

THE THEORY OF THE SECOND STATE

HISTORICAL PRELIMINARIES

When the Western Empire collapsed under the impact of the barbarians and from its own internal corrosion, the people of Western Europe were playing without being aware of it a game of "whoever loses wins." Roman theocracy developed out of the ruins of the Empire, inheriting its ambition and its universality, and gradually undertook through the sole means of the faith the reconquest of the world. Its pioneers penetrated even further than the eagles of Rome had ventured. Christ's labarum flew triumphant over lands from which Rome in its time had been unmercifully driven. While the victorious church broadened the limits of the antique world, everywhere under its domination the lay, local and national forces organized and consolidated their power, taking full advantage of the Pauline and Augustinian doctrine favoring the separation of church and state. After several centuries of painful anarchy the characteristic profile of the West emerged: two symmetrically organized powers, the spiritual power of the church, universal in ambition or vo-

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cation, and the lay, local or national power. A society unique in the annals of history was born from the balance of these two powers, a society that succeeded where much richer and more civilized societies had failed miserably, notably in preparing the way for the advent of industrial society, master of science, nature and technique. What was the reason for this progress, barely half a millenary ago, which took hold in a diamond of territory situated in Germany, England, France, Italy and the Netherlands? Could it be attributed to the races that inhabited this area? But this (for an explanation) would be to revert to a primitive racism which science has disproved a thousand times! Was it thanks to the richness of its soil or the mildness of its climate? Still the great civilizations of the Nile valley, of the Euphrates, the Ganges and the Yang-tse had had the advantage of richer lands and a much more propitious climate! Was it due to the great cultural Greco-Roman heritage? But the Byzantines and the Arabs had been its much more direct heirs, and yet they had not been able to reap the same advantage from it that the Western peoples had.

There is only one possible explanation, namely that the duality of powers made it possible for society to be emancipated and to leave the traditional ruts, setting out on an entirely new road. Maneuvering between the spiritual and the lay power tenacious and hard-working human groups gained a status of freedom which guaranteed them against abuses of authority, not the least dangerous of which could have resulted from their own ambitions. For the first time in history organized human groups were able to cling to a middle road, between the proud summits of authority and the bottomless abyss of anarchy, that led directly to an infinitely more efficacious way of life than the traditional way had been. This middle road prodded them into more and more promising economic preoccupations, opening the almost unlimited possibilities that could arise from the unprejudiced cooperation between scientists and artisans. Thus their spirit turned toward uncharted horizons and little by little they were able to shake off the double yoke of biblical authority and the Greco-Latin cultural heritage.

No such thing could have occurred in the East. Here the Empire was at that crossroads so pregnant with historic destiny

at the time of the resignation of the last Western Emperor. Constantinople united under its sceptre the richest, the most populated and the most civilized provinces of the ancient world: Egypt, Asia Minor, Assyria, Greece, Moesia. The Empire had survived victoriously the onrush of the barbarian invasion, which had submerged the West and solidified that incomparable moral cement, the Church of Christ. The East seemed to be reserving for itself all the aces and to be winning on all fronts, without having the least suspicion that it too was playing at "whoever loses wins." The imperial power, reinforced by the immense moral authority of the Church, weighed so heavily on society that any attempt at emancipation was stifled at the source, with the result that during the long millenary of life remaining to it, it followed scrupulously in the path of the inherited tradition of Hellenism and of Rome. The Church fell under the domination of the Empire and together they constituted a kind of early totalitarian state, which rigorously banished all incentive, all innovation and all progress.

The contrary occurred in the West. However brutal and excessive the ambitions of the emperors of the Holy Germanic Empire and the kings of France, they could never submit to Roman theocracy, nor could the latter ever put a halt to its pretensions of temporal power. During the long centuries of the Middle Ages popes and emperors, princes and bishops vied with each other and fought bitterly, but these jealousies, these indecisive battles were the most fruitful of history, because in the course of them, and without the protagonists being clearly aware of it, society got out from under their feet, their subjects were emancipated, their authority was weakened, their weapons blunted and their ideals dissipated. Commerce, industry, science and technique made an unparalleled leap forward. And when historical conditions were ripe, the Church underwent the Reformation, a revolution of far-reaching consequence, and from this time on the modern world knocked with redoubled force at the door of history. But without the duality of powers there would never have been a Reformation, because a too solid and durable union between Church and State would have made it materially impossible. It is no coincidence that the Reformation triumphed everywhere where—as in Germany or England—the

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opposition between the Church and the State was most bitter and unyielding. And if in France, for example, the Reformation failed, the reason probably lay in the fact that there was too great accord between the royalty and the Gallican Church, that the king of France had too great ascendancy over the Church of France to the detriment of the ultramontane power.

Out of the dualist society of the Middle Ages modern pluralist society was born with all its characteristic features: a bourgeoisie, industrialization, democracy, scientific and technical progress. While the Church for a long time had ceased to play the role it once had, from the core itself of the new society entirely new powers sprang into being: great financial and industrial corporations, giant workers' trade unions, which now held their own to advantage against the State. Our own period resembles in certain of its traits this period of the Middle Ages when the national states had not yet been formed and feudal oligarchies confronted the universal authority of the Church directly. In our time it is the economic oligarchies—employers or workers—that mount the attack against the ancient authority of the State. The latter defends itself one way or another and sometimes replies with violence. Is it in the nature of the West to pledge itself to the victory of one or the other antagonist? I do not believe so. If an oligarchy of employers conquers the State with the aid of the middle classes, it becomes a totalitarian state of the fascist type. If a democratic State by means of unprincipled "reforms" reduces the economic oligarchies, the State and society will still retain for some time their façade, but the final result will be no less than the definitive eclipse of the West as the West and the belated but effective revenge of Byzantium.

