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PHILOSOPHICAL STATISM AND THE ILLUSIONS OF CITIZENSHIP. REFLECTIONS ON THE NEUTRAL STATE

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ABSTRACT

The liberal view of society as an order of law is fundamentally opposed to the (idea of the) state and to the idea that legislation is the source of law. From an analysis of the statist philosophies of Hobbes, Aristotle, Plato, Rousseau and Marx, it is shown that neutrality is not and cannot be an objective of the state. Law and state stand for completely different conceptions of human societies and only law is characterised by neutrality and can, therefore, respect personal morality.

1. *Introduction*

Is the welfare state neutral to personal morality?[1] In today's welfare states one can find numerous life-styles existing side by side. These indicate a wide scope for 'personal moralities',[2] but do not prove that the welfare state is 'neutral' to them. Welfare states interfere in more or less

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[1] This question serves as the title of the second section of the Hayek Symposium (held at the University of Gent, March 17, 1995). Since I do not believe that the question of moral neutrality arises only or in a special sense with respect to the welfare state, I shall not pretend that it does.

[2] The phrase 'a personal morality', as used here, refers to a personal commitment to some vision of what makes life good and worthwhile, a code of conduct, or a particular set of values. I make no a priori assumptions about the sources of this commitment, nor about the particular content of the morality in question. However, it is necessary to assume that a personal morality does not require the person holding it to [attempt to] force others to accept it.

onerous ways with the business of [private] life with police checks, administrative controls and a vast arsenal of regulatory, penal and/or fiscal regimes. Some of the regulations may be more or less reasonable attempts to minimise the risk of one person inflicting irreparable damage on others or their property, but a great many are not. It is not too difficult to see the hand of special [economic, ideological, even sectarian] interests in the bulk of the rules and regulations on the books.

The state's non-neutrality is often an unintended outcome, but not always. Officials introduce new regulations with proud declarations of their intention to enforce particular 'moral choices', to treat one thing as a 'merit good' and another as an evil. They also justify intrusive policies with blatantly paternalistic arguments,[3] with self-congratulatory references to an unspecified 'responsibility of the government'. There is no more direct negation of the role of private morality than the claim that one discharges one's own responsibility by depriving others of the opportunity to exercise theirs. As far as protection against onerous interference is concerned, the presumption of innocence — which is the linchpin of the rule of law — counts for very little. One delinquent person or business entity is often enough to let loose the regulatory juggernaut on everybody in the same group or category. In short, the question, whether the welfare state is neutral to personal morality, is largely rhetorical and academic.

Behind the question there is the presupposition that the welfare state *should* be neutral to personal morality, but probably is not. This presupposition, of central importance to liberal political thought, is much more interesting than the question itself. It is equivalent to the idea that the state should protect liberty, and consequently should not interfere with it unless it does so, occasionally and exceptionally, to meet some clear and imminent threat to life or liberty itself. As Locke defined it, liberty consists in a general respect for the rights of all to "order their Actions, and dispose of their Possessions, and Persons as they think fit, within the bounds of the Law of Nature, without asking leave, or depending upon

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[3] Remember their promise (or was it threat) to take care of us "from the cradle to the grave"?

the Will of any other Man".[4] Liberty is neutral to personal moralities, i.e. to the ways in which people order their actions within the bounds of Natural Law. Given the uncertainty and the diversity of conditions they have to face, and given the fact that they cannot fall back on infallible "innate ideas", human beings need liberty to cope with life as well as they can. This liberty is not freedom from obligation or responsibility. It is freedom from obligations unilaterally imposed by others. Or, to put it positively, it is freedom to assume obligations and responsibilities. The state, as a protector of liberty, has no business interfering with how people cope with life, only to see to it that they do so without failing in their natural and self-contracted obligations towards others. The state should be neutral to personal morality.

The liberal thesis, that neutrality is a necessary condition of legitimacy of the state, raises a number of questions. One may wonder whether the thesis itself is coherent. Does it make sense to think of neutrality with respect to personal moralities as *a value*? Does it make sense to believe that the state *can* be neutral in that respect? What exactly *is* a state? I propose that we take a closer look at these questions. I shall begin with

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[4] John Locke, *Two Treatises of Government*, II, Chapter 2, paragraph 4. Locke explains what he means by 'the bounds of the Law of Nature' in paragraph 6 of the same chapter. His 'Law of Nature' is an amalgam of naturalistic and theological ideas. Locke's naturalism refers to the natural fact of the separateness of persons, all of whom are equally human ("furnished with like Faculties"). The Law of Nature requires men to recognise this fact and to accept its implications: "being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions", "[no one may] unless it be to do Justice on an Offender, take away, or impair the life, or what tends to the Preservation of the Life, the Liberty, Health, Limb or Goods of another." His theology supports the other part of the Law of Nature: "[Man] has not Liberty to destroy himself, or so much as any Creature in his Possession, but where some nobler use, than its bare Preservation calls for it", ""Every one is bound to preserve himself, and not to quit his Station wilfully; so by the like reason when his own Preservation comes not in competition, ought he, as much as he can, to preserve the rest of Mankind". This part of the Law of Nature refers to God's proprietary rights as Creator or Maker of the natural world and of every human being in it. Locke recognised that natural law, be it ever so evident in its principles, has to be applied and enforced under conditions where its implications may not be clear. His naturalism led him to leave these problems to the practical social skills of people in finding mutually acceptable solutions; his theology led him to entrust them to a worldly, yet "sacred", institution: the state. The state should ensure that people continue to serve God, even when they have no direct interest in doing so.

a short discussion of the neutrality thesis itself, and then air some misgivings about the idea of a liberal state. The bulk of this paper will be devoted to what I call 'the philosophy of statism'. By 'statism' I mean the idea that the state is at once a necessary condition for the existence of society and the form of its perfection. As we shall see, statism is radically opposed to the idea of a neutral or impartial attitude towards personal moralities, even to the point of denying that a personal morality is of any value to man.

2. *Liberalism and the State*

2.1 *Law and Liberal Neutrality*

Liberalism (as I understand it[5]) is not primarily a theory of the state. It is a theory of social existence, of its basic structures (law or justice) and dynamic aspects (the continuous exchange of goods, services and ideas — the 'economy' — and of signs of approval and disapproval, sympathy and antipathy — 'morality'). Its political theory, or theory of government, addresses the problems of maintaining a general respect for law, and of providing for the elucidation, administration, enforcement of justice. 'Law' and 'justice' refer to the bonds or requirements of social existence. Without law, or justice, there is no social mode of existence, hence no society.[6] For the liberal the requirements of society are *free-*

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[5] The term 'liberalism' can be a applied to a wide variety of ideas. I shall use it only to refer to what in the Anglo-American literature is usually called 'Classical Liberalism'. Some of Locke belongs to that tradition, and so does most of Hayek. Following Eric Havelock (*The Liberal Temper in Greek Politics*, London: Jonathan Cape, 1957), Karl Popper (*The Open Society and Its Enemies*, Part I, London: Routledge & Kegan Paul, many editions), and others, I think (but shall not argue here) that it can be traced back to the Sophists' naturalistic and historical teachings on human society.

