KAY274 THEORIES OF STATE AND BUREAUCRACY - 5

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Barrowed from J.K. Bluntschili «Theory of State»
III. THE MODERN IDEA OF THE STATE

A. When does the Modern Age start?

THE historical consciousness of Europeans and Americans at the present day is unanimous in accepting the idea of a period of many centuries in the life of humanity which is called ‘the middle ages’; and in believing that we are living in a new age. But opinions are still divided as to what point of time separates the modern from the mediaeval period. We have learned that the past is bound up with the future. Presentiments and tendencies of the coming age make themselves felt long before, and countless effects of bygone days continue to operate in changed times. In the depth of the middle ages a few distinguished men gave utterance to ideas which have not been understood until the present century, and even to-day we still find many survivals of mediaeval institutions carefully preserved, and that not merely in monasteries or the castles of the nobility. The old and the new are linked together by the very unity of human life, and it shows a want of sense to divide them sharply from one another. It is the same with the different ages in the life of the individual. Nevertheless it is necessary to determine the different periods of time which, though passing over into one another, may yet on the whole be clearly distinguished.
1. Renaissance

Many date the beginning of the new age as far back as the second half of the fifteenth century. The period of the Renaissance appears to them the transition from the middle ages to the modern world. The reawakening of the philosophical spirit after the sleep of more than a thousand years, the revival of ancient ideas and memories in opposition to mediaeval beliefs and institutions, the reappearance of a freer and more joyous art under the influence of classical models, above all the rise of the Italian cities which did not shrink from withdrawing themselves as occasion offered from the protection of the Papal hierarchy, the extension of Roman and the derogation of Religious law, the invention of printing and the diffusion of printed books, the invention of gunpowder and the consequent changes in warfare, the greater enterprise in navigation, and the discovery of unknown countries on the coasts of Africa and in India and of a whole new continent in the West all this certainly marks a transition from the old to the new. But it is not so much the conclusion as the decline of the mediaeval period, and the preparation for the rising tendencies of the new era. The spirit of the age at the Renaissance had rather the character of maturity than of youth or childhood. It was less inclined to create what was new than to revive what was old; its efforts were directed throughout to the revival of ancient ideas and the imitation of ancient models. It partly reformed and partly destroyed the institutions of the middle ages, but it did not overthrow them nor replace them by creations of its own. The movement ended by stiffening into the absolutism of princes, great and small.
2. Reformation

Still more often the period of the religious Reformation is considered the beginning of the new period not indeed the incomplete attempts at reform in the German Empire at the Diet of Worms of 1495, but the reform of the sixteenth century, which is usually dated from the 13th October, 1517, when Martin Luther nailed his theses to the church door of Wittenberg. As a matter of fact the world-historical breach with the mediæval authority of the Roman Church was then complete, and the foundation of Protestant churches was actually a new creation in the religious sphere. The liberation of the religious conscience from servitude to Rome undoubtedly gave a powerful impulse to the subsequent liberation of science from all religious authority. The moral purification and elevation of the idea of the State prepared the way for modern politics.
3. The English Revolution

The same considerations prevent us from finding the beginning of the modern period in the English Revolution, whether that of 1640 or the so-called "glorious" Revolution of 1668. Certainly they brought about something new constitutional monarchy. But the more carefully we compare the English with the French Revolution, the more is our conviction strengthened that the former belongs to the end of the Mediaeval and the latter to the Modern period. The English were struggling mainly for the old Anglo-Saxon liberties and for the traditional rights of Parliament against the absolutism of the king, whereas the French strove to realize a new and rational organisation of the State and a new social freedom.
4. The French Revolution

Many therefore see in the French Revolution the first decided movement of the modern period, and date this from 1789, an opinion which flatters French vanity. It is incontestable that the French Revolution was filled and animated by the modern spirit, but it had begun to work before this. The ‘age of enlightenment’ which preceded had already the unmistakable stamp of the new time.
5. The Accession of Frederick The Great of Prussia