THE SOCIAL TECHNIQUE

The Polish philosopher Jan Kott compares the conquest and conservation of power to a great mechanism which consumes enemies and friends at an accelerated rate. But this comparison is perhaps even more judicious if it is applied to human masses that the wheels of power crush in the same way that any

machine crushes its raw material in order to mould it to its purpose. Obviously this mechanism disposes of man less in body—although in the last analysis it disposes of it too—than in the hold it has over his mind. But in both cases a technique of coercion is always and everywhere at the base of the “Great Mechanism” and this from time immemorial. For it does not appear that these processes have varied much since a very long time ago when the first organized power appeared on the scene of history. Whether it was a question of levying taxes or drafting armies, of building roads and monuments or the imposition of statute labor, the State always had to have recourse to techniques of coercion. The history of humanity for several thousands of years is marked by edifices built by statute labor, but however monumental they may be, they have been out of use for centuries and the sand of the desert or the luxuriant vegetation of the tropical forest has mercilessly covered them over. They are like the fossils of paleontology, skeletons of dinosaurs or brontosauri which, buried under the earth’s strata, are there only to testify to nature’s mistakes.

One had only to wait for the advent of Western civilization for more highly developed economic and political techniques to appear on the scene of social life. Then came the enterprise: a community of producers whose cohesion is in principle assured by common consent. At the outset a manifest inferiority worked against labor, but thanks to trade-union organization this inferiority diminishes. The power that emanates from this community of producers acts upon a frame of new dimensions without relation to traditional power. If it is an elementary reflex of any traditional power to levy taxes, the reflex of the new power is to extend credits. The technique of giving credit is at the base of the new society. It was the Manchester economists who for the first time ascertained that communities of production, facing each other and the consumers, produce automatic forces which in the regularity of their functioning resemble the forces of nature. There is an affinity between economic forces and natural forces, with the difference that the forces of nature are necessary whereas economic forces are manifest only where there is enough leeway for them. A society massively in the control of a power using by preference coercive

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techniques is a less adaptable terrain for the deployment of social automatisms. The economists of the Manchester School believed that this deployment occurs in harmony with man's moral destiny, hence their motto, "*laissez faire laissez passer*." But we have found out since, after many bitter disappointments, that economic forces demonstrate the same indifference toward us as the forces of nature, that they have their own downgrades which retard or check the forward progress of man. They create unemployment, cause crises and all kinds of disequilibriums and the conjunction of these misfortunes with political upsets sometimes unleash social catastrophies—wars or revolutions—which are infinitely more devastating than the most serious natural calamities.

Thus the main problem of our modern societies is posed in these terms: can we dominate these economic forces by means of a penetrating study of the laws that govern them and by an intelligently conceived social technique, or must we resign ourselves to be subject to them? But we are firmly convinced that man, who was able to dominate nature, will be able to dominate as well the forces which activate society, although to be victorious over nature is a task relatively much easier than to conquer oneself. The tactic to be followed remains the one whereby man has succeeded so well in the epic struggle against the obscure forces of nature: to submit to its laws in order later to have the upper hand over its processes. For every automatism is at the mercy of man, since all he has to do is learn the rules of the game in order to become its master.

This is the principal flaw in all dogmatic socialism. Led astray by the mythical concept of the dialectics of history, it believes that historical evolution will simply swallow up these economic forces and the laws that govern them and after the table has been cleared, all that remains to be done is to planify. A grave error which can only bear bitter fruit. Impatient to eliminate the troubles caused society by the uncontrolled play of economic laws, Lenin thought that a revolution, by over-running stages of growth, would accomplish more quickly the work that Marx had entrusted to the eliminating dialectics of historical evolution. But it has been demonstrated that the elimination of these economic automatisms that cause troubles

eliminates at the same time the freedom of enterprise, the freedom of trade unionization and the freedom of choice of the consumer, in other words, the very phenomena which in relation to traditional society appear as complete novelties, as the only wheels of progress. From the time these trouble makers leave the scene the victorious revolution heads for a catalepsy which cannot be healed without recourse to the most traditional recipes of coercion. It is no longer a question of forging a perfected social technique which would dominate the live forces of the new society and would place them at the service of the public interest. The ambition to guide the social nature of man is lost; the State is satisfied simply with ruling and thus returns to the most outmoded and simplistic ambitions of the powers of history. Before the advent of the scientific mentality it was believed that the wave of a magician's wand could at any moment suspend the activity of a natural law, but I believe the success of such exploits must have been rare. Unfortunately, the politician has every chance of success where the magician failed and can abolish when he deems it right the force of economic laws, on the condition that he has an almost unlimited power over society. But once these laws have been cast out, the magician is reinstated and the politician can only resign.

