress of the Communist Party of the Soviet Union advanced a number of important theoretical statements in connexion with the socialist state. It expressed the doctrine that the dictatorship of the working class would at a definite stage of evolution of the socialist state forfeit its justification, i.e. for the purposes of internal evolution, the dictatorship of

the proletariat would cease to be a necessity in the Soviet Union. The Congress emphasized that the dictatorship of the proletariat guaranteed the complete and final victory of socialism in the Soviet Union, and through its agency the Soviet Union had been transformed into the universal state of the people, an organism representing the interests and will of the people as a whole. With the realization of the first phase of communism, i.e. socialism, the socialist state entered a new phase of its evolution and so proletarian democracy changed over to an allnational socialist democracy. However, the working class, as the most progressive, best organized force of Soviet society would continue to exercise its leading role. This position taken by the XXII<sup>nd</sup> Congress of the Communist Party of the Soviet Union was of fundamental importance for several reasons. It was of importance for the very reason that the proletariat had not in mind to perpetuate its power, i.e. that the socialist state of the dictatorship of the proletariat was merely the state of the period of transition from capitalism to socialism. Hence the working class was the only class in history which did not intend to perpetuate its power. As a matter of fact if the conditions which had called to life the dictatorship of the proletariat would cease to exist, and when also the problems which could be tackled only with the aid of a dictatorship would be solved, then with the leadership of the working class the State would become the universal popular organization of a socialist society. It was made clear that the working class of the Soviet Union converted its dictatorship into a universal popular state, i.e. for the first time in history a state was born which was not the dictatorship of a single class, but the means of society and the people as a whole, and not of the dictatorship of the one or the other class. It was also pointed out that there was no partition wall between the state of the dictatorship of the proletariat and the universal state of the people, the dictatorship of the proletariat itself bore the traits of the universal socialist democracy, traits which would become determining in the subsequent phase. Its metamorphosis into a universal popular State did not weaken the power of the State in the least; on the contrary, this power was even reinforced, as its underlying social basis, this principal source of the strength of the State, had been widened. It was also made clear that although class antagonism had disappeared, the State remained. This is connected with the fact that there were still tasks which could be tackled only with the aid of the State. Consequently the State would continue to live even after socialism had been built up. These tasks were associated with the creation of the material and technical foundations of communism, the change-over of socialist conditions to communist conditions, the control of consumption, the safeguarding of the rights, freedom of the citizens, the defence of the socialist legal order and socialist property, the education of the broad masses to conscious discipline and to a communist attitude to work, the defence and security of the country, and the cooperation of socialist countries with the capitalist world. Consequently the State would go on living even after the victory of socialism. The withering away of the all-national socialist State would take a long time, extend over a whole historical period and come to an end only when society would be completely mature for selfadministration. Naturally in the process of the withering away of the State the elements of political leadership and social self-administration would be intertwined for a definite period, and in the process the internal functions of the State would change and gradually

drop their political character. The State would therefore wither away, and become superfluous only if in the Soviet Union the advanced communist society would be established, and in the international arena socialism gained the upper hand and consolidated.

The XXII<sup>nd</sup> Congress of the Communist Party of the Soviet Union made theoretical statements also in association with socialist law. It emphasized the need for the continued consolidation of the socialist legal order, the postulate of the improvement of the legal norms, and that the various laws, resolutions, decrees and instructions had to be enforced completely. It insisted on the strict observance of socialist legality on the understanding that any breach of it, and any infringement of the law must be prosecuted.

A review of the political and legal opinions of Marx, Engels and Lenin necessarily leads to the conclusion that all the three investigated the most vital problems of State and law. In their analysis of the fundamental problems of State and law they had recourse to a number of political and legal categories. With the aid of these categories they analyzed the content, essence, forms, structure of State and law, and also the problems of the socialist State and law.

The Great October Socialist Revolution has created the first socialist State and law of the world. The socialist system of society at the same time has given a shape to the theory of State and law as a uniform political science, which deals with the principal phenomena of politics and policy, i.e. with State and law. Several phases may be distinguished in the evolution of the independent Marxist theory of State and law, and one may say that this autonomous branch of science, viz. political science, in particular after the XXII<sup>nd</sup> Congress of the Communist Party of the Soviet Union, has entered a phase of remarkable development. Actually, the theory of State and law tries to suppress the dogmatic political tendencies in the theory of State and law flourishing in the "fifties, and their remnants, and for a study of the problems of State and law on a general level endeavours to apply a complex method. It is hoped that by this method the theory of State and law will effectively promote the research of the principal phenomena of politics, and of the socialist State and law, in particular in their relations to the governmental agencies, in order to develop public activity and improve the effectiveness of the legal norms. The theory of State and law as an autonomous branch of science dealing with the origins of State and law, their essence, significance, regularities, evolution makes use of the laws and categories of dialectic and historical materialism, relies on scientific socialism and the results of research in sociology, the psychology of society, the historical sciences and the branches of jurisprudence. At present the theory of State and law teaches that the principal regularities of State and law have to be grasped within the theory of State and law from various aspects. The theory of State and law, studying the principal regularities of State and law, at the same time emphasized the close relationship existing between State, law and politics.