Among many others, Thomas Buckle, the learned historian of modern civilisation, has remarked that in the year 1740 a change in the current of men's ideas becomes perceptible. As the sun first lights up the mountain-tops, and only afterwards shines down into the valley, so the new spirit first manifests itself in great men, and only gradually diffuses itself among the multitude. In the second half of the eighteenth century the new spirit animated not only a chosen few, the prophets and forerunners of a coming age: everywhere new ideas rose on the horizon, and the demand for change was universally felt. Men's hearts swelled with the hope of a new life. Art, literature, the state, and society were transformed, the sentiments of the world were turned away decisively from the middle ages towards a new creation.
If we compare men and events since 1740 with those of the preceding centuries, we are struck by the vast change in the character of the times. Not merely are the individuals different, but the conditions of their existence, the ground on which they stand, the air which they breathe. Compare, e.g., Frederick the Great of Prussia, the most significant representative of the modern State and the modern view of life not merely with Louis XIV of France, the clearest representative of the absolute monarchy by the grace of God, which closes the middle ages but even with his own great ancestor, the Elector Frederick William; or compare the liberation of the Netherlands from Spanish rule with the liberation of North America from English rule; or compare the French with the English Revolution, or Rousseau with Ulrich von Hutten, or Lessing with Luther, and the vast difference is at once apparent.
Thus we date the modern era from the year 1740. The rise of the Prussian kingdom, Joseph II’s reforms in Austria, the foundation of the United States of North America, the changes of the French Revolution and the Napoleonic empire, the transplanting of constitutional monarchy to the continent, the attempted introduction of representative democracy, the foundation of national states, the gradual removal of religious privileges and disabilities in public law, the separation of Church and State, or at least the clear demarcation between their spheres, the abolition of feudalism and of all privileged orders, the rise of the conception of national unity, the recognition of the freedom of society, all these are the achievements or at least the attempts of the modern State.
THE DEVELOPMENT OF DIFFERENT THEORIES OF THE STATE

POLITICAL science has had a very important share in altering the actual character of the State and the ideal of what it should be. Modern political theory preceded modern political practice, and has generally accompanied and pointed out the way for change. More rarely, theory has followed facts. The following are the main phases in the scientific development:

1. The Renaissance

The conception of the State at the time of the Renaissance, especially as we find it in the works of Machiavelli, Bodin, and partly also of Hugo Grotius, is the direct outcome of the ancient conception, but begins to deviate from it.
Machiavelli

The State is to Machiavelli the highest kind of existence. He reverences it as the noblest production of the human spirit. He loves it passionately, and sacrifices to it without hesitation everything, even religion and virtue. But his State is no longer a legal or constitutional State, such as was that of the ancient Romans. Public law is to him only a means to further the welfare of the State, and to secure the growth of its power. His ideal is exclusively filled and determined by politics. The State is for him neither a moral nor a legal, but only a political being. Thus, the only standard of all state-acts is utility. What the power and authority of the State demand, that must the statesman do, undisturbed by moral and legal considerations. What is hurtful to the welfare of the State he must avoid. Machiavelli's great service was to make political science independent of theology, and to have discovered the distinction between public law and politics. But he has adorned an immoral and unjust policy, has put his prudent advice at the disposal of tyranny, and has thus helped to corrupt the political practice of the last three centuries.
Bodin

Bodin sees in the State ‘a right government, with sovereign power, of several households and their common possessions’. He bases the State especially on the family, common possessions, and sovereignty, and he blames the political ideas of the ancients for having looked too much to happiness and success. By his doctrine of the sovereignty of the ruler he gave a scientific support to the absolutism of the French monarchy.
Hugo Grotius

Hugo Grotius still inclines to the definitions of Cicero, but the transition to modern political ideas may be quite clearly observed. He bases the State, like the ancients, upon human nature, but he is thinking less than they of mankind or of a whole people. He looks, above all, to the individual man. His saying ‘hominis proprium social’ is a bad translation of the Aristotelian: ‘human is a social animal’. But it shows in a characteristic way that the modern mind does not begin with the State, but with the individual. The sharp separation of the religious community of the Church from the worldly and political community of the State, and the strong accentuation of personal freedom are two other signs of the modern spirit of the Dutch writer. He declares the State to be ‘the complete union of free men, who join themselves together for the purpose of enjoying law, and for the sake of public welfare’. The personality of the State was not unknown to him, but it does not dominate his political theory, and in making the consent of men the chief source of public law he suggests a line of thought which was carried out in, the later theory of contract.
2. Theories of the Law of Nature, of Contract and Association

The idea of contract formed the basis of the modern nature, of theory of the Law of Nature and the speculative political association philosophy which was founded on it in complete independence of ancient theories of the State. The differences of philosophical schools and of political parties produced a great difference between opinions, hardly any one writer completely agreeing with another. But even into the present century, in the many accounts of the Law of Nature, and of the general conception of the State, there prevailed the fundamental idea that the State was essentially an association of individuals, and therefore an arbitrary work of individual freedom. The absolutist, Hobbes, who makes the authority of the monarch an all-devouring Leviathan, is in this at one with the radical Rousseau, whose ‘sovereignty of the people’ makes the continuance of the whole order of the State an open question. The ingenious Samuel Puffendorf regards the State as a moral person, but its will is, for him too, only composed of the individual wills of all, and he explains the State by the theory of social contract. John Locke zealously defends this theory against the attacks of theological bigots, and finds in it a guarantee of English civic liberty. Even Kant does not get beyond it, although he shows a tendency to do so, and Fichte himself in his earlier writings still adheres to the same view. The State, according to the whole philosophy of natural rights, is essentially based upon contract and upon association. If the ancient philosophers did not sufficiently regard the rights of individuals, the modern have committed the opposite error of regarding the individual so much as to ignore the significance of the State as a whole.
3. System of Authority