THE PARALYSIS OF THE LEGAL SPIRIT

It is not from modesty that we have up to now carefully avoided revealing that by social technique we simply mean legal technique. We use this term, which is both more theoretical and more practical, because, aware of the disfavor into which legal science has fallen practically everywhere, we want it to profit from the prestige that the word technique enjoys in our modern world. Moreover the assimilation of *law* with social technique is from the philosophical point of view perfectly justified, because law fulfills in relationship to the social sciences exactly the same function that technique properly speaking does in relationship to the physical sciences. In fact, every economic or social problem, as soon as one tries to find any practical solution, necessarily requires a legal solution, a formula or legal procedure.

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Unfortunately, a conclusion as clear as it is fundamental is not within reach in our period, infatuated as it is with scientific progress. Law is considered as a relic of the past, as something achieved and finished. It is thought that it cannot be reversed, that it cannot swell with new sap and give life to new shoots. And yet there have been periods in which law has enjoyed incomparable prestige. Can we admit that prior epochs had a saner, more just concept of the scale of human values? For the Romans, for instance, law was the *scientia*, the only discipline that merited the rank of science, or rather the most influential knowledge to which all others came to solicit title and ratification. What could be more revealing in this respect than the fact that even the notion of natural law, so important to the natural sciences, is owed to a loan from legal terminology. Even in the eighteenth century, already at the threshold of the industrial revolution, the most enlightened minds believed without a shadow of doubt that the guarantee of collective happiness resided in good laws. They would never have admitted that comfort and the technical means that contribute to it could in any way whatsoever have replaced good laws in the scale of human values.

Yet this is what happened, and from two sources at the same time. Marxism, in reducing law to the rank of "ideologies," deprived it from the outset of all vigor and real efficacy. To take account here of what is active and what is not is not an easy thing, because the Marxist-inspired revolutions have everywhere swept out obsolete and retrogressive legal statutes, and it would be manifestly unjust not to recognize this willingly. The separation of Church and State as well as the abolition of the rule of latifundia are reforms which should have been made by a bourgeois revolution. Even when the communists attack the privileges of ownership, outside of those directly concerned, who could object? Unfortunately the Marxists believe wrongly that there is an infrastructure and a superstructure, that the first determines the second, and that the law, siding with the superstructure, should not merit any particular attention. Once the infrastructure has been solidly established, the ideologies, law included, will come around quietly, like chickens coming home to roost. When the question was once put to Marx as to how

collective ownership would be administered, he answered ironically that he was not making "culinary recipes for the pots of the future." As though recipes were made according to the pots and not the pots according to the recipes! There can be no doubt that a serious speculative prejudice in the mind of Marx blinded him to these major problems, and made him misunderstand their subtle theoretical and practical implications. One of the essential aims of this study is precisely to suggest that techniques of production and social techniques, instruments of production and legal instruments are complementary and inseparable, that each level of production technique corresponds to a level of legal technique and vice versa. Traditional society would never have been able to produce modern technique and it would be illusory to believe that with old economic and political processes (although newly repainted) the same output could be reached from modern machinery as ordinarily. The autonomy of the enterprises, a minimum of competition among them, trade-union freedom, freedom of choice of the consumer are vital conditions for modern technique and if there has to be planification—about which there is no doubt—it can only be added to these elementary conditions but never supplant them.

On the other side of the barricade the same evil has empirical sources. The façades are still standing—even scrupulous respect is sometimes paid them—but behind the appearances the reality is entirely different. First of all there is the ever-widening gap between ownership and management. The anonymous company, the general form of modern industrial property, is no more the free and well balanced institution that it was in the beginning. Within the boards of directors that administer companies real power has passed to the managers, who in the majority of cases possess shares only symbolically, and the great mass of the shareholders, large and small, are only called upon to approve decisions taken in advance. Here the right of ownership is in fact reduced to the right to dividends, but even this right is sometimes seriously curtailed by the current practice of managers to fix at will the pro rata of the dividends and to set aside funds for new investments. The anonymous company as it functions today is a distinctly oligarchic organization, all the more that

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there are among them true giants, veritable financial or industrial empires exercising sovereignty over thousands of workers and tens of millions of consumers within and outside the national borders. Sometimes their budgets surpass those of the older countries, and they weigh with all their enormous influence on the destinies of a whole people. And yet such colossi are classed from a legal point of view among civil corporate bodies, "lodged" so to speak in a modest chapter of commercial law which is itself only a subdivision of *private law*! There exist marine crabs, rapacious gluttons that constitute themselves the heirs of dead snails, establish themselves in their empty and spacious shells . . . Legal science, paralyzed and rigid as it is, does not see or pretends not to see that the great oligopolies stay deliberately outside the scope of *private law* and quite naturally enter the scope of an *economic public law* which is only hypothetical due to the complacent silence of the jurists, a complacency which in no way runs counter to the interests of these economic giants.

In order to be able to measure up to the great employer combines, workers trade-unions—at first genuinely democratic organizations—have constituted themselves into even more colossal organizations in that they are monopolistic. These huge trade-union confederations, highly centralized and bureaucratized, have become important centers of power capable of exerting real influence on the economic or general policies of a country, and this without modifying their original statutes one iota.

The States themselves, reputed to be democratic, have suffered modifications, without these being reflected in the national constitutions. From the middle of the last century until the rise of Labour, England, the "mother of parliamentarianism," enjoyed a separation of powers and an effective parliamentary control, whereas in our time the separation of powers and parliamentary control are no more than solemn façades. The fact is that the party in power accumulates the two powers, executive and legislative, and parliamentary debates exist only to give formal approval to decisions taken in the high echelons of the party behind closed doors. This is not parliamentarianism but partocracy, made obvious by the fact itself that a relatively weak

fraction of the party in power has a much more real influence on the evolution of political developments than the opposition, however strong it may be. It is true that the people can in elections every four or five years vote for or against, but only in a summary or global fashion, either extending the mandate of the departing government or entrusting power to the opposition, which will also govern without genuine controls until its mandate expires. Such an evolution became inevitable from the moment when, under the pressure of democracy and the aspiration of the masses for greater well-being, the State had to take over various quite specific competences and a great number of often contradictory interests that could not be represented in parliament.

To whatever side one turns one sees only oligarchies which do not dare reveal their identity, which extend beyond the dead weight of their petrified statutes and distort or overrule the intentions of the legislator.

ECONOMIC POWER AND TRADITIONAL POWER

There can be no doubt about it: from the extensions of capitalist property a power has been let loose that is much more subtle and effective than any other power of a classical type. In the course of time it has created its own hierarchy and form, confronting the traditional State with a rival structure. It comprises two superimposed levels: the first encompasses industrial enterprises, the second the institutions of credit. In highly developed countries six to eight great banks control two-thirds of the industrial activities of a great nation. Facing the managerial pyramid is the trade-union organization, the formidable bastion of the wage earners. If the managerial power follows an evolution from the top down, that is, "democratizes itself," the parallel power of the workers, originally democratic, follows an evolution ascending from bottom to top. Capital and labor, although they have the reputation of being hereditary enemies, are more frequently in agreement than is commonly believed, and it is always the consumer who pays the bill. Thus they are the two pillars of economic power, pillars resembling

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in their spontaneous and natural formation, as well as in their hidden character, the stalactites and stalagmites that support the majestic vaults of subterranean caverns.

Confronted with this new power *grosso modo* two principal attitudes are affected. The orthodox liberals do not believe that anything can be altered and are resigned in advance to the consequences, considering them natural. The others—socialists or those who favor a directed economy of any kind—want at all cost to subject this special power to the authority of the traditional State. Outside of these two positions there could be still a third one, hitherto little explored it is true, that would favor drawing this power, judged necessary, from the economy itself. This task appears more simple than one would believe, for one reason because this authority is prefigured in modern economic organization and for another because a method exists that could be called *translative*. This is a method as simple as it is fruitful which would concern itself with *translating* certain economic terms into terms of public law, without proceeding with massive and costly changes, which once accomplished would be disappointing.

It was Marx himself who applied for the first time this translative method, by qualifying the capitalist production of his period as *anarchic*. No doubt he intended to say that the capitalist production of his time was not subjected to any regulating authority. And yet, Marx did not believe that this authority, which he called upon to the limits of his capacity, could be other than traditional. He predicted with almost prophetic foresight the concentration of capital, but the idea that this concentration would lead to a purely natural economic authority did not even cross his mind. Seeing the disorders created on the market by "the anarchy of production," he became reconciled to an ever-growing concentration which by gradually eliminating competition would open the way to socialism. Inherent in the fact itself of the elimination of the market and of competition, this socialism could only be an administrative socialism, a statism of the traditional kind. It is doubtful whether Marx ever assigned a positive role to the market, other than that it progressively eliminated itself by creating a sufficiently broad and solid technical and social base to make

the start of socialism possible. What accounts for this misapprehension which had such grave consequences for socialism as well as for economic liberalism? The fact that in his time thousands of small and medium-sized enterprises fought bitterly in a market in which the majority of needs could not be satisfied must have concealed from him the primary role that the market and competition have not ceased to play even at the most obscure moment of capitalist evolution. But since then, thanks to concentration, the anarchistic character of the market has been considerably lessened and the great majority of needs are now clearly attainable, so that it is no longer possible to disregard the regulatory role of automatic controls which the market and competition play quite naturally and *de rigueur*. To replace this automatism by administrative regulation and control would be equivalent to replacing mechanical work by manual work, or replacing an advanced technique by a rudimentary technique. What is important now is not to create a weighty hierarchy of offices and to get swamped in red tape, but to establish more perfect "legal machinery," which by mastering the economic automatism would assure man's domination over his own social nature.

The second application of the translative method was carried out by the eminent liberal economist Ludwig von Mises, who, refuting certain socialist theses, advanced the idea that the market from a political point of view is a *direct economic democracy*. Every market implies, in fact, the power of the consumer to choose among the products of several firms, and in principle he will choose the product of best quality and at the best bargain. As a result of this choice the consumer "makes a plebiscite" so to speak of production, because every dollar spent from a political point of view is a ballot in favor of such or such an enterprise in preference to another. It is an election without beginning or end, a massive, multiple, varied and ceaseless poll, and the most effective one that can be imagined, because the companies that have not gathered enough votes, i. e. money, in the course of the balloting, will shortly be eliminated from production. It is a genuine "plebiscitary democracy," with two conditions: the first is that the "right to vote is equal," that there is not a "plurality of votes," that