The theory of State and law deals with political phenomena.

Namely the State is a political institution. It was not by mere accident that Lenin emphasized the unbreakable ties between politics and State, when he made it clear that politics were, strictly speaking, participation in the affairs of the State, the guidance of the State, the definition of the form and functions of the State, and of the content of its activities. Viewing the State

from another aspect, the classics of Marxism emphasized that any general statement transmitted by the State would receive a political character. The specific, or political side of the various classes of society, various nations and other social and economic communities is exactly implied in the fact that these relations demand a State. More precisely the economically ruling class becomes a politically ruling class with the aid of the State, or, in other words, domination with the aid of the sovereign power amounts to domination in the political sense. Consequently the State and its activity are the principal aspects of political life, i.e. not a specific aspect or routine element of it. The political life of society is in its entirety associated with the sovereign power and the relations to the content of governmental functions. Consequently politics are inseparably tied up with the specific governmental side of the life of society. Or, from another aspect: without an analysis of the State or without a respect for the forms of the State and the peculiarities of politically organized activities, one cannot find one's way.

Law, too, is a political institution. In this case, too, it was not by mere accident that Lenin again stressed the unbreakable ties between politics and law, when he exposed that law, or the statutes, were political standards or policy, i.e. legislation was a political act. The specific aspects, or the political side of the relations between the various classes of society, or the different nations and other social and economic communities, are also implied in the fact that all these demand some law. Consequently politics have a legal side as well as a specifically legal side. i.e. the economically ruling class ensures its political domination not only with the aid of the sovereign power, but also with the aid of the law. Political life of society is on the whole associated with relations defined by the law. Consequently there are unbreakable ties between politics and the specifically legal side of the life of society. Consequently without the analysis of law no one can take one's bearings in the political life of society, i.e. the forms of the law, the peculiarities of its function will have to be respected in each case.

From what has been set forth above it stands to reason that politics are closely associated with State and law; however, it is also true that State and law are not merely tied up with one another, but mutually permeate each other; neither operates by itself without the other. This means that the State is a legal phenomenon and that law, too, is a phenomenon of the State, or political phenomenon. This was emphasized also by the classics of Marxism by teaching the simultaneous origin of State and law. Namely law is the manifestation and safeguard of the economic interests of the ruling class. The safeguard of these interests is not simply one of the functions of the State, but one of the most important basic means of political activity. Hence the State depends on law in about the same degree as law depends on the State. Therefore it is impossible to study the State segregated from legal regulation.

These discussions do not want to say as if the theory of State and law had lost its independence as a branch of science, or had coalesced with politics. The peculiarities of State and law have to be surveyed also in their relations to other political phenomena. The relations of State and law to politics cannot be interpreted in a simplified form, because as the weapons of the politics of classes both possess a certain degree of independence, and this independence lends a certain peculiarity to State and law in the wide sphere of political life. State and law are subject to politics. Both are weapons and

forms of politics. Naturally this cannot mean as if in the process of translation of politics into reality e.g. the laws of the socialist State could be set aside. It is essential therefore that there should exist a strict harmony between politics and law. Hence the law cannot be ignored: it can be changed or repealed only in the order established by statute. On this consideration the political principles have to find an expression in the legal forms, in conformity with the constitution. Consequently recourse to the legal forms is of fundamental significance in the elaboration of a scientifically established policy.

Hence it cannot be argued that the theory of State and law established in an autonomous form is a vital portion of Marxist—Leninist political science; it is political science by itself in the above meaning, and therefore the attempts to shape a so-called autonomous socialist political science provoke serious doubts, because this would suggest as if other social sciences were non-political. However, this is merely paradoxical. In this respect it has to be emphasized that no aspect of social life exists in a manner isolated from politics, i.e. from politics where the fundamental and most vital interest of the various social and economic groups constituting society are reflected. On this understanding it cannot be disputed that the interests finding an expression in politics are equally reflected in the subject-matters of the various disciplines of the political sciences, so in the disciplines of philosophy, political economy, in sociology as a group of disciplines, in history, and in political and legal sciences, and within the latter in the theory of State and law. Furthermore it cannot be doubted that this statement applies also to other branches of the socialist political and legal sciences, although in a most striking manner to constitutional law. In fact these interests manifest themselves in all branches of the political and legal sciences, as the infringement of any legal provision exposed or studied within their scope is associated with the violation of a scientifically established policy.

Hence the theory of State and law occupies a prominent position in the system of political sciences. In fact politics are present in the whole system of categories analyzed by the theory of State and law. Thus politics manifests themselves at the study of the mechanism of the State and its form, the sovereignty of the State, the functions of the State, or even at the study of e.g. the categories of legislation, the application of law and legality. Consequently actually there is a demand for the intensification of the role of the theory of State and law in the analysis of political phenomena. All this is associated with the fact that State and law have momentous functions in the life of society. This calls for an improvement and enrichment of the system of political and legal categories within the theory of State and law in order that these categories might give a more complete, profounder and many-sided expression to the concrete forms, distinctive features and specific traits of the political and legal phenomena and processes of the present age. At the same time it is a fundamental function of the theory of State and law to appraise and criticize the political and legal categories living in bourgeois political science and political sociology. From this point of view the theory of State and law is of particular importance in a socialist society for the understanding and solution of the political problems. Without the political and legal categories analyzed within the theory of State and law, a correct political analysis of the processes of a socialist society would become impossible. Naturally an understanding by itself would not suffice: the ideas manifesting themselves



in these categories have to be applied consistently. The theory of State and law is a discipline whose objective is to raise and at the same time solve any new problem of the political life of a socialist society. The theses of theory depend on objective relations, and their translation into reality depends on the degree of their elaboration.

On the ground of what has been set forth here, the theory of State and law may appreciably contribute to a study of politics and promote the evolution of Marxist political doctrine.

#### BASIC LITERATURE

*Abramowski, G.*: Das Geschichtsbild Max Webers. Stuttgart, 1966.; *Antalffy György*: Állam és demokrácia. Budapest, 1967.; *Antalffy György*: Über einige neuere Probleme der sozialistischen Staatsentwicklung. "Wissenschaftliche Zeitschrift der Ernst-Moritz Arndt Universität" (Greifswald) Vol. XIII. 1964. in "Gesellschafts- und sprachwissenschaftliche Reihe" N° 3., 1964.; *Babeuf et les problèmes du babouvisme*. Paris, 1963.; *Blanqui, Auguste válogatott művei*. Válogatta, bevezetőjét írta és jegyzetekkel ellátta: Jemnitz János. Fordította: Remsei Flóra. Budapest, 1968.; *Bravo, Gian Carlo*: Les socialistes avant Marx. Vol. I—III. Trad. de l'italien par Alice Théron. Paris, 1970.; *Cabet, E.*: Voyage en Icarie. 1840.; *Campanella, T.*: A napváros. Fordította, előszóval és jegyzetekkel ellátta: Sallay Géza. Budapest, 1959.; *Coletti, L.*: Il marxismo come sociologia, in. "Società" N° 4. Iuglio 1959 (Roma).; *Del Noce, A.*: Classi sociali e dottrina marxista, in "Le classi e l'evoluzione sociale". Roma, 1959.; *Egyetemes filozófiatörténet*. Budapest, 1963.; *Engels, F.*: "Anti-Dühring". Budapest, 1950.; *Engels, F.*: A család, a magántulajdon és az állam eredete, in Marx—Engels: Válogatott Művek, Vol. 2., Budapest, 1949.; *Engels, F.*: Feuerbach és a klasszikus német filozófia alkonya. Budapest, 1945.; *Engels, F.*: A természet dialektikája. Budapest, 1952.; *Farkas Endre*: Erkölcs és politika. Lenin etikai hagyatékából. Budapest, 1970.; *A filozófia története, 1—6. kötet*. Szerkesztette: Dinnyik, M. A.—Jovcsuk, T. Fordította: Hazai Lujza. Budapest, 1968.; *Formánek, Miroslav*: K dialektics demokracie. "Sociologický Časopis" N° 1. 1971. (Praha).; *Gyeborin, A. M.*: Az újkor társadalmi és politikai tanai. Fordította: Józsa Péter. Budapest, 1962.; *Juarès, J.*: Histoire socialiste de la Révolution française. Paris. 1923.; *Керимов, Д. А.*: Общая теория государства и Ленинград, 1961.; *Kohn, H.*: Ideologie politiche del ventesimo secolo. Firenze, 1964.; *Kovács István*: A burzsoá alkotmányosság válsága. Budapest, 1953.; *Kovács István*: General problems of rights, in "Socialist concept of human rights". Budapest, 1966.; *Кузьмин, З. М.*: Буржуазная демократия: кризис институтов, бесплодность доктрин. "Советское Государство и Право" № 9. 1970. (Москва); *Мейст, О. Е.*: Вопросы государства и права в трудах социалистов-утопистов XVI—XVII. веков. Москва, 1966.; *Lenin, V. I.*: Összes Művei. Vol. 1—34. Budapest, 1963—1967.; *Lenin, V. I.*: The State and Revolution. Progress Publishers. Moscow, 1969.; *Lukács György*: A polgári filozófia válsága. Budapest, 1947.; *Lukács György*: Történelem és osztálytudat. Budapest, 1971.; *Marat, J. P.*: Válogatott írásai. Budapest, 1950.; *Marton Imre*: Eszmék és téveszmék a harmadik világban. Buda-

pest, 1969.; *Marx, K.*: Grundrisse der Kritik der politischen Oekonomie. Berlin, 1953.; *Marx, K.—Engels, F.*: Válogatott művek. Vol. I—II. Budapest, 1949.; *Marx, K.* Zur Kritik der Hegelschen Rechtsphilosophie. 1843—1964. (Budapest); *Мамут, М. С.*: Критика политической идеологии анархизма. "Советское Государство и Право" № 9, 1970. (Москва); *Mátyás Antal*: A polgári közgazdaságtan rövid története a marxizmus létrejötté előtt. Budapest, 1961.; *Morus*: Utopia. Fordította és bevezetővel ellátta: Geréb László. Budapest, 1941.; *Meusel, Alfred*: Thomas Münzer und seine Zeit. Berlin, 1952.; *Morgan, L. H.* Az ősi társadalom. Budapest, 1961.; *Mosca, Gaetano—Bouthoul, Gaston*: Histoire des doctrines politiques. Depuis l'antiquité. Paris, 1969.; *Owen, Robert válogatott írásai*. Válogatta és a bevezető tanulmányt írta: A. L. Morton. Fordította: Forgács Géza. Budapest, 1965.; *Pándi Pál*: Deux réponses. L'accueil du socialisme utopiste en Hongrie à l'époque des réformes nationales. "Acta Litteraria Academiae Scientiarum Hungaricae" Tom. 8. (3—4.), 1966. (Budapest); *Péteri Zoltán*: La science politique bourgeoise et la théorie marxiste—léniniste de l'Etat. "Acta Juridica" Tom. 6. 1848.; *Против современной идеологии империализма. Сборник статей*. Ред. В. А. Туманов. Москва, 1962.; *Rátz Kálmán*: Utópista szocialisták. Budapest, é. n.; *Ruyssen, Théodore*: Les sources doctrinales de l'internationalisme. Vol. I—II. Paris, 1954.; *Robespierre*: Emlékiratai. Budapest, 1944.; *Salomon-Delattour, G.*: Moderne Staatslehren. Berlin, 1955.; *Sain-Simon herceg emlékezései*. Válogatás. Válogatta, fordított és a bevezető tanulmányt írta: Győry János. Budapest, 1960.; *Claude—Henri Saint-Simon válogatott írásai*. Fordította: Justus Pál. Összeállította és jegyzetekkel ellátta: Nyilas Vera. Budapest, 1963.; *Szabó Imre*: Political and legal Sciences, in "Science in Hungary". Edited by Erdély-Grúz Tibor, Trencsényi-Waldapfel Imre. Corvina Press, Budapest, 1965.; *Székely András*: „Mindenki legyen mindenható...” Az anárchizmus útja Proudhontól Kropotkinig. „Világosság” № 7. 1969. (Budapest); *Sztodolnik László*: A jogállam eszméjének színváltozásai. Budapest, 1963.; A Szovjetunió Kommunista Pártja XXII. kongresszusának anyaga. Budapest, 1961.; *Sztucska, P.I.*: A general Doctrine of Law (in Soviet Legal Philosophy). Cambridge, 1951.; *Tadić, L.*: Odnos bitka i trebanja (Sein und Sollen) u Kelzenovom pravofilosofskom sistemu. „Godišnjak pravnog fakulteta u Sarajevu” VIII. 1959.; *Touchard, Jean*: Histoire des idées politiques. Vol. I—II. Paris, 1959.; *Туманов, В. А.*: Современные буржуазные учения о капиталистическом государстве. Москва, 1967.; *Utopie et Institutions... au XVIII. siècle*. Paris, 1963.; *Weber, Max*: Állam, politika, tudomány, Tanulmányok. Összeállította: Kemény István és Varga István. Fordította: Józsa Péter. Budapest, 1970.; *Zenker, E. V.*: Der Anarchismus. Jena, 1895.