It was only in the modern period that the theory of natural law could obtain general acceptance, and lead to attempts to realise it. The absolutist character of the two centuries before 1740 implied a theory of the State, which based it upon the power of a superior. The source of this conception received no further examination. Sometimes people were content with the traditional belief of the Church, that the government had received the sword from God: sometimes they inclined to the patrimonial tradition that the prince was the supreme owner of the country. Meanwhile these older doctrines had to undergo a transformation, partly through the accentuation of the ‘public law’ character of sovereignty, partly through the necessary regard to the public weal. The State was thus regarded as being essentially the sphere of the power of a superior, and the government was actually identified with the State. This was the fundamental idea of the absolutist theory of the State which, prepared by Bodin and Hobbes, was developed in a theological way, especially by Filmer and Bossuet, and was taught with a hundred variations. In this one-sided view of authority, the rights and liberty of the governed were of course altogether left out of sight. Just as the Roman Catholic Church places the essence of its being in the clergy alone, with the Pope at their head, while the people are regarded as a flock of sheep, who have to be guided and sheared by their spiritual shepherd; so, according to this theory of the State, only the prince and the government officials had any value, and the subjects were looked on as a mere passive mass, to be managed and governed from above, but with no claim to manage themselves, or to share the government, or to control the conduct of their rulers.
4. The State to be a ‘Legal State’

It was with the immediate intention of narrowing the sphere assigned to government, alike by the theory of natural law and by the theory of authority, that Kant and Wilhelm von Humboldt declared the State to be a ‘legal State’ in the sense that its sole duty was the maintenance of the legal security of each individual. Fichte indeed broke through these narrow limits in describing the State, as at the same time concerned with economics, and in this respect he even exaggerated its power, and towards the end of his life, inspired by the national enthusiasm for the liberation of Germany, he ascribed to the State still higher spiritual functions. But most German philosophers and jurists of the next generation still adhered to the theory in the narrow Kantian sense.
5. Organic Theory of the State

The historical school has the merit of having restored the consciousness of the organic character of the State, of which indeed a few great statesmen had never lost a vivid comprehension. Frederick the Great of Prussia expressed it clearly in his Anti-Machiavel: ‘As men are born, live for a time, and then die from disease or from age, so states come into being, flourish for some centuries, and then perish.’ But science had so completely neglected this view that the restoration of it by the historical school had the effect of a new discovery, and science for the future took a new and more fruitful direction. Meanwhile the historical school was inclined to take up the conception of the State too much as merely national, and to overlook or even to dispute its human significance. Thus, Savigny declared the State to be ‘the bodily form of the spiritual community of the nation,’ or ‘the organic manifestation of the nation’.
6. German Political Philosophy

Although the works of the historical school are almost exclusively limited to the legal and political history of particular states, yet even speculative philosophy gained by the new inquiries. Even Hegel in his theory of Law paid more Hegel regard to the historical formation of states than the earlier theorists of natural law. He supposed indeed that he found in the history of the world a dialectical process of reason. The ‘existing’ appeared to him ‘rational.’ His theory glorified especially the Prussian state, as it then existed, still absolute although governed in a spirit of public duty. He defended the power of the monarchy, and did not care for the advance of constitutional freedom. But he emphasized the moral significance of the State, and in opposition to the wretched idea that it was only a necessary evil, he praised it, as the highest and noblest realization of the idea of Right. Hegel's State is however only a logical abstraction, not a living organism, a mere logical notion, not a person. Hegel, by founding the State and Law merely upon will, overlooks the fact that in the State not merely is the collective human will operative, but all the powers of human spirit and feeling together.
7. Union of the Philosophical and Historical Methods

The old conflict between the philosophical and historical school in Germany has altogether ceased. Peace was made as early as 1840. Since then it is recognized on all sides that the experiences and phenomena of history must be illumined with the light of ideas, and that speculation is childish if it does not consider the real conditions of the nation's life. In spite of this union of the two methods, which supplement and correct one another, some authors have more of the philosophical, and others more of the historical tendency.
Differences between Ancient and Modern State regarding:

1. Rights of man as man: The ancient State did not recognize the personal rights of man, nor consequently the right of individual freedom. The modern State recognises the rights of man in every one. Everywhere slavery has been abolished as a wrong.

2. Sphere of State-action: The ancient idea of the State embraced the entire life of men in community, in religion and law, morals and art, culture and science. The modern State has become conscious of the limits of its power, and its rights. It considers itself essentially a legal and political community.

3. Individual freedom Private Law: In the ancient idea, the man had only full rights, qua citizen. In the modern idea, the man has his rights as an individual, private law is sharply distinguