

The Rise of the Modern (Idea of the) State

DANIE F. M. STRAUSS*

ABSTRACT *Some of the main contours of the development of Western society from ancient Greece and through the medieval era up to the rise of the modern state constitute the substance of this article. In the course of the argumentation the actual history of state formation and the gradual emergence of the idea of the state are accounted for in their mutual intertwinement. It is argued that the transition from the ecclesiastically unified medieval culture to the early starting points for the rise of the modern state is intimately connected to the difference between a kingdom and a republic. But this article stops without entering into a discussion of modern political theories and contemporary political practices—a theme reserved for a different (follow-up) investigation.*

Orientation

The *condition humana* (the human condition) is inseparably connected with practices of co-existence with fellow human beings. Human beings share the capacity to socialise and, according to the earliest recollections and records, people have lived in *societies*. The questions regarding the structure and forms of organisation of the earliest human societies are rather diverging. We commence our discussion by first looking at the Greek-Medieval situation.

The Greek-Medieval legacy

Plato constructed in purely speculative theoretical terms a conception of an ideal state in his well-known dialogue *Politeia*. He postulated three estates analogous to his threefold conception of the human soul. The latter was supposed to be constituted by three parts: the rational (*logistikon*), the spirited (*thumoeides*), and the appetitive (*epithumétikon*). Justice, as general virtue, embraces the three cardinal virtues distinguished by him.¹ Therefore justice was relevant for the ideal state as a whole (cf. *Politeia*, 433A–C). Justice prohibits the transgression of the legal domain of the different parts of the soul, that is, it commands avoiding any *legal excess*—and this also applies to the three estates within the state (cf. *Politeia*, 443 ff.). Aristotle views the human being as a *political animal* (*zoon politikon*) and believes that the *social drive* of being human is only realised in a hierarchy that

stretches from the nuclear family (the so-called germ-cell of society), via the village community, up to the *polis* as the highest whole encompassing all other communities as mere parts (see Chapter I of Book I, Aristotle, 2001, pp. 1127 ff., 1252a ff.).

By and large Greek political thinking simply considered the *state* to be the all-inclusive *whole* of society—and both Plato and Aristotle thought that the perfection of human societal life could only be achieved within the state, where justice is appreciated as a *moral virtue*. Since the state was supposed to *embrace* society no meaningful distinction between *state* and *society* was possible (see Strauss, 2005).

In Stoic philosophy one finds the doctrine of the *equality* of all people—although in practice slavery was still accepted.² The theory of natural law advanced by Cicero strongly influenced the classical Roman jurists—such as Gaius, Ulpianus, Modestinus, and others—as could be seen from their definitions of *justice* and *natural law*. However the first thinker who distinguished between natural law and positive law was already Aristotle. According to Aristotle, justice, in a broad (moral) sense (*dikaion politikon*), embraces all virtues (such as courage, moderateness, friendliness, and so on) and manifests itself within the *state*.

The development of Roman law did make significant contributions to the modern idea of the state. However, initially the Roman *ius civile* was exclusive in the sense that it only made legal provision for the members of the Roman tribes. It was only during the expansion of the Roman Empire that the exclusive *ius civile* was transformed into the *ius gentium*. Although the latter is often mistakenly viewed as the starting point for *international law* it in fact made provision for non-Roman citizens within the Roman Empire. Therefore it should rather be seen as the starting point of modern *common law* (*civil private law*). Although the idea of the public good (*res publica*) also emerged within this context it did not give birth to the modern idea of the state. Jellinek points out that after Constantine both the Roman Empire and the Byzantine Empire did not acknowledge an independent domain for the individual and he even adds that there is no period in the history of the West where the individual suffered more severely from suppression than during this era.³

Particularly through the invasion of Germanic tribes the western part of the Roman Empire eventually experienced its final collapse in AD 476. The eastern part of the Roman Empire, by contrast, lasted until 1453. The initial Roman idea of a holy empire (*sacrum imperium*) was continued in the Byzantine Empire, and since Charlemagne (800) and his successors, it returned in the shape of the idea of the *Corpus Christianum* (*Body of Christ*) as the *perfect society*.

While conquering many countries, the Frankish king laid claim to unoccupied land and then started to hand it out to servants and the nobility as a reward for their support during the wars. This developed into the *feudal system* where the owners of large pieces of land acquired within their own domain an exclusive military, judicial, and political power. Governmental authority was viewed as a *private*

entity and therefore it was not possible to come to a *territorial monopolisation* of this power. Medieval cities, guilds and market communities all disposed over pieces of governmental authority on their own.

The Frankish empire of Charlemagne actually viewed itself as the successor of the Roman Empire. The superior power of the Emperor is clearly expressed in a letter sent to Pope Leo III by Charlemagne in the year 796. This letter breathes the spirit of Caesaro-Papism and in it Charlemagne regards it as his right and duty to provide material support for the church but also to strengthen the Catholic faith: 'It is our part with the help of Divine holiness to defend by armed strength the holy Church of Christ everywhere from the outward onslaught of the pagans and the ravages of the infidels, and to strengthen within it the knowledge of the Catholic Faith' (cited in Ehler and Morrall, 1954, p. 12).

However, the division of the Empire of Charlemagne in 843 paved the way for the powerful counts and dukes—in combination with the Roman Catholic Church—to develop into the real bearers of governmental authority during the subsequent medieval period. Yet although by the eighth and ninth century papal Rome could match the provisions of ancient Rome for its citizens, it was in need of military aid, provided by the Carolingians. Of course long before the church attempted to take on political rule it 'was a large and sophisticated enterprise with a huge staff, vast estates, and wide-ranging responsibilities' (Noble, 1984, p. 254).

During the eighth and ninth centuries the Frankish kingdom and during the 10th and 11th centuries the Anglo-Saxon kingdom managed to maintain themselves for a 'respectable length of time' (according to Strayer, 1970, p. 14). The sweeping changes that occurred before 1000 afterwards became fairly rare, particularly in the chief surviving kingdoms, namely, that of England, the West Franks (eventually known as France) and the East Franks (the core of Germany) (Strayer, 1970, pp. 16–17). Strayer also notes that even 'the most primitive feudal lordship was a more sophisticated political unit than a primitive Germanic tribe' (1970, p. 18).

During the 11th century the so-called *Investiture Conflict* emerged against the background of the intertwined relationship between the 'secular' and 'religious' authority that prevailed during the previous centuries. During that period the Kings had a great influence in church affairs by appointing abbots, bishops and even popes (Strayer, 1970, p. 20). For almost 50 years this conflict lasted and eventually the programme of Pope Gregory VII (1073–1085) emerged victoriously. Not only did the church gain almost complete control over European society, it also separated itself from the 'secular' authorities (Strayer, 1970, pp. 21–22).

What is significant for the modern idea of the state is that in this process the first steps were taken in the direction of a *differentiation* of the sphere of competence of the church and the domain of authority of what subsequently became known as the state. Since it is certainly not meaningful to speak of a genuine *state* during the later middle ages it is also not proper to designate the Investiture Conflict as a 'struggle of Church and State' (Strayer, 1970, p. 22). Increasingly the lay ruler was considered to take responsibility for guaranteeing and distributing *justice* through law and its enforcement (Strayer, 1970, p. 23).

The initial political power claims of the church were based on its relatively *differentiated* position, which enabled it to integrate the relatively *undifferentiated* substructures of medieval society under its umbrella. But through the developments after the Investiture Conflict conditions favouring the rise of a differentiated state increasingly emerged. For example, the rapid growth of educated people during the 12th century was a necessary requirement for an effective state administration. Unfortunately the schools of education mainly focused on Roman law whereas England, Germany and northern France used customary law not taught in the schools (Strayer, 1970, p. 25).

Strayer summarises the situation as follows:

Thus in the centuries between 1000 and 1300 some of the essential elements of the modern state began to appear. Political entities, each with its own basic core of people and lands, gained legitimacy by enduring through generations. Permanent institutions for financial and judicial business were established. Groups of professional administrators were developed. A central coordinating agency, the chancery, had emerged with a staff of highly trained clerks. These professional administrators were not as yet very numerous, and they therefore could not be highly specialized. They had to be assisted by short-term or part-time agents-clerks whose main career was going to be in the Church, minor barons and knights, or wealthy burgesses. Many of these men were willing to work a few years, or part of the time each year, as estate-managers, financial agents, local administrators, or judges. In this way they could gain royal favor and increased income, even if they did not plan to serve the government permanently. But everywhere there were men who spent most of their lives as professional administrators, and their number increased markedly in the thirteenth century (Strayer, 1970, pp. 34–35).

Johannes von Salisbury (1115/1120–1180) defends an organic conception of the state (thus affirming Aristotle's view), but designates as its principle of life *justice* (von Barion, 1986, p. 48). When Thomas Aquinas entered the scene in the 13th century, his account of medieval society was based on an attempted synthesis between Aristotle's philosophy and biblical Christianity. He accepts the dual teleological order of Aristotle with its hierarchy of *substantial forms* arranged in an order of lower and higher. It was designated as the *lex naturalis* (natural law), which is related to the transcendent *lex aeterna* (eternal law) as contained within the Divine intellect. By virtue of its substantial form, the human being depends on the community for the satisfaction of its needs.

The state (both the *polis* and the *Holy Roman Empire*) is here still viewed, in line with the conception of Aristotle, as *the* all-encompassing, self-sufficient community (*societas perfecta*). The provision is that Thomas Aquinas applies this only to the *natural terrain*. As the highest community within the domain of nature, the state embraces all other temporal relationships. These lower communities do possess a *relative* autonomy, subsumed under what is known as the *principle of subsidiarity*. However, this principle does not eliminate the universalistic starting point operative in St Thomas's view of society, since the so-called *relative autonomy* of these lower communities remains connected to the nature of the state as *parts* of a larger *whole*. What is part of a whole shares in the same structural principle as the whole.⁴ As a result, the view of St Thomas does not allow for the

acknowledgment of societal collectivities that are *structurally different*. In line with the conception of Aristotle, the family for Thomas also remains the *germ-cell* of society. The hierarchical ordering of these communities coheres with each other according to the mutual relationship of a *means* to an *end*, of *matter* to *form*.

As the encompassing community within the natural domain the state actually only forms the *natural foundation* for the church as overarching *superstructure*, as the *supernatural* institute of *grace*. The state carries human beings to their highest *natural* aim in life, namely, *goodness*, whereas the church elevates them to their super-temporal perfection, *eternal bliss*.⁵ Barion explains that according to Thomas Aquinas the human being is not fully absorbed within the state because it also partakes in the supernatural ordering.⁶

When King Philip the Fair decided to tax the French clergy pope Boniface VIII considered that as an infringement on the freedom of the church and responded with his famous Bull, the *Unam sanctam* (1302). Gregory already claimed that the spiritual power is superior to the temporal power. King Henry IV reacted with his theory of two swords but in his *Unam sancta* Boniface VIII states that there is 'no salvation or remission of sins outside' the 'one Holy, Catholic and Apostolic Church' (Ehler and Morrall, 1954, p. 90). To this statement he adds: 'But it is necessary that we confess the more clearly that the spiritual power exceeds any earthly power in dignity and nobility, as spiritual things excel temporal ones' (Ehler and Morrall, 1954, p. 91).⁷

In his work *Monarchia* Dante (1265–1321) assumed an intermediate position on this issue. In reaction to the claim made by pope Boniface VIII in the *Unam sancta*, namely, to be the highest spiritual and temporal authority, he holds the view that the worldly authority of the Emperor is not dependent upon the authority of the pope (*Monarchia*, III, 13 ff., quoted by Zippelius, 1980, p. 68). The authority of the Emperor, just like that of the pope, directly derives from God. Yet concerning the overall assessment of the relation between *temporal* happiness *vis-à-vis* *eternal* bliss Dante continues the standard Roman Catholic view. There are two aims requiring a twofold guidance, the one by the pope which has to lead humankind according to Revelation to eternal life and the other one where the Emperor, according to the doctrine of philosophy, has to direct humankind to its earthly happiness.⁸

Renaissance and modernity: the modern idea of the state

During the 14th century a new life orientation developed on the basis of the disintegration of the medieval hegemony. Philosophically speaking the transition from late medieval scholasticism to the early Renaissance was mediated by an intellectual movement that challenged the prevalent hierarchical view of human society.

At the beginning of the 14th century the contest between King Louis of Bavaria and Pope John II witnesses the starting point of a new line of thought that eventually resulted in the subversion of the priority claims of the Roman Catholic

Church. A new book in defence of peace (*Defensor Pacis*) was written by Jean of Jandun and Marsilius of Padua. They presented this work in 1326 to the emperor, a work that advanced the conviction that all forms of authority are derived from the *people*. The implication of this position was of decisive significance for the modern political scene for from this point of departure it follows that *law* can only be an expression of the *will* of the *majority*. Only the majority can make a law, change it, withdraw it, or interpret it (see Kates, 1928, p. 37).

Accompanying these events the *nominalistic* movement of the late 13th and early 14th centuries questioned the Roman Catholic view. William of Ockham (1290–1350) rejects the primacy of the intellect (directed against Thomas Aquinas) by opting for the primacy of the *will*. More important is his rejection of any *universality* outside the human mind. In reality nothing but *individual things* exist. Nonetheless science is considered still to be concerned solely with *universals*—albeit it only as universal concepts within the human mind. One of the most significant consequences of this new nominalistic position is given in its undermining of the church as a supernatural (*universalistic*) institute of grace—communal forms within human society are simply *universalia* representing a mere *collection* of truly existing *individuals*. Therefore the *reality* of the church is reduced to a mere *collection of believers* (*congregatio fidelium*).⁹

This nominalistic movement provided the starting point for modern philosophy and modern political thought for it emancipated the supposedly autonomous and free human personality from the authority of church belief and the pope. Krüger explicitly refers to Ockham in respect of the process of secularisation and regarding his significance for the separation of the natural and supra-natural world.¹⁰ While the Roman Catholic Church witnessed the decline of its power this historical process laid the foundation for *individualistic* or *atomistic* theories of human society and the state. These new theories denied the reality of supra-individual communities and embarked on a different course by attempting to explain society entirely in terms of the actions of individual human beings. Initially, as in the case of Machiavelli (1469–1527), Bodin (1530–1596), and Hobbes (1588–1679), the result of this transformation was explicit *totalitarian* theories.¹¹ However, gradually various thinkers attempted to develop a theory of the state in which it was possible to guarantee various (civil) rights, that is, theories of the ‘just state’ (*‘regstaatsteorieë’*).

The deepest motivation of the new era is found in its conviction that the human being can only proclaim its sovereignty (autonomous freedom) by exploring the possibilities of the new natural scientific understanding of reality—Galileo, Kepler, and Newton. This new mode of thought found in the rise of the modern natural sciences (particularly mathematics, kinematics and physics) an *instrument* by means of which it could *control* and *subdue* all of reality. This instrument was supposed to serve the purpose of a complete *methodological breakdown* of everything within reality, introducing the creative capacities of *rational thought* to once again create *order* from this resulting *heap of chaos*. For example, in his major work on *corporeal things* (*De Corpore*), Thomas Hobbes constructs a thought-experiment in which he demolishes all of reality and then proceeds to create

order by means of the basic (natural scientific) concept of a *moving body*. This shows that now human reason actually took over the task of creation originally assigned to God by Christianity (by alluding to the Genesis account of creation). Thus modern *humanism* ultimately *deified* the human being, embedded in this new motive of *logical creation*.¹²

The most significant outcome of this motive of *logical creation* is found in the *social contract* theories of Hobbes, Pufendorff, Wolff, Locke and Rousseau. According to the demands of the natural science ideal also human society has to be constructed out of its simplest 'elements', the *individuals*. In the course of the 18th century, the era of Enlightenment, Immanuel Kant (1724–1801) restricted this science ideal by once again ascribing primacy to the initial root motivation of the science ideal, namely, the urge to be autonomous and free. The science ideal, after all, entails a threat to the freedom ideal (personality ideal) because once everything within the universe is reduced to fully determined (mathematical) physical laws no room for freedom is left. Immanuel Kant therefore transformed the humanistic idea of the constitutional state under the rule of law ('*regstaat*') in the direction of the *humanistic personality ideal* (*freedom ideal*). He distinguishes between the domain of nature and freedom (theoretical and practical reason): the former is bound to sensory experience and innate thought categories, and it determines what *is* (*Sein*), whereas the latter transcends the *phenomenal* world and concerns the human being as an ethical aim-in-itself ('*Selbstzweck*') within the domain of the *ought to be* (*Sollen*). The concepts of understanding are guided towards this practical-ethical domain by means of *regulative ideas of reason*, in *casu* the ideas of *God*, the *soul*, and the *world*. Kant defines freedom in a jural sense as the mere equivalent of his view of the *ethical autonomy* of a person (the human being as a moral end in itself): freedom equals being 'independent from the coercive arbitrariness of another person' (Kant, 1971, A, p. 45). If my action can co-exist with the freedom of every other person according to a general law, then, according to Kant, we encounter the general principle of *law* (Kant, 1971, B, p. 33). For him, injustice originates when an obstacle is placed in the way of the freedom of a person (according to general laws—Kant, 1971, B, p. 35). The question of course is: how is it possible to restore an injustice? In order to give an answer to this question, Kant imports a *coercive* element in his definition of the jural: if a particular usage of freedom itself is an impediment to freedom according to general laws (that is, an injustice), then the force installed against this injustice, as the prevention of an impediment, is in agreement with freedom according to general laws (Kant, 1971, B, p. 35).

However, this 'solution' brings Kant into conflict with his idea of autonomous (juridical) freedom, for the latter, according to him, is identical to the *independence* from the arbitrariness of another person. This shows that his absolutised freedom contradicts every form of *jural coercion*. And since every impediment of freedom constitutes an injustice, this 'force' solution implies that what is *just* emerges from the hindrance of a hindrance, that is to say, from the injustice done to an injustice! How is it possible to appreciate the injustice done to an injustice as the basis for what is *just*?!

Post-Enlightenment reflections on the origin of the modern (idea of the) state

At this point of our analysis it should be mentioned that the term 'state' is not that old. Although the Greek word *Politeia* is usually translated as republic and sometimes equated with the idea of the state, the ancient world as well as the medieval period merely knew *empires* and *kingdoms*. It was only during the 16th and 17th centuries that the term 'state' appeared in French, English and German.¹³ In 1576 Bodin still employs the word 'republic' for the state and only used the word 'etat' for specific *forms* of the state. The second edition of the Shakespeare-Lexicon shows that he frequently used the word *state*. In Germany the early 17th century already knows the phrase 'status republicae' but it was not until the latter part of the 18th century that the transformation of territories into states permeated the general consciousness. In 1804 in Austria the words *kingdom* and *state* were used adjacent to each other [(i) 'Königreiche und Staaten'; (ii) 'Königreiche und anderen Staaten']. Particularly phrase (ii) demonstrates that the denotation of both terms is the same.

Wager points out that the state concept proceeds from two distinct meaning complexes, the one related to the *Ruler* and the other to the *Body Politic*. The former concerns words such as *status*, *stato*, *estado* associated with the personal status of the governor (*status regalis*, *regis*, *ducalis*, *ducis*, *principis*) while the latter is related to the constitution of the body politic (here *status* means *species*, *forma politicae*, *reipublicae*). Wager subsequently speaks of these two in terms of the phrases *status regalis* and *species politicae*. By the end of the 16th century Machiavelli and Guicciardini used the words *status* and *stato* to designate both the collection of subjects and what is intimately connected with it, namely, the *territory* (Mager, 1968, p. 429). During the 16th century the phrase *ius publicum* served to refer to the *law of the state* (Mager, 1968, p. 486). Particularly in the expression *status regalis* elements are fused in a way that produced something completely *new*. The distinction between person and office forms part of this fusion. The moment the distinction is drawn between the person and its official capacity as ruler the final step to a proper concept of the state is given, for only now is it clear that the authoritative public power of the state ought to be distinguished from the person occupying the office of ruler (Mager, 1968, p. 488). The *regnum republica* is no longer conceived apart from the *sovereignty* of the state (its authority, power, coercion and highness) (Mager, 1968, p. 488).

Modern natural law theories assumed a hypothetical *social contract* but they did not enter into any real historical considerations. Classical Marxism attempted to fill this vacuum. The first penetrating attempt to reconstruct this historical process in terms of relevant data is found in a work of Friedrich Engels: *Der Ursprung der Familie, des Privateigentums und des Staats* (1884). Although he merely summarises many points advanced in a work of Morgan from the year 1877, *Ancient Society*, he does add significant *information* to it.

According to him the advent of the institute of *private property* was decisive for the rise of the state, for only after the establishment of private property was it

necessary to *protect* it. To this he adds his conviction that at once another purpose is served, namely, the *stabilisation* of *class differences* and *antagonisms* within society (Engels, 1944, p. 231). In an early work from the year 1877–1878 (*Anti-Dühring*), Engels nonetheless still considers other possibilities, but from the year 1884 his emphasis is on the opposition between the *exploiters* and those who are *exploited*.

Early in the 20th century the sociologist Oppenheimer developed his theory of *conquering* and *subjection*, in German known as the *Überlagerungstheorie* (see Oppenheimer, 1907). Although the views of Marx and Engels did not draw exceptional attention during the 19th century, the problem continued to exist. Oppenheimer's theory of conquering and subjection was elaborated in his extensive work, *System der Soziologie* (1922, 1926).

According to his 'sociological' idea of the state, the emergence of the latter in its structuration is *completely* and within society *almost completely* forced on a conquered people by those who conquered them—with the sole purpose of arranging the authority of the latter over the former and of securing the safety of the rulers against riots from within and attacks from without (Oppenheimer, 1907, pp. 8–9). What is basic is that, according to this subjection theory of Oppenheimer, the earliest undifferentiated societies absolutely did not know the state.¹⁴

Decisive for the emergence of the state is the event in which the first conquerors *saved* the lives of those conquered in order to subject them permanently to a state of *slavery* (Oppenheimer, 1907, p. 40). During the 1920s, we meet two prominent reactions in the USA, namely, those of McLeod and that of Lowie. Particularly Lowie (1927) formulates the sharp criticism that subjection did not necessarily lead to state formation. In some instances, states developed without the aid of conquering a people. Of greater importance is that the conquerors already lived within societies acquainted with a form of super- and subordination and that political elements 'were distributed among formations which we regard now from the point of view of private law: churches, local bodies, kindreds' (Lowie, 1927, p. 43).

In spite of this criticism, Richard Thurnwald once again, since the 1930s (compare Thurnwald, 1935a, 1935b, 1950, 1957), gave new life to the *conqueror theory*. Of particular interest in this context are the views of Rüstow concerning the *exogenous* origin of relationships of power (cf. Rüstow, 1950). Together with Oppenheimer, he advanced a theory concerning the *exogenous* origin of relationships of power.

In his critical reaction to these theories Kammler basically distinguishes between undifferentiated and differentiated societies, based upon an application of the following criteria: (a) their technology is still largely undeveloped, and accordingly, their productivity is relatively insignificant; (b) they harbour a low degree of socio-cultural differentiation—in other words, the realisation of political and administrative, economic, juridical, cultic religious, and educational functions initially bound together in the family bond is still *absent*, or they are at least only present in a *rudimentary* form. Differentiated societies (designated as 'complex societies') represent the other side of the coin (Kammler, 1966, pp. 17–18). His most important critical remark concerns the fact that one cannot argue that social stratification and

unilateral relations of super- and subordination were absent in *undifferentiated societies*. What is striking is that some of the most undifferentiated groups of hunters and collectors already knew the institute of *slavery*. Kammler concludes that even the lowest level of technological and economic development, therefore, displays elements of *social ordering* (Kammler, 1966, p. 30).

The way in which Oppenheimer—following Marx and Engels—attempts to put undifferentiated societies in a perspective where relations of super- and subordination are absent (they exist supposedly in a ‘stateless’ condition) is simply not capable of accounting for and explaining how these societies managed to protect themselves against onslaughts from the outside. Although it is often difficult to identify the central instance of control, the presence of such a defence organisation testifies, in the light of ethnographical material, that the ‘political element’ everywhere presents itself in undifferentiated societies (Kammler, 1966, p. 31).