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is, that some people dispose of too much money to the detriment of others who dispose of only a little; the second, no less important, is that an efficient antitrust policy guard against cartels and industrial trusts interfering anywhere with competition and establishing a de facto monopoly, and that uncontrolled advertising does not affect substantially the consumer's freedom of choice. In other words, a market contained on the one hand by a social policy and on the other by an antitrust policy would be the most perfect economic democracy and no socialist regime could outclass it. In fact a regime that is incapable of taking advantage of the immense moral force, which in industrial societies adds up to hundreds of millions of purchases of all kinds, is from a legal point of view like an underdeveloped country which, lacking an adequate modern technique, is unable to exploit its resources of energy. This is a productive application of the method which we have called translative, an application that would dispense with cumbersome and massive nationalizations and would from the outset suppose a perfected economic democracy with which every truly scientific socialism would sooner or later have to identify.

THE LIMITS AND SHORTCOMINGS OF PLANIFICATION

The idea that a supreme bureau of any kind could draw up a detailed list of all the needs to be satisfied along with a specific program of the procedures to be followed to produce the means for meeting these needs is a utopia as pathetic as it is simplistic. The superficial rationalism which is at the base of this idea does not take into account either what is flexible and unpredictable in human needs nor their variety and infinite wealth of specification. That a father, the housekeeper of a convent, or the pay officer of a regiment makes up a list of all the products and articles that the friars of the convent or the soldiers of the regiment will need in the course of a year, that they organize the complete logistics of all the tasks to be carried out in view of procuring these products and articles, is not inconceivable or impossible. But modern industrial society is neither a convent nor a regiment, unless one intends to

assimilate it to them, an idea that has always tempted ascetic and spartan souls. Even if one were to try to eliminate from these needs all that is flexible and unpredictable, one would discover that though reduced to a set volume and type, they would entail so much complication and abundance of detail that just to coordinate them in space and time would pose almost insoluble problems. All the more than the data on the basis of which the planifier would have to work would be in large measure deprived of the objectivity that is an indispensable condition for success. In fact, planification, by abolishing the market as a matter of principle, destroys at the same time the objective character of economic data because everywhere at the lower echelon it imposes managerial caprice and arbitrariness. Such a procedure would subjectivize the economy which by the same taken would cease to be a subject that would lend itself to scientific observation and interpretation. It may be seen to what extent planification is the negation even of the spirit which is at the base of the modern sciences, including economic science.

If planification is what it is, how can we explain the unquestionable successes it has achieved in a number of countries? The problem is to distinguish between long- and short-term planification, considering that the success attained is ascribed entirely to the former. Long-term planification is a proven process which has always yielded good results in the course of history. The monumental pyramids of ancient Egypt; the wall that runs thousands of miles along the frontiers of China; the temples embowered in the tropical forest of Yucatan; the majestic cathedrals of the Middle Ages could never have been built if the work had not been planned over a period of several years, indeed several decades.

People living at the height of the neolithic period, such as the Mayas, were capable of building impressive ceremonial edifices which today inspire general admiration. How much more effective would this long-term procedure be if it were carried out with modern technical means! Certainly, neither the pharaoh Cheops nor the emperor Cheng-Chi, the arch-priest of Tikal or Palenque ever posed the question essential to modern economy: how much does this or that cost? It is certainly now more

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indispensable than ever to see that manpower, capital and raw materials are economically employed, because any use that deviated only a fraction from economic principle would be a painful return to the ancient historical use of statute labor. Yet, however legitimate these historical comparisons may sometimes be, long-term planification, such as it has been and still is practiced in a number of countries, has proved to be a particularly efficient method. It is thanks to it that these countries have been able to accelerate the rhythm of their industrialization and have created a powerful technical base. These successes would have been even more brilliant if short-term "planification" had not disappointed expectations. The fact is that there is a substantial difference between these two types of planification: the former spaces out credits over a long span of time; the latter imposes an administrative regime on production. The former is a policy of credit spread out over several years; the latter is a regime of distrust and control whose aim is to take over every minute of the productive process.

Such a "planification" of production entails a number of obvious disadvantages for which nothing compensates. The direction and control are entrusted to a very expensive and not very efficient bureaucratic apparatus; without a margin of leeway accorded the interplay of economic laws, there can be no real price and consequently no objective calculation of the cost of production price; without the discipline imposed by the market, raw materials are squandered and manpower is badly distributed; the proportion of rejects from poor workmanship surpasses admissible bounds; machines are used up faster than ordinarily and sometimes without having yet been amortized; work discipline and morale in the factories become lax; due to the absence of competition, technical progress bogs down. The accumulation of all these negative phenomena is translated into mediocre productivity which remains clearly under the norm. The fact is that planification is perfectly capable of establishing prodigious objectives and of realizing them, but it is incapable of exploiting them with the minimum of necessary profit. To administer means to entrust the management of a business to executives who are not interested in it, whereas modern production requires that a business be managed by the very people who are the

most directly interested in it. In order to cure this deep-seated disease that corrodes from within the entire administrative economy, an attempt has been made to interest producers in the results of their work by means of bonuses. Unfortunately, in an economy in which the touchstone is not profit but the realization of such or such a goal, the producers will always find convenient subterfuges to increase the indices of their fulfillments without at the same time raising productivity, to magnify their indices even at the expense of productivity. The goal is realized, sometimes surpassed, but its fulfillment conceals more or less a deficient productivity, in some cases even losses of such magnitude that no normally run enterprise could sustain them without being driven in a short time into bankruptcy.

One can see clearly that in the idea and practice of planification two entirely different things are confounded; on the one hand the planification of long-term investments and on the other the bureaucratic management of production. The first is a proven process, clearly superior to the methods of capitalist financing which show a marked preference for short- or medium-term investments that are more quickly amortized.

And the second? An improvised regime inspired by that old authoritarian adage that the State can do better than individuals and that it is enough to appeal to it and everything will be for the better. But coercive direction, the finicky bureaucratism that it imposes on executives is absolutely contrary to the productivity that flourishes only where there is a well-developed decentralization of initiatives and responsibilities. Moreover, the ambition of the State to manage business directly is as old as history, and is always a phenomenon of the most retrogressive periods of economic history. The Roman Lower Empire, the Byzantine Empire, the French *ancien régime*—regimes in full decadence—outdid each other as to who could better exploit the manufacturers, but unfortunately with a very low return. Economic and technical progress owes nothing to this form of productive activity which vegetated in the shadow of authority and perished miserably without leaving a trace.

On the other hand, planification such as it is being practiced and conceived does not comprise this form of very modern

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planification which is called "market planning," and which, it seems, is likely to have a very promising future. Jean Dayre, in a book entitled *Les faux dilemmes* that appeared a few years ago, insistently raises the question of whether "the plan" and the "market" might not be combined. He considers that adequate measures could bring competition close to a perfect "pattern" which would thus become a balanced and efficient "instrument of economic technique." The most important measures should be concerned with the standardization of products, the systematic informing of the sellers and buyers by means of "institutional advertising," the anticipation of future demands, insurance against commercial risks which do not depend on the businessman. In order to remedy, within the limits of the possible, the accidents of the economic situation, the mechanism of the term payment market should be enlarged. In order to counter commercial risks insurance companies should be organized that would fulfill these functions: the determination of the product-types listed in the insurance contracts; the establishment of contracts that guarantee prices against the fluctuation of the market. These mechanisms will inspire the confidence of the producers in the market, and the distressing dilemma of inflation and the chances of a recession itself would be considerably attenuated. This "market planning" in Mr. Dayre's opinion "would be as applicable to a society of private enterprises which seeks harmony in freedom as to a society of public enterprises which looks for an ordered decentralization."

Of the three types of planification analyzed above only the first and third type, long-term planification and "market planning," are worthy of consideration. The second type, which requires the rigid centralization of the production apparatus to the advantage of a top-heavy and proliferous corps of managers and excels in taking away any responsibility, any autonomy, any initiative from the producers, should be thrown into the "trashcans of history," to use a metaphor dear to the Marxists.

SHORT OUTLINE OF THE SECOND STATE

In order to find an adequate answer to the principal problem of economic power and to the no less important problems

raised by the market and planification, the concept of a second, purely economic State should be formulated; it would have to be constituted alongside the traditional State, collaborate with it but still be constitutionally separated from it. This second State would not start out from nothing, since the capitalist economic organization with its hierarchic structure prefigures it, in the sense that the institutes of credit superimposed on industrial enterprises constitute a kind of natural instance of management. Profiting from this prefiguration, our second State appears as a "financial government," disposing of the highest authority and of the broadest initiative in matters of credit and finance.

The idea of a new State could and should be derived from the organization of modern economy. A new State made to the measure of our industrial epoch will appear strange only to those for whom the State is not an historical phenomenon, but an a priori postulate, a metaphysical, timeless and unchangeable entity. These metaphysicians surreptitiously throw a veil over the modest economic origins of the traditional State. Anyone who has studied at all the history of English political institutions must observe that the State and these institutions were crystallized around the royal prerogative of levying taxes—a simple function of the Royal Household—and around the will of the people to put an end to the abuses of this prerogative. Thus the traditional State simply emerges out of the economic conditions of the Middle Ages, from the agrarian and artisanal economy of feudal society. If the preindustrial period benefitted from the privilege of creating its own State, why should our period and our industrial society not crown their evolution with the constitution of a State that would be appropriate to it?

From the economic point of view this new State would be a super bank with the tasks of: 1) combatting by means of competitive investments any tendency to monopoly and reestablishing in all branches of production effective competition, that is, carrying out on a much broader scale and in a much more efficacious manner what for instance the antitrust legislation is designed to do in the United States; 2) financing and planifying long-term investments which capitalists are reluctant to do, and which hence would have to be put in charge of a public

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authority; 3) elaborating and financing "market planning," whose aim would be to make competition as near to a perfect model as possible; 4) taking all the necessary financial measures to prevent or check inflation or a recession. As this "financial government" would have in its arsenal only "banking" weapons, the budget for it would cede to it the receipts from taxes on the profits of corporations. These receipts in the United States amount to about thirty billion dollars a year, which, due allowances being made, would be sufficient to cover the expenses of the second State. The latter would convert the amounts from the tax on profits into bonds—shares or obligations—in such a way that the duty to pay interest would be an admonition to the planifiers to watch over the solvency of their investments. At the same time the tax on the gains of corporations would cease to be a tax which would dry up profit at the source in order to convert it to negotiable bonds.

This "financial government" should be controlled by a representative assembly of interests which would be the same as an expression of the economic sovereignty of the nation. It would represent consumers, workers trade unions, management associations and other important economic interest groups whose arithmetical composition would have to be established. In a book entitled *La République moderne*, Pierre Mendès-France assigns the representation of the interests an appreciable place in his renovated republic without taking into account that in an environment in which traditional competences and modern economic competences are inextricably bound together, it is doubtful that the representation of the interests could make its weight felt exactly where it ought to be; and whether one wants it so or not, in this confused context the most direct and most probable effect of the representation of the interests would be to diminish the importance of universal suffrage to the benefit of traditional authority. Thus the confusion of the two powers, traditional and modern economic, can be multiplied, on the one hand of the government and on the other of parliament, but the result always remains the same.

François Bloch-Lainé in a book recently published, entitled *Pour une réforme de l'entreprise*, proposes that the problems of business management, instead of being posed in terms of com-

mercial law henceforth be posed in terms of public law or constitutional law, respectively. It is curious to note that this is the same translative method that we used when we defined the market as an economic plebiscitary democracy. According to Bloch-Lainé, the relationships within an enterprise should be conceived of as relations between "rulers" and "governed," that is, the enterprise should be understood as a miniature economic State. The conversion of the economic (commercial) problem into a problem of public law has made it possible for the author to dismiss from the start nationalization as a solution and to propose in its stead the democratization of the social constitution. If it is legitimate to speak of "government" in the case of the management of an enterprise, how much more legitimate would it be to speak of "government" with regard to this superior authority which would take charge of the management of the entire economy.

Thus the second State could be defined politically as follows: *A direct or plebiscitary economic democracy (market or decentralized public enterprises), supervised and directed by a representative democracy of the interests (financial under the control of an assembly representing the interests).*

The pluralism which has developed in the course of these last centuries, beginning with the duality of powers in the Middle Ages, is in the process of degenerating into an oligarchy harmful to the interests of civilization. It has as a reaction generated an authoritarianism, which as a remedy is worse than the ills it was meant to cure. It purposes to submit modern economy to the traditional authority of the State without regard for the consequences. But we who know a good deal about the modest origins of the traditional State are particularly impressed by the extent of the historical lag that exists between this State and modern industrial economy. How could we imagine that a State born of a pre-industrial economy could assume the functions so differentiated and delicate that the direction of a modern economy entails, when the only "technique" in which the State originally has had experience is solely the levying of taxes. In order to prevent once and for all the State with its undifferentiated techniques from encroaching upon the domain of the infinitely more evolved modern industrial economy, an

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institutional separation must be effected between the State and the economy through the intermediary of the second State. In order to be up to this task, an interest in legal-political studies must be revived and primarily "the old hide" of commercial law must be cracked open to allow a new public law, a *public economic law*, to issue from it.

This new State with economic and financial competence respectively would not contest the authority of the old State in traditional spheres, such as internal affairs, foreign affairs, national defense, justice, agriculture, public finances, national education and public health.

Furthermore the superior unity of state organization could be reconstituted in different ways: in the person of the chief of State; through mixed commissions of both assemblies—one the issue of universal suffrage, the other the issue of the representation of the interests, and periodically through common sessions either of both executives or of both assemblies.

The healthy repercussions of the formation of this second State would be felt equally in the domain of the traditional political State. In countries with an old political tradition, such as England, the industrial and social revolution has upset the delicate balance between the executive and the legislative to the benefit of the political parties. In countries in which parliamentary institutions have not become part of custom, the same evolution has to a greater or lesser extent swept away existing political structures and has led to the installation of ceasarisms or tyrannies, modestly called "dictatorships." Once the traditional political State is unburdened of the major part of its economic competences, which moreover it has been able to fulfill only in an incomplete and inefficient fashion, it will be able to recover that aspect and classical equilibrium which suited it so well in the past.

As the second State is by comparison with the weighty machinery of traditional politics a very flexible and adaptable political instrument, there is no reason why it should not also extend to the supranational level. Thus nations desiring to push their economic collaboration as far as possible could perfectly well, before they have achieved political unity, organize a sup-

ranational economic state and allot a part of their financial resources to it.

SOCIALISM AND THE SECOND STATE

To be sure neither the dialectics of history nor the myth of the working class, copied closely on the biblical myth of the chosen people, nor the myth of the class struggle, a Manichean idea par excellence, nor the romantic myth of revolution are of such a nature as to get along with our legal positivism. All this eschatology is most useful for making a new semi-Manichean, semi-Islamic religion, which under the banner of its prophet rushes to the conquest of the world. Engaging in a discussion with adepts of a religion is always useless and painful, all the more that they prefer as good theologians a quarrel over dogmas to a confrontation with lay thinkers.

Yet, as involved as they are in their myths, as violent as the challenge is that they hurl at the scientific spirit of our time, the socialists nevertheless have solidly taken root in the modern world, to the extent that it has become necessary and reasonable to look for areas in which an understanding between them and liberals as unorthodox as we might be possible. This is not an easy task, because the matter in dispute between us bears at once on the form and on the substance. Thus it would be preferable at first to look for what unites us and to disregard for the time being what separates us. We agree with the socialists on a number of important points that could almost be enumerated specifically: that the economy in its modern industrial forms is a public affair; that certain long-term investments that are vital to society are repugnant to capitalists and consequently the public powers should take charge of them; that the market left to its natural bent tends to degenerate into private monopolism; that capitalism in its typical forms cannot insure full employment and remains exposed to the danger of inflation, recession or a crisis. These grievances are perfectly legitimate and any liberalism which does not take them into consideration is condemned to failure.

However our quarrels with socialism are not resolved for

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all this. First of all, the way it defines itself seems to us, in the light of what has been said here, *a minor definition, regrettably lodged in the cul-de-sac of private law*. To say that socialism is a regime which "abolishes private ownership of the means of production to the benefit of the collectivity" is an absolutely inadequate definition. It does not even touch upon the most important problem of all: how the instruments of production, once they have passed into the public domain, will be managed; how the socialist State will present itself and how an economy become socialist will react. The socialists of whatever stamp cannot provide any valid answer to these key problems, which open the way to the worst improvisations and the most abusive and retrogressive interpretations. In order to rectify the shortcomings manifest in this definition we would propose the following corrected version: *a socialist regime would be a regime which has abolished private ownership of the means of production and which insures by a perfected "technique" man's domination of economic laws*. This corrected version on the one hand confirms the right of the socialists to transform private enterprises into public enterprises; but on the other hand it cautions them against every attempt to subject the socialized economy to a rigidly centralized system. They should abolish private ownership of the means of production if they want, but they should not interfere with the autonomy of the producers and the right of the consumers to direct and control, through adequate mechanisms, the management of production. No regime, even socialist, can avoid under pain of falling again into the most abusive economic practices of history, the absolute necessity of granting at least a minimum of liberty to production and consumption in order that their confrontation produce automatisms indispensable to the smooth functioning of the economy. One should have the courage to push decentralization up to the precise limit at which all the advantages of competition could still be reaped, without having to endorse the counterpart inherent in a market economy.

Capitalism is a regime characterized by privileges of ownership and dominated by the blind law of the economy. Socialism, if it is truly a superior phase of evolution of human societies, must be a system which has abolished the privileges of private

property and subjected the blind forces of the economy to the domination of man. This may be accomplished only by a much more evolved social technique than the one that is in use in capitalist societies!

Why are the socialists incapable of rising up to these primary problems? Doubtless Marx's error was that he was convinced that economic laws were only transitory historical categories and that the concentration of capital, by stages eliminating competition, would also eliminate them. But this theory does not take into account the delicately ambiguous nature of economic laws, which on the one hand are manifest only where there is sufficient latitude for them, but which once unleashed have something of the determinism of natural laws. This determinism is sometimes as relentless as the determinism of natural laws, but it is not incurable in the sense that man may sooner or later become its master by means of the right technique. It is this idea of *technique* that Marx and his disciples critically lacked, as well as indirectly their adversaries. This lack vitiates from the outset all socialist theories, starting with the social-democrats, who hope that economic evolution will automatically install monopolism everywhere and that all they need do is to conquer it in order to become its heirs, and continuing with the communists, who the day after taking over power everywhere impose a rigid public monopolism, not leaving the least latitude to the interplay of economic laws.

It should be understood finally that socialism is not incompatible with a good dose of freedom accorded to producers and consumers and that this freedom in no way excludes direction and control by the state authority, on condition however that this authority is conceived as a purely economic authority, preferably a financial one and would only have economic weapons in its arsenal.

The formula that we advocate would open up, even in a society that remained capitalistic, an unlimited field to socialist action. Certainly, it would have to renounce once and for all the illusory tactics of nationalizations, tactics that are theoretically fallacious and in practice cumbersome and deficitary. And how could it not be so, when the aim is to "expropriate" at all cost something that by its very nature could only be rend-

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ered "constitutional" or "democratic?" How can a problem be posed in terms of private law when it is susceptible only to being solved by public law? Also, the socialists, instead of nationalizing enterprises, would have to become reconciled henceforth to being capable of nationalizing only the economic initiatives that are most vital to the life of a nation.

Has proof been given that the economic science of the Manchester School is more vigorous than Marx had imagined? It does not matter if as a result of one of these ironical overturns, in which history is past master, the socialist can loudly affirm that only socialism may assure the perfect balance between supply and demand, an interplay without the force of competition; that only socialism can bring the market closer to this ideal pattern that classical economic science has drawn.

But this is not all. The productivity of the capitalist system has reached a limit which cannot be surpassed by typically capitalist methods. In order to achieve a new level of productivity the workers must be made more interested in production, they must participate more and more directly in the management of production. To conduct this action to a successful conclusion the second State would be an invaluable ally for the proletariat, because the new enterprises founded as a result of public initiative could function on the basis of the principle of worker co-management. Socialism will dare finally to challenge capitalism in the only field in which the latter could really be defeated: in the market! Fair competition between the private and public sectors would make it possible to isolate the most productive and democratic forms of management and would contribute in a decisive way to the progressive socialization of the entire economy. Thanks to the ladder that the second State would lend them, the most talented and ambitious sons of the working class would be able to accede to the most responsible economic positions, without regard to the privileges of property. Without being the class chosen by history, the working class would nevertheless be the most solid pillar and the greatest beneficiary of a reform, liberal in kind but basically socialist in content.