[6] The term 'society' is somewhat misleading here. It is often used to refer to particular exclusive groups, clubs or companies (associations or organisations with well-defined sets of leaders - officials: directors, managers, governors - and members, a common goal and strategy, a stock of 'social' capital). In liberal political philosophy, 'society' should be understood in an inclusive sense, i.e. as referring to a mode of coexistence and interaction. Sometimes an adjective is used to identify this sense: *open* society (Popper), *great* society (Hayek), *general* society. In Dutch there is a clear distinction between 'maatscha-

dom, *peace* or *friendship*. Each of these terms denotes the same phenomenon: relations are friendly to the extent that no one of those involved poses a threat to the person or the possessions of another, people are free to the extent that no other by force or threat prevents them from being masters of their own life or property, and they live in peace to the extent that not one of them engages in actions that threaten another's person or his possessions.[7] The presupposition of each of these concepts is, that people are separate beings, capable of independent action and judgement, yet vulnerable and interested in one another, and therefore dependent on one another. Law (or justice) translates these natural facts into rules of conduct that is compatible with the requirements of society. The institutions of property, contract and personal liability reflect the separateness of persons in a direct manner; and so does liberal politics (organising for mutual protection and negotiating solutions in cases of disagreement and conflict). I have absolutely no qualms about using the term 'natural law' in this context, as long as it is understood to belong to a naturalistic philosophy, and not pressed into the service of some grand metaphysical or theological scheme.

The neutrality thesis is a direct implication of the liberal concern with law or justice. The requirements of society are the same regardless of the particular circumstances that may prevail at one time or another, in one place or another. They are also the same regardless of the ends, values, preferences, needs, ambitions, beliefs, expectations, and so on, of the people engaged in an interaction. They are, in this very precise sense, neutral to the many ways in which people try to cope with life, as long as they do so in a friendly, peaceful manner, without threatening the freedom of others. Each person needs a 'personal morality' because each

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ppij' (company, exclusive society) and 'samenleving' (inclusive society). In the liberal sense, law belongs to inclusive society. Note that there is no sense in supposing inclusive society to be unlawful; on the other hand, societies/companies can be, and often are, unlawful. In this paper 'society' refers to inclusive society unless another sense is specified by an explicit qualification.

[7] In Germanic languages the similarity of the concepts of peace, friendship and freedom is clear enough from the form of words. E.g. in Dutch: 'vrede', 'vriend', 'vrij'; in German: 'Frieden', 'Freund', 'Frei'. Etymology points to a common root, the Oldindian word 'priya' that originally seems to have meant *one's own* (hence presumably the Latin 'privus', 'privatus'), and later: *dear*, *beloved*.

has to go through a life that is uniquely his own,[8] but law refers directly to the social mode of existence, and only indirectly to the life of any person. A person 'needs' law only if he wishes to live in society.

Academic philosophers often make fun of the liberal notion of neutrality and the corresponding idea that what is lawful is an entirely different matter from what is moral. The fun comes mostly from the fact that the thesis seems to invite the application of a favourite stock-in-trade of academic philosophy: a dialectical argument that seeks to defeat a thesis by showing that it contradicts its own presupposition(s). Concerning liberal neutrality, it has been said that it is a myth because "in order to establish the value of neutrality in the first place, one must deploy reasoning that ends up undermining the moral/legal distinction on which neutrality rests. For to adhere to the value of neutrality is patently to take a moral position: it is to say that it is *better* for the law to allow people to do what is 'morally wrong' than to force them to do what is morally right."[9]

The suggestion is, that we have to 'establish the value of neutrality of law' by 'moral reasoning', and that we cannot consequently deny that the neutrality of law is merely a moral value. I reject the suggestion. As we have seen, neutrality is a characteristic of law, and law reflects the objective, factual, requirements of social existence. To establish just what those requirements are, no moral reasoning is needed. From this natural law perspective, the law is what it is, and the question whether it is better for law to be or do this or that simply does not arise. The question makes sense only when 'law' is equated with 'legislated commands', but this is admissible only in the context of particular or exclusive societies.

Clearly, then, the argument quoted above obfuscates the issue — and

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[8] Because of the diversity of human characters and external conditions, and because life is nothing apart from the experience of living, abstract theorising about the content of 'personal morality' is mostly barren. It may be possible to identify some intrinsic goods on the basis of a general consideration of human nature, but any proposition about their relative values or priorities in particular circumstances is extremely speculative.

[9] Jeffrey Friedman, "Accounting For Political Preferences", in Critical Review, volume V, number 3, 327. For a more extensive criticism of Friedman's argument, see Frank van Dun, "Hayek and Natural Law: The Humean Connection", in J. Birner & R. van Zijp (eds), *Hayek: Coördination and Evolution. His Legacy in Philosophy, Politics, Economics and the History of Ideas*. London: Routledge, 1994, 269-286.

not just with its unwarranted question-begging supposition that things are morally right or wrong regardless of context, regardless of the persons involved in a situation. Note the use of the phrases 'the law allows' and 'the law forces'. It makes sense to discuss what the law allows or does not allow; but to say *that the law forces* does not make any literal sense at all. If it is merely a way of saying that the ruling authorities use force, the question is whether what they enforce is law (in the liberal sense). Surely, it is one thing to ask whether it is better (for whom?) that the rulers allow people to do what the rulers consider to be morally wrong than that they force people to do what they decree to be morally right. It is another thing to ask whether the requirements of society allow people to have different moral convictions or not. Only the latter question is relevant to our discussion. The answer does not depend on 'moral reasoning'.[10]

Besides, is to adhere to the *value* of neutrality really a matter of saying that it is better (again: for whom?) that law is what it is rather than something else, or that it is better that the rulers behave in one way rather than another? It seems to me that to adhere to the value of neutrality is to say that, even if one has the power to do otherwise, one intends to honour the requirements of society, and not to impose one's own ideas about what is better on law-abiding people. It is only after that decision that I can be receptive to moral reasoning in a meaningful sense: reasoning that can stand the test of being spoken out loud in the presence of independent, unintimidated critical minds. But then it is obvious that we establish that a position is moral by showing that it recognises the priority of law over anyone's convictions concerning what is good, better or best. To say that we establish the value of neutrality *by* moral reasoning is to put the cart before the horse.

To see the point more clearly, let us consider the case of one who refuses to adhere to the value of neutrality, who intends to force us to comply with his convictions. Let him rant as much as he wants about our alleged moral deficiencies, are we going to take his ranting for moral reasoning? No. Are we going to assume that the fact, that he is willing to use force, is proof of the truth of his convictions? No. If he persists

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[10] Of course, it may depend on meta-moral reasoning, but the argument was not that liberal neutrality is a myth because it is the conclusion of a particular sort of non-moral argument, namely a meta-moral argument.

and actually begins to move on us, we should see him for what he is — an outlaw or enemy — and act accordingly. The meaning of his actions is that it is better for him to make war than to live peacefully in society with us, and, because it takes two to tango, that it is better for us to make war on him than to pretend that he is in society with us. As Democritus said some twenty-five centuries ago: "If a thing (i.e. beast or man) does injury contrary to right it is needful to kill it. This covers all cases. If a man does so, he shall partake in a greater portion of right and security *in any social order.*"

It seems to me that the liberal neutrality thesis stands firm. However, note that it refers to law, not to the state. In fact, nothing in the preceding arguments refers to the state. It is time, then, to turn our attention to that dominant political institution of modern times.

2.2 *A Liberal State?*

A state typically holds a sovereign legislative power as well as a virtual monopoly of the means of violence (its executive power), the power of the sword as well as the power of the purse, the power to tax as well as the power to spend. The characteristic feature of the state, in theory and in practice, is its claim to legislative sovereignty. The state distinguishes itself from other systems of rule by its claim to be above the law in the very specific sense of being *the supreme or only source of law itself* (and not just of its administration and enforcement): *Quod principi placet, legis habet vigorem.* This is a far more radical "principle" than the traditional rule that the king or ruler is above the law in the sense that he is not bound by law: *Rex legibus solutus.* The latter rule means no more than that the law cannot be invoked against the king, that he enjoys immunity with respect to the sanctions for transgressing the law.

It should be clear that there is a clear tension, perhaps an outright contradiction, between the liberal view of society as an order of law on the one hand, and the idea of a state on the other. The contradiction is most evident when the liberal view is restated in terms of natural rights and the requirement of consent. A natural right (in a naturalistic interpretation of the term) is merely the exercise of a natural power in a way that is compatible with the requirements of society. Except in the unlikely event that a large multitude of people consents to transfer all their real

estate to a single organisation,[11] nothing like a territorial state could lawfully emerge from society. It is far more unlikely still that people do so without stipulating as a condition for the transfer that they should be given some control over the organisation in the form, say, of voting rights or direct access to its decision-making organs. (One may suppose that they would make this stipulation with respect to any organisation they transfer property to, unless they do so in return for a specific service or because they trust it will make better use of the property for an approved purpose.) Most unlikely of all is that they consent to give it an unlimited power to tax and to spend, to regulate contracts to which it is not a party, or to exact services from them. What we may expect is that over time a great variety of service organisations emerge, reflecting the infinite possibilities of contractual arrangements: firms, clubs, charities, leagues, and so on. In fact, this is what did and does happen day in and day out. While some of these organisations (companies or particular exclusive societies) may manage an enormous amount of capital, they are still under the law.

The idea of the state having a lawful origin is just plain silly.[12] Yet that was the idea John Locke proposed to the world in his still widely read *Second Treatise of Government*. At the time Locke wrote, the modern theory of statism had been forcefully defended by Hobbes, but Hobbes had not bothered with a lawful origin of the state. Moreover, the Westphalian treaties had consolidated the Continental state-system. We

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[11] John Locke, *The Second Treatise of Government*, Chapter VIII, paragraphs 119 sqq, tried to present this unlikely event as required by the logic of social contracting: "[E]very Man, when he ... incorporates himself into any Commonwealth, he ... annexed also, and submits to the Community those Possessions, which he has, or shall acquire, that do not already belong to any other Government" (_120). Actually, these paragraphs contain some of Locke's most absolutistic utterings: "[The obligation to obey the laws of the government] reaches as far as the very being of any one within the Territories of that Government" (_119); "[H]e, that has once ... given his Consent to be of any Commonweal, is perpetually and indispensably obliged to be and remain unalterably a Subject to it, and can never be again in the liberty of the state of Nature (_120). To appreciate the illiberality of these statements, just substitute 'woman' for 'man', 'marriage' for 'commonwealth', and 'husband' for 'government'.

[12] Not many people appear to have accepted Robert Nozick's all too complex and convoluted attempt,in *Anarchy, State, and Utopia* (New York: Basic Books, 1972) to provide what he called an 'invisible hand' explanation of the lawful genesis of the state.

may assume that Locke's foremost ambition was to rescue the absolutist state from the clutches of royalism (especially that of the Filmer-variety), and to temper its Hobbesian features by a requirement of formal representation and institutional checks on the executive power. With Filmer he dealt extensively in the *First Treatise*. Locke avoided a direct confrontation with Hobbes, but attempted to get round him by means of revisiting the state of nature. Finding it in peaceful condition, Locke could then redefine the natural rights of men as rights people have when in society. Because the state was supposed to arise within the bosom of society, in response to a perceived problem of co-ordination, it was not tainted with the violence and fear from which the Hobbesian state had sprung. However, it was a state, complete with a sovereign legislative power over its territory and everyone in it. Locke never explained the great mystery why rational men should freely agree to submit to a monolithic, territorially delimited, permanent organisation of rule like the modern state. Modern political liberalism tried to find a solution in minimising the role of the state, by assuming that people in natural society only needed an organisation to deal with the problems of elucidating, administering and enforcing natural law. That interpretation has a strong basis in the texts of Locke. But it does not solve the mystery: why should anyone think that all of these problems would have to be solved by a single organisation, and then only by one with such extraordinary powers as the state?

The mystery is solved, of course, if we drop the Lockean pretence and return to Hobbes: the state was designed not to assist society, but to survive a breakdown of society or state of war.[13] When there is a breakdown of law-based order, the prospects for survival and for a speedy return to normalcy may depend on the form lawlessness takes in the mean time. In this way, and perhaps only in this way, liberalism can be reconciled with the state — by confining the role of the state to large scale emergencies and disasters. This had been the Roman solution: in times of war law is suspended and a dictatorship installed, in the form of the temporary emergency rule of a supreme commander or warlord. But this is not the way things developed. On the contrary, law became hostage to

[13] I take the word 'war' in its broad original sense of *confusion, disorder* (as, in Dutch, *verwarring*).

the state, when the state claimed rulership in times of peace as well as war.

3. *The Philosophy of Statism*

3.1 *Statism: War and Scepticism*

The idea that the state is a form of organised lawlessness is a recurrent theme in liberal thought. It underlies the many attempts to civilise or tame what Hobbes aptly called the "Leviathan". The aim is to institutionalise constitutional checks and balances that mimic the principles and well-tested practices of law. In other words, the liberal idea implies that, at least in times of peace, the state should be controlled by law. In many ways, this constitutional approach was very successful. The implementation of constitutionalist strategies significantly altered the aspect and behaviour of the state. Nevertheless, constitutionalism was more effective as a source of legitimacy than as a check on the powers of the state. Liberals all too easily acquiesced in the state's claim to represent or embody the law, in its usurpation and monopolisation of legislative, judicial and executive powers. In the end, few people were able to understand that law should be the source of legislation rather than its product. The state, the instutionalised form of [preparedness for] lawless war, came to be regarded as a necessary institution of lawful peace.

To the extent that liberals subscribed to this view — and they did so *en masse* — they conceded the main point of political ontology to the apologists of statism: that war, not peace, is the normal or natural condition of human life. This is perhaps *the* most basic axiom of statism. It implies that there can be peace only inside an organisation designed to fight and win wars. It implies that there is no natural society, no spontaneous order. Man plus man equals war. The whole of the statist philosophy is contained in that simple statement.

Liberals may have tried to convince themselves of the lawful character of the state, statists have always denied that there is such a thing as an open inclusive society. Society, for them, is not integrated by law, but by organisation and command. Thus, to the statist, the idea of civilising the Leviathan is incongruous with its very nature: the Leviathan is the

source and mainstay of civilisation; to shackle him[14] is to condemn the world to everlasting war and chaotic confusion.

We should not forget that statism is an ideology, a theory of humanity as bent on self-destruction. According to this theory, personal morality is not a value at all. It is but a symptom of a curse. Modern statism was launched from a platform of profound scepticism. Its philosophical premises were that there is no reason for believing what we believe, no matter with how much conviction, and no reason for believing that what we want or desire, no matter how passionately and sincerely, will do us any good. Consequently the belief, that by acting on one's own judgement one does what is right, must be groundless. The individual human person is a source of error; human interaction is error raised to a power that equals the number of those involved in the interaction. The first requirement of wisdom, then, is that we do not act on the basis of our own beliefs and passions.

3.2 *Hobbes: the Moral Alchemy of Absolute Power*

Hobbes, arguably the most daring architect of modern statism, translated the sceptical position into a "science of politics". He did so by equating a condition in which every man acts on his own judgement — what he called "the natural condition of mankind" — with a universal war of all against all in which life is nasty, brutish and short. This allowed him to define peace among many as a condition in which one judgement directs the actions of all of them. For Hobbes, this one judgement had to be the judgement of one (whether one man, or one body of men acting in concert). Once we grant the initial equation we can no longer deny the need for an absolute monarchy. It emerges as a mathematical truth from its axiomatic base. Thus, although acting on our own judgement is our 'right

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[14] Or perhaps: *her* - in Jewish mythology Leviathan was often depicted as a female monster that ruled the seas and that would ultimately defeat Behemoth, the male monster that ruled the land. In the book of *Job*, where Hobbes probably got the idea of using 'Leviathan' as a metaphor for the state, Leviathan is a male creature of which it is said that "When he raiseth up himself, the mighty are afraid... He maketh a path to shine after him... Upon earth there is not his like, who is made without fear. He beholdeth all high things; he is king over all the children of pride." (41:25-43) Thus, 'Leviathan' stands for all that is awesome, fearless and invincible, like a mythological warrior, or as Hobbes shamelessly but aptly put it: "a mortal god".

by nature', it cannot be right in any moral sense, because it stands in the way of our getting what we want, hence of what is 'good'. Reason cannot but conclude that it is better that we all renounce our natural right to act by the light of our own judgement and submit to the judgement of a single authority, a single ruler or sovereign agent. However, submission to a single authority does not change our nature, and so war always looms just around the corner. It is, then, a requirement of lasting peace, that the sovereign take every precaution to prevent people from acting on their own judgement, from following their own conscience or living according to a personal morality.[15] A state can succeed in its pacifying mission only by keeping the scope for personal morality as small as possible.

Hobbes did not pluck his political theory out of thin air. He drew inspiration from a great tradition of humanist scepticism, associated in his age primarily with such figures as Montaigne and Justus Lipsius.[16] Its roots were the epistemological *skepsis* of the Greek and Hellenistic schools of Antiquity, and the stoic insistence that happiness requires detachment from the passions and affections. The dissociation of action and judgement encouraged a retreat to "the inner citadel", where one could indulge in games of the intellect and the passions without assuming any real responsibility.[17] The inner citadel might be in the mind only, in the enclosed space of one's home, or it might be a blessed circle of intellectual or artistic friends. In any case it offered the occasion for enjoying liberty, but at a price of renouncing all claims to independent

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[15] Among the "Diseases of a Commonwealth, as are of the greatest, and most present danger", "the poyson of the seditious doctrine ... *That every private man is Judge of Good and Evil Actions*" ranks second, immediately after the king's want of absolute power. "Another doctrine repugnant to Civil Society, is, that *whatsoever a man does against his Conscience is Sinne*; and it dependeth on the presumption of making himself judge of Good and Evill." (*Leviathan*, Chapter 29).

[16] Richard Tuck's *Philosophy and Government* (Oxford 1994) extensively discusses the intellectual background of the "revolution" in political thought brought about by Grotius and Hobbes.

[17] In an age when Cartesian dualism was an increasingly influential philosophical paradigm, the idea that the "divine" element, the mind or the soul, exists in a realm apart from the lowly body and material nature, the dissociation of action and judgement could easily appear to be absolutely uncontroversial.

action in the public world — or, what amounts to the same thing: at the price of accepting, and siding with, whatever power ruled the world outside. The ancient Stoics had already discovered how easy it is to claim a quasi-divine omnipotence for the wise man: having rejected the light of his own merely subjective reason as well as the motive force of his affections, he accepts, indeed wants, what is necessary and inevitable, and so, by an impeccable logic, it follows that everything happens according to his will. In this he is, as far as any mortal can be, the equal of Zeus, the ruler of the universe: free, even if his social status is that of a slave, rich, even if without a dime, and completely happy. In a like manner, Hobbes taught his contemporaries to accept and side with the powers that be, and to resolve to make every action a ruler might undertake their own. Think of the ruler as your agent, a mere actor; think of yourself as the author of all he does; and you'll find that you have no injustice to fear from his strength, only from his weakness. Whatever he does to you, you do to yourself: and what you do to yourself cannot be unjust. But when his enemies get you, you suffer injustice: they are not your agents.

The Stoic formula stands as a triumph of moral alchemy: it holds the promise of turning a lowly creature into a god, a poor man into a tycoon, a slave into a master, a subject into a sovereign legislator. However, its application to worldly politics was contestable. Pascal stated the problem clearly in one of his *Pensées*: "Unable to fortify justice, people have justified force". It was inevitable that the Hobbesian application of the Stoic formula should be seen as proof that the state is without virtue, an amalgam of force, intimidation and cowardice, with no redeeming value, except, perhaps, that it permits people to go about their private business as long as they turn a blind eye to what the rulers do to others.

Hobbes' theory has continued to enjoy considerable prestige in academic circles. There is good reason for this: modern statism owes a lot to Hobbes, because in the course of adapting the Stoic formula to the phenomenon of political rule he laid the foundation of the modern conception of citizenship. Citizenship, at least since the days of Aristotle, refers to the problem of reconciling freedom and political rule. Aristotle's proposal for solving this problem had been rather simplistic: free men will take turns at ruling and being ruled, so that in the long run the equality of the free is preserved. According to the modern conception, 'the citizen' also refers indiscriminately to the ruler and the ruled, but in

a stronger sense. It seeks to *identify* the rulers with the ruled, and so to rid the concept of rule of all traces of subordination and oppression. The Hobbesian "social contract" indicates the way to realise this ambition: the ruler commands the ruled, but the ruled authorise the ruler, and therefore indirectly rule themselves. According to this conception, the state is the medium through which people rule themselves. To this day, the thesis of collective self-government remains the general form of "the legitimacy of the state".[18] In Hobbes' theory, however, the form had been all too transparent; at every point the contours of naked power were visible beneath the legal veneer of a common principal-agent relationship.

3.3 *Plato: State and Civil Service*

To infuse the state with substantial, as against merely formal, legitimacy, modern statism could appeal to another venerable tradition of political thought. Its fountainhead was Plato, and again the philosophical base was an extreme form of scepticism. Although Plato made extraordinary claims about the power of philosophy to pierce the veil of ignorance and error and to arrive at certain truth, he was equally insistent that the vast majority of people were condemned to remain forever captive in a morass of fleeting illusions and irrational impulses. That there was any certifiable truth in mere opinion was as unacceptable to Plato as the sceptical sophists' claim that the grand theories of the philosophers were also mere opinions. He did not share the sophists' scepticism concerning philosophy, but his scepticism concerning the theoretical and practical knowledge of ordinary people was if anything more radical than theirs. After all, the sophists made it clear that the lack of epistemological certainty and unshakeable moral foundations does not prevent people from finding viable solutions to the problems of the day, day after day. For Plato, on the other hand, these "solutions" are likely to be accumulations of mere folly. They are part of the problem, if not its main cause: ad hoc responses to unanalyzed difficulties, they provide no fixed rule or measure of

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[18] This form is broad enough to encompass parliamentary democracy as well plebiscitarian dictatorship. Nazism and Fascism are a measure of how far the form can be stretched. *Duce* and *Führer* are words meaning 'leader', and a leader is a leader because people choose to follow him and come to regard him as the supreme representative and embodiment of their own calling or interest.

action; uninformed by reason, they can only be irrational; and irrational social practices breed irrational human beings. Unless we can organise human life on fixed and true foundations, irrationality will continue to grow like a cancer and engulf everybody in a hopeless war of all against all.[19] Scepticism, as a reflection on the human condition, serves to vindicate the claim that war is the natural condition of mankind.

It is not surprising, then, that Plato's political theory, like Hobbes', ends up endorsing monarchy as the only true solution of the human predicament. Plato finds nothing to commend in the idea of a personal morality that is not formed and selected by the state. Long before Hobbes presented his ideal monarchy as one in which "all movement proceeds from the Sovereign", Plato rhapsodised about perfect unity under the supreme authority of a Philosopher-King or a Nocturnal Council.[20] The main distinction with Hobbes is that the Platonic ruler supposedly derives his title to rule from his eminent knowledge or wisdom, whereas the Hobbesian sovereign derives it from his eminent power (or rather: from his subjects' wisdom in resigning themselves to it).

In some ways Plato was a far more astute political thinker than Hobbes, who tended to assume that absolute power was an original gift to the sovereign. The sovereign might subsequently squander it by his foolishness, but how he got it in the first place was not, for Hobbes, a political problem at all. Hobbes was well aware, that in a large "commonwealth" there would always be any number of rival centres of power: popular men, large cities, corporations, churches, universities, independent judges, fiscal officers, monopolists. These, Hobbes insisted, the sovereign would have to keep under tight control, lest they destroy the unity of rule that is the essence of a commonwealth. However, he had very little to say about how the sovereign could make and keep his power absolute. Given Hobbes' naturalistic approach to human interaction, the only plausible method would appear to be the time-honoured practice of making and breaking alliances (*divide et impera*). However, Hobbes could not admit this method, because it presupposes that the sovereign's

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[19] And also, Plato adds, a war of each against himself: people are likely to adopt ever more unhealthy life-styles.

[20] The Nocturnal Council appears in Plato's last work, *The Laws*. The Philosopher-King is the linchpin of 'the city constructed in speech' in *The Republic*.

power is far from absolute, that it depends on the support of others, and is therefore conditional on its being used to their advantage and in accordance with their wishes. The Hobbesian sovereign, it seems, has to buy support: he must be a power-broker, skilled in the art of wheeling-and-dealing. There is no way in which he can stop his potential rivals and powerful subjects from acting on their own judgement in trying to get the most out a given situation. This rules out that "all movement proceeds from the sovereign". When the sovereign is no more than a conduit through which particular interests or personal moralities assert themselves, the fiction that what the sovereign does to a subject is never unjust is destroyed.

Plato, on the other hand, met the problem of absolute power head-on. He had to: his ruler was to be a philosopher, almost by definition a powerless, lonely figure, with no popular support, no inclination for swift and decisive action, no guts for a ruthless pre-emptive strike. Moreover, as the champion of "principle", the philosopher is totally averse to wheeling-and-dealing, to becoming a leader by jumping on every passing bandwagon. A philosopher can be king only by force of the non-mercenary loyalty of his subjects. The key to a well-ordered society, for Plato, is the *construction* of an absolute power-base, the *breeding*, through eugenic manipulation, education and training, of a new kind of men, unconditionally loyal to their ruler, devoid of any inclination to act on their own judgement, to hold beliefs of their own or to be moved by personal passions and affections. They, the guardians of the city, the prototypes of what we now call civil servants, have no individual personality, hence no use for a personal morality. The price of having a state is the renunciation of humanity on the part of its members. Man and state don't mix. This is a direct implication of the axiom that war is the natural condition of mankind. Because Hobbes failed, or refused, to draw this implication, his theory of the state remained incomplete and ultimately incoherent. On the other hand, Plato's theory gave us the notion of the civil servant, but not that of the citizen. His guardians of the city and their helpers were merely servants of the ruler; they served him, and only because he aimed his policies at the common good, did they also serve the general interest of the rest of the population. The farmers, traders, and workers are no more than subjects; they are not in any meaningful sense members of the state.

3.4 *Rouseau: State and Citizen*

It was Jean-Jacques Rousseau who pointed the way to a modern synthesis of statism. It consisted of an infusion of Platonic substance into the Hobbesian form. The synthesis proceeded by a radicalisation of both elements. Rousseau's "social contract" required an unconditional surrender *sans réserve* of each, with all his rights, to all, because otherwise there can be no perfect union or unity. The contract transfers *all* rights to the collective person of the Community or State or People. This collective person is not a pre-existing entity; it is formally created in and by the contract itself. It is one person. Therefore it is nonsense, or a mistake of categories, to apply the logic of human interaction, of plurality, diversity, scarcity, to the relations that constitute the state. They are relations between a whole and itself, a whole and its parts, or between parts of the same whole. Moreover, because the whole, as it is constituted by the original contract, is completely undifferentiated, there is a perfect correspondence between the whole and each of its parts. Therein lies its perfect unity. Of course, this unity refers only to the whole constituted by the contract, i.e. to the rights of many combined into the rights of one. The unity of the state is a legal fiction. In physical terms there is no unity: the contract does not change the natural facts of human existence, in particular: the separateness of persons. That is why it is nonsensical to think, as Hobbes apparently did, that natural human beings can make up a state. On the contrary, the social contract signifies the total and radical renunciation of all claims based on one's individual human nature. In the state no individual as such has any right whatsoever. Only the state has rights; and because the state is by definition a perfect unity, each and every part of the state has the same rights as the whole. Only as a citizen does a person have the same rights as the state itself, but these rights are not his in any proprietary sense: they belong to the whole, and to him only because he is a part of the whole; he can claim them only in so far as he identifies with his role as a citizen. This highly theoretical and abstract construction has but one rationale: to provide a formal solution to the problem of reconciling freedom and rule. That solution is collective self-rule, realised when a People rules itself.

However, a formal solution is not a political solution. In real (as against merely logical) terms, the social contract has no causal impact. It does not make a People out of a mass of men. It does not turn a *man* (a

separate, independent physical being) into a *citizen* (a fictional person with no independent existence or motive force, defined as a part of an as yet unrealised whole). Men continue to be independently active, fallible, passionate creatures, each with an overriding interest in his own preservation and advancement. Each man has his own particular individual "will". A citizen, on the other hand, is by definition congruent with the state as a whole; therefore he has no other interest than the interest of the whole of which he is a part. Consequently, all citizens have, again by definition, the same general will. That they have this will is not a psychological fact, but a logical implication of their being citizens.

Regardless of the consistency and adequacy of the formal solution, the political problem remains: how to make a People, how to transform man into citizen? In his attempt to answer this question, Rousseau resurrected Plato's guardians of the city, again in a far more radical form. Rousseau "democratised" the guardians by insisting 1) that their loyalty was to be to the public interest rather than to the philosopher-king (or, equivalently, that they should be moved only by the General Will), 2) that all persons in the state, and not just those in its governmental apparatus, should conform to the requirements of civil service (so that civil service would be the characteristic business of every citizen), and 3) that the philosopher-king (Rousseau's *législateur*) should be placed outside the power-structure of the state, where he may enjoy an exalted, quasi-divine "moral authority", but no "political power" whatsoever. The latter requirement must ensure that the People retain the legislative power, i.e. the power to give formal legal force to the rules proposed by the wise legislator. These emendations of Plato's theory serve to make it fit the formal requirement of collective self-government. They annihilate its hierarchical class-structure, yet retain its central insight: that in order to make the state work, it is necessary to transform human nature through skilful indoctrination (education, myth, religion) and training. The success of the political project depends, then, on "the secret work" of the *législateur*: on his ability to get people, without their knowing it, and if necessary against their will, to change their mode of existence. If successful, the outcome of this project will be that people *are* citizens, living according to the law (the expression of the General Will), freed from the need to survive on the strength of their own personal judgements.

The one draw-back of Rousseau's theory, from a statist point of view, was that it ruled out an optimistic assessment of the chances for a

successful conclusion of the political project. Everything in it turns on the presence of a succession of wise *législateurs*. Rousseau liked to say that the whole of human history had not produced more than ten such men. All of their great constitutions had perished after a relatively short time, even though they had worked under far more propitious circumstances than one could hope for in the present day and age. It was as if Rousseau wished to stress that the legitimate state is, indeed, a theoretical, but by no means a practical possibility. During the nineteenth century, some schools attempted to by-pass the contingent element of the *législateur*, and to present the coming of a legitimate state as a sort of historical necessity (philosophy or dialectics of history, e.g. in Hegelian or Marxian form).

3.5 *Marx: the Citizen as the New Man*

Marx arguably pushed the concepts of the state and of citizenship to their outermost limits. From Plato to Rousseau the state was viewed primarily, if not exclusively in military and political terms. Plato's guardians assisted the ruler in war and peace, but there is little indication that Plato intended them to "run the economy", except perhaps in times of war. He made it perfectly clear that the economy (or natural society, what he called: the elementary state) has no need for guardians. In his logical reconstruction of the state, the phase of the elementary state covers the whole spectrum from a simple subsistence economy involving a very small number of people (five or six) to a global market economy with a highly developed division and specialisation of labour, extensive trade and sophisticated financial and monetary arrangements. The guardians appear on the scene only when the desire for luxury begins to seek satisfaction through robbery and war. But they do not displace the natural men that inhabit the elementary state; the state of the guardians sits on top of the natural society. Under the rule of the guardians, the ordinary people continue to live as they always had and always will. The Platonic state divides society in a political class and an economic class. The main concern of political theory is the transformation of predatory warriors into socially useful guardians. Rousseau's state obviously could not have this hierarchical class-structure. Nevertheless, Rousseau presupposed a distinction between economic and political activities. Like Plato's, his theory was concerned with the use of political means (violence, force,

coercion), not with economic means (labour and exchange). Consequently, his concept of the citizen applied to men only in so far as they participate in political activity. The economy as such, i.e. the modus vivendi through which people seek to satisfy their needs and to reach their goals without political means, takes care of itself: when politics is under control, economics is no problem. With respect to the economic dimension of life, men could continue to live according to their own nature: there was no need to transform them into citizens. This dualistic view soon became a sort of orthodoxy, enshrined, in France, in the *Déclaration des droits de l'homme et du citoyen*. Each person is at once a human being (holder of *natural* rights) and a citizen (a member of a state, holder of *political* rights).

Marx stood this classical time-honoured view on its head. According to the Marxian analysis, when the economy is under control, politics ceases to be a problem. Marx differentiated actions by the ends they aimed at, not by the means they employed. In his "scientific" view, every end justifies the means necessary or useful to its attainment. Because apportioning means to ends is an economic function, every means is economic. Thus, he could represent slavery and robbery and the state as economic forms and practices. The political is a subset of the economic. For him, political emancipation was only a half-way house. Its principles of citizenship were basically correct, but it was a mistake to apply them only to those economic functions traditional usage identifies as political. One should extend them across the board to all social activities. The idea that man and state don't mix was no more than a half-truth. The full truth, for Marx, was that man and man, or: man and society, don't mix. Consequently, one should jettison the natural rights of men, as they are no more than licenses to disregard the common good. Citizenship, on the other hand, signified the concrete realisation of community; but the community would not be perfect unless it found expression in every social activity — in one's daily work no less than in one's occasional political roles as a voter, representative or civil servant.[21] If there was any place in a well-ordered society for the autonomous individual, it would have to be outside the vital circuits of social organisation, during

[21] This vision of Rousseau's citizen as a model for the New Communist Man concludes part one of Marx's revealing essay on emancipation, *On the Jewish Question* (1844).

moments of leisure, in games and plays.[22]

4. *Statism and the State*

4.1 *The Failure of Statism*

It is time to interrupt our visit to the city of statism. We certainly did not visit every one of its houses and hovels; but we did stop at some of its magnificent palaces. Everywhere we got the same message: neutrality is not an objective of the state; on the contrary, the state's ambition is, or should be, to put an end to the metaphysical sickness of private judgement, at least among its own personnel or with respect to all politically sensitive actions, and ideally in all spheres of social life. We know that Rousseau did not believe this ambition was worth pursuing, except on those necessarily rare occasions, most of them in the distant past, when all the conditions are favourable. We also know that Plato was pessimistic about the chances that a wise ruler would succeed in establishing a durable regime of loyal guardians contented with an ascetic life of service.[23] It seems to me that, before the nineteenth century, philosophical statism was more often presented as an ideal solution that should guide political reforms, but *only* if there was any chance of success; however, as most of the time there is no chance of success, the counsel of prudence is to shelve the statism and to stick to a conservative programme of

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[22] Marx's extension of citizenship to all social activities set the stage for the totalitarian project of remaking mankind, of recasting the raw human material in the mould of the New Man. According to the logic of the theory, state and society would then coincide. When everyone has absorbed the requirements of citizenship, there is no or only a marginal need for a coercive institutions. Most of the totalitarian projects inspired by Marx have now collapsed under the weight of their own inefficiencies. Other projects have attempted to create a new class of guardians, mainly by appealing to racist and nationalistic sentiments. Most of these too have collapsed or spent themselves in bloody wars. However, we need not go into this aspect of the history of the twentieth century.

[23] It is true that Plato, like Rousseau, occasionally went into the business of political consulting, but what advice he gave his 'clients' is not very clear. We do know, however, that Rousseau, as a political consultant, took care to advise against using *Du Contrat Social* as a hands-on reformer's handbook.

maintaining law and tradition.[24]

In retrospect, and judged by its own criteria, the statist project has been a failure. The spectacular growth of the state, especially since the last quarter of the nineteenth century, has not been accompanied by the emergence of the sort of guardian of society, citizen or New Man that Plato, Rousseau or Marx thought necessary to legitimate the social chains of statehood. Instead we have witnessed the emergence, acknowledged even by the social sciences, of bureaucrats and rent-seekers. All the positions that should have been occupied by dedicated, unselfish, even ascetic, civil servants, are filled with precisely the sort of unreconstructed human material the theory declared unfit for a well-ordered state.

The rhetoric of guardianship and citizenship is still very much in evidence, especially in the press and the other mass-media where it allows editorialists to produce "responsible comment" at low intellectual costs, and, of course, in the schools. The rhetoric has a hollow ring: it provides a convenient set of formulas for use in public discourse, but no one takes it too seriously as a guide through the complexities of daily life. Politicians, the masters of public discourse, appreciate it enormously. If it is their mission, as guardians of the state, to recast the raw human material in the mould of the citizen, they should not have any scruples (other than those of electoral or budgetary expediency) about using state power to make people behave. Most of the time, however, when politicians use it, the rhetoric sounds like a pathetic complaint about how "uncooperative" people are, especially when it comes to paying taxes and complying with regulations. People never seem to get the idea that a good citizen is really an unpaid civil servant. The citizens themselves, mere human beings, also sing the praise of citizenship; only to them it means no more than common decency. They think they behave like a good citizen even as they move through life in almost complete ignorance of or disregard for the multitude of regulations that apply to them.

If we restrict ourselves to the far less metaphysical theory of statism advanced by Hobbes, the verdict of failure still stands. While the state is in a sense more powerful than ever before, it is in control of very little. Yet, effective control was the Hobbesian rationale for the concentration

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[24] Hobbes does not fit this interpretation, but then he was more concerned with maintaining an absolutist state than with getting one off the ground.

of power in the hands of the state. "All movement proceeds from the sovereign". The best we can say is, that an extraordinary amount of movement proceeds *through* the sovereign. The sovereign should have been at the top of the power-structure, occupying a place where everything comes together. In reality hardly anything comes together. Except for the in most cases merely formal check at the time the budget is drawn up, no procedure exists for co-ordinating policies. Interest-groups of various colours and stripes are often successful in their attempts to influence, even capture, political and administrative decision-making processes. Dropping their specialists in every major party, they are directly represented in parliament, in its committees, and often enough in the cabinet. If they do not succeed in writing suitable regulations, they still influence the implementation of policy. The name of the game is getting the state to work for you at the expense of whoever happens not to be watching. In Hobbesian terms, the war of all against all continues to rage, except that it is now called 'politics as usual'.

Why did philosophical statism fail when so many great minds have spent so much energy in elaborating it? The easiest, and probably most convincing, answer is, that it built on the wrong foundations. In one form or another the Hobbesian axiom, that war is the natural condition of mankind, underlies all of the statist theories. There may be reservations about whether this natural condition is also the original condition, or whether mankind at some point became alienated from its original nature, lost its innocence, and dissolved into a mass of separate groups and individuals. Nevertheless, whether it postulates an original long-lost unity or not, statism looks forward to unifying society under a single rule of life. It aims at overcoming the separateness of human persons and all it implies: independent decision-making, diversity of opinion, rivalry, self-interest, and ultimately all manifestations of individuality in social relations.

Statism is at bottom a revolt against nature, a refusal to accept what to others is simply an unalterable fact of nature. In this alternative view, originally elaborated by the Sophists and other radical naturalist philosophers of the fifth century BC, human beings survive in this very real world by means of their social skills, their ability to instil respect for the requirements of society by appeals to the sense of honour and shame (*aidoos*) and by insisting on the need for negotiations, arbitration and impartial judgement (*dikè*). That is to say, people learn to develop rules

and conventions for living *with* and *along side* one another, without sacrificing their individuality. The secret of social order is accommodation, not unity. Accommodation takes place in a horizontal plane, where people meet one another, exchange goods and ideas, and then move on to other meetings, other exchanges. Every meeting is a local and temporary affair, preceded and followed and surrounded by countless other meetings involving countless other people. Only memory and anticipation can integrate these meetings into recurring flexible patterns of social behaviour. There is no point above the horizontal plane of human action from which everything can be seen in its totality, let alone controlled. Unity, in contrast, presupposes a vertical dimension, it presupposes just such a point above the plane from which everything, no matter when or where, can be seen, comprehended, and controlled. As long as people thought this point above the plane was reserved for the gods, it symbolised man's humility and fallibility in the face of an unobtainable *scientia divina*. The pretence to rise above the plane of human existence could only be interpreted as self-defeating *hubris*. However, the metaphysical strands in Western philosophy as well as some forms of religious mysticism taught man would not be complete unless he attained that position. The knowledge of all things would then be his, and as it is the same for all, it would unify mankind and end all strife and rivalry. Statism, I submit, is but a translation of this teaching into the language of action and power.

The failure of statism leaves us with a state that embodies all that the statist philosophy abhors.[25] That state is not a unity made possible by an integration along a vertical axis, because no such axis exists or can exist. Rather, the state exists, like all human things, in the horizontal plane. The appearance of verticality is illusory. What creates the illusion is the psychological need to come to terms with the state's ability to do with complete legal impunity and as a matter of daily routine what would immediately be stigmatised as criminal if a 'private person' or 'ordinary citizen' were to attempt it. This ability is a direct affront to the common

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[25] As Rousseau put in his essay *Sur l'économie politique* ("On Political Economy") for the *Encyclopédie*: "We may say that a government has reached the ultimate stage of corruption, when it has no other link to the people than money. But every government always tends to become lax, and that is sufficient proof that no government will subsist unless it continually seeks to increase the revenue."

principles of law. These have their origin in the requirements of life in the horizontal plane. Consequently, there is no way in which to look upon the state as part of a just order, other than to suppose that it answers to a higher justice. On the other hand, if the state is viewed as part of life in the horizontal plane, it appears as nothing more than a particular organisation for satisfying human needs and desires. Far from delivering mankind of the curse of private, and therefore incomplete and unreliable judgement, it makes private judgement the source of "public action". Public action is action that is not bound by the common principles of law. For the statist, such action would be proper only if it issued from a "public judgement". It does not.

4.2 *The Corrupted State*

The consequences are grave. The rise of the state has made it possible for an ever increasing number of persons to accomplish their ends without regard for law. The requirements of society count for very little in an intellectual climate dominated by the belief that there is no such thing as society. So all attention is diverted to the requirements of particular societies (states), that is to say, to setting collective goals and mobilising the means to attain them. There is a standing invitation to all to try to put the machinery of the state and its enormous "public powers" at the service of their own interests. Who can afford to decline the invitation? Who can afford to be left behind in the political rat-race?

Modern apologists of the state like to invent one *social dilemma* after another to vindicate their belief that people in society are impotent to solve their problems of co-ordination and co-operation.[26] The apologists think they have proven their case when all they have demonstrated is that, if he were to exist, their fictional "mortal god", would solve the problems. The real state, however, exists in the horizontal plane and has no advantage except force. There is nothing magical about this force: it is force supplied by people, and used by people against people in order to get what they want at the expense of what less powerful others might

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[26] Top billing goes to the famous *Prisoner's Dilemma* that has been studied and discussed *ad nauseam* by social scientists and psychologists for the past fifty years or so. Few appreciate the irony that the situation that gave the dilemma its name was concocted by a state official to trick two hapless prisoners in his power into an extended stay in jail.

want. If the power grows to be effective, everybody will want his piece of the action; but if everybody does, no one will like the outcome. This is the 'social dilemma' all over again, only this time it does not prove the impotence of lawful society, but of the state itself. It creates the very nightmare statism was designed to ward off. The apologists are blind to fact that the mere existence of the state multiplies and intensifies their vaunted *social dilemma's*.

The process generated by this *political dilemma* exhibits a perverse dynamic of social destruction, a steady depreciation of the social skills. Respect for law forces people to co-operate, to assume full responsibility for their actions, to face the risks and costs their decisions entail. The 'need' for political power is never greater than when the objective is to get what one cannot get lawfully. It is never greater than when the objective is to get out from under one's lawful obligations and to shift one's responsibilities onto unsuspecting others. The "legitimacy" of the use of state power sanctions any "winning coalition", no matter what it wants, as long as it is smart enough to conjure up a "crisis". Any crisis will do. The perverse dynamic ensures that crises are never in short supply. The political merry-go-round never stops, it goes faster with every spin. Critics may explain the "atomization of society", the emergence or re-emergence of a "dual society", by referring to the regulatory labyrinth of the welfare state, its incomprehensible tax laws and catch-as-catch-can fiscal policies, its jealously guarded monopolies over monetary and jural institutions. They may point out that, when business finds itself between the anvil of consumer choice and the hammer of discretionary regulatory and fiscal powers, economic competition is bound to become ugly. However, rather than face up to the realities of what Ludwig von Mises called 'the hampered market', we complain that the hammer is not heavy enough and pour money into smoke-screens such as 'business ethics'. Whatever message the critics send, the message received will be interpreted as a call for new and vigorous political action. Every critique of present conditions is automatically translated into a call for more guardians and better citizens. The axiom of statism, that left to itself society will disintegrate, allows no other conclusion.

The process has not yet run its course. The state may have hit its limits, but it is actively looking for an escape. At the moment, it explores with great interest the possibility of "international co-operation". To the statist intellectuals, this way out promises to blunt the pressure of some

of the more annoying national pressure-groups, and to create a relatively inaccessible sphere where the guardians can rule serenely without being reminded at all times where their power comes from and on what conditions they can keep it. The dream lives on.

5. *Conclusion*

Where do these considerations lead us? The state, especially the welfare state, is not neutral to personal moralities. There is no doubt about that. *Should* the state be neutral to personal morality? A timid answer would be, that it should if it could, but that, as it can't, we should not insist. However, we saw that a number of the greatest thinkers in the statist tradition denied that there was any value in personal moralities. They wanted the state to be a condition of life in which the need for a personal morality would not arise — a condition in which one will, one judgement, would direct all activity. While statism, considered as a program for state builders, has unquestionably failed, the rhetoric of statism (and its corollary: citizenship) continues to be a strong and intimidating force in public affairs. It is still used to urge people to measure themselves and each other against the mirage of the true guardian, the true citizen, the true Social Man. It is utterly naive to expect neutrality from the state.[27]

So where do the misgivings about a lack of neutrality come from? Neutrality, I argued, is a characteristic of law. I also argued, that 'law' and 'state' stand for completely different conceptions of human society. It seems reasonable to conclude, therefore, that misgivings about the lack

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[27] It might be objected that at a deeper level the state is neutral. The argument might be that the state can be captured by any private interest or combination of private interests - that it is not inherently biased with respect to any private morality. This argument implies that the state is merely a form of action and does not specify any particular end or value. In its popular form the argument is that state power can be used for good as well as bad purposes. Nevertheless, the argument fails, because, whether its purpose is "good" or "bad", state action still embodies the particular judgement that the end justifies the means, i.e. the judgement that law should not hinder the powerful from reaching their ends. On the other hand, if we suppose that state power should be used only for the purpose of maintaining law, we re-introduce statism, albeit in its minimal liberal version. We are then supposing that the state is controlled by beings who may look like human beings, but who are not moved by private judgements, interests and prejudices.

of neutrality in the welfare state betray a deep sense of uneasiness about the present form of organised lawlessness. If law is indeed the requirement of social existence, that uneasiness is eminently justified.

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