Without exploring Kammler’s criticism in more detail it is sufficient in this context just to mention his basic point. He points out that tyranny—from Peisistratos up to Hitler—appears without the cooperation of exogenous conquered groups. In addition elements of ‘Herrschaftsstaaten’—originating without the support of a foreign conqueror—are found, amongst others, in the Pueblo tribes of America as well as with the Dschaggas from East Africa (Kammler, 1966, pp. 46–47). As a consequence, Kammler much rather searches for an *endogenous* explanation for the presence of authority relationships within undifferentiated societies. This is a new approach that deserves serious attention in the light of the almost total absence of investigations regarding endogenous cultural change.

In this approach the *extended family*, which is sometimes also designated as ‘Sib’, ‘Gens’ (clan), or ‘House’, acquires a central position. It functions as the authentic subject of action in *undifferentiated societies*. The actions of relatives, on the one hand, heighten the status of the entire extended family, while, on the other hand, the rank of the individual is determined by the family to which such a person belongs.

The decisive importance of the contribution of Kammler in respect of the problem regarding the genesis of relationships of *super-* and *subordination* is undoubtedly given in the sensitivity of his argumentation for the *endogenous* emergence of increasingly differentiated power relationships. The one-sided ideological trait of the subjection theory, therefore, justifiably causes Kammler to accuse it of having become a victim of a *secularised soteriology* (Kammler, 1966, p. 90).

Although the modern idea of the state and the modern state only gradually emerged during the last few centuries, the important point raised by Kammler is that *authority* and relations of *super-* and *subordination* are found throughout the history of human societies.

The distinction between kingdom and republic

Whereas a *kingdom* belongs to a king—as his private property¹⁵—the state is a *public legal institution* that is destined to serve the *public interest*. This is the

authentic meaning of the Latin expression *res publica*. The state in this public legal sense of the term only came into existence through a long and gradual process of cultural development and societal differentiation. This process of *differentiation* of human society brought into existence distinct societal institutions (collectivities) such as the firm, the club, the nuclear family, the school and university, the church and, of course, also the state itself. Through this process of differentiation, a diversity of distinct societal forms of life therefore emerged *alongside* the state. Each one of these non-political societal collectivities had its own *form of organisation* and its typical internal *sphere of law*. Together, they co-constitute a diversity of societal interests that ought to be united and integrated within the public legal order of the state.

This public legal character of the state entails that the state is *by definition* a *republic*, a *public legal institution*. Therefore, strictly speaking, it is not correct to employ the term 'republic' as designating some or other *form of organisation* of the state. By referring to the *republican* nature of the state, no specific *form of government* ought to be envisaged. As was the case with the former communist 'people's republics', a state can be organised as a *totalitarian* and *absolutist* state ('power-state'; '*magstaat*'), or it may be organised as a 'just state' ('*regstaat*'), which is neither totalitarian nor absolutist. In South Africa, for example, we currently have a *parliamentary democratic republic*, in distinction to the monarchical republic of the Netherlands.

What is commonly referred to as a *democratic state* should actually be referred to as a *republic*. How did it come about that we are used to employing the term 'republic' to refer to a particular *form* of organisation of the state instead of merely highlighting its *public legal* character?

Machiavelli introduced the familiar distinction between *monarchies* and *republics*. In the case of the former, so he believed, the king has the power (referred to as a *kingdom*), and in the case of the latter, sovereignty belongs to the people, designated as a *republic*. This reminds one of Rousseau who calls the *public person* (the people when active) the *state* and (when passive) the *sovereign*.

Conclusion

At this point one may be tempted to enter into a discussion of modern views of governmental authority ('sovereignty') and the accompanying views of state and democracy. For example, where Krabbe dedicates a whole book to the modern idea of the state he immediately starts by contrasting the 'old' and the 'new' idea of the state in terms of the distinction between *law* and *power*. On the one hand the state is appreciated as an institution equipped with authority and power, and on the other hand, in view of the idea of the 'just state' ('*Rechtsstaat*'), in the words of Laband, it cannot command anything except on the basis of a law formulation (Krabbe, 1919, p. 1).

The crucial issue here is what the relationship between 'justice' and 'power' is. Since Bodin introduced the idea of sovereignty modern political theories explored various options, varying from popular sovereignty, parliamentary sovereignty,

state sovereignty to the sovereignty of law. Of course many related problems immediately surface, such as the basic issue concerning the *unity* of the state—how the multiplicity of a people is united into a territorial state unity (see Horneffer, 1933, p. 83 ff.), whether or not the government of the state has an unlimited competence to the formation of law (the implication of Bodin's initial concept of sovereignty), if it is correct to view every societal institution and collectivity as integral *parts* of the state, whether it is sound to speak of *democratic societies*, and so on.

While our current discussion focused on a number of issues related to the rise of the modern idea of the state and the modern state, we reserve an analysis of the implications of different modern *political theories* for a separate treatment in an article on 'The Threat to Constitutional Democracy in Modern Political Theories and Contemporary Political Practices'.

Notes

- * University of the Free State, Bloemfontein. Email: dfms@cknet.co.za
1. Namely, wisdom (*sophia*), as the virtue of the rational part of the soul; courage (*andreia*), as the virtue of the spirited part; while temperance as virtue represents—under the rule of the rational part—the union of the *thumoeides* and the *epithumétikon*.
 2. Cicero, continuing arguments of Aristotle, still defends the institute of *slavery*. By contrast Seneca did accept the Stoic doctrine of the *equality* of all people but relativised slavery with his view that it only has an effect on the *human body* and does not take hold of the *human spirit*. Seneca envisaged an absolute natural law *before* the fall into sin with equality for all, communal ownership, and an absence of governmental authority. After the fall, there is only a relative natural law with slavery, private property, and the state.
 3. 'Niemaals hat es in der Geschichte der Abendländischen Völker eine Epoche gegeben, in welcher das Individuum mehr zerdrückt worden wäre als in dieser. (Jellinek, 1966, p. 316).
 4. Zippelius states this point succinctly: 'Parts are standing in a proper relation to the whole when one and the same principle rule them' (Zippelius, 1980, p. 67) ['Teile stehen aber dann in einem rechten Verhältnis zum Ganzen, wenn ein und dasselbe Prinzip sie regiert'].
 5. Thomas's view of the function of the church as a supernatural institution of grace exerted a strong influence on the official position taken later on by the Roman Catholic Church. In the papal encyclical, *Quadragesimo anno* (15 May 1931), it is still explicitly stated: 'Surely the church does not only have the task to bring the human person merely to a transient and deficient happiness, for it must carry a person to eternal bliss' (cf. Schnatz, 1973, p. 403).
 6. '... daß der Mensch nicht mit seinem ganzen Sein und Haben auf die staatliche Gemeinschaft hingeordnet sei, er stehe auch in der Ordnung der Übernatur' (von Barion, 1986, p. 50).
 7. A part of this conviction is manifest in the incorporation of marriage as a sacrament of the church. The implication is that 'marriage could only be validly contracted *in facie ecclesiae*, as indeed was laid down by the Eastern Church' (Smith, 1964, p. 62).
 8. The pope who 'nach der Offenbarung das Menschengeschlecht zum ewige Leben hinführen soll; und des Kaisers, der nach den Lehren der Philosophie das Menschengeschlecht zu irdische Glück leiten soll' (Monarchia, III, 16, quoted by Zippelius, 1980b, p. 68).
 9. Even the triunity of God was transposed into three independent divinities—the heresy of 'tri-theism'.
 10. He speaks of the 'Bedeutung' of Ockham 'für die Trennung einer natürlichen und übernatürlichen Welt' (Krüger, 1966, p. 33, note 3).
 11. In German, Dutch, and Afrikaans the appropriate designation is '*magstaat*' (literally, 'power-state'). For the lack of a better descriptive translational equivalent, we will sometimes employ the phrase 'power-state' as the opposite of '*regstaat*', a term that may be transliterated with the phrase 'just state'.
 12. Since the Renaissance, modern thought has explored various options in this regard—varying from 'moving body' (the basic denominator chosen by Hobbes, 17th century), 'to perceive' (Berkeley, 18th century), 'sensations' (Kant, 18th century), and 'sense-data' (Ayer, 20th century)—to mention a few philosophers.
 13. The information concerning the emergence of the word 'state' is found in Jellinek (1966, pp. 132–135).

14. From the context, it is clear that Oppenheimer actually wants to claim that undifferentiated societies lack any structure of super- and subordination.
15. Governmental authority was therefore a *private item*, something that could be traded (*a res in commercio*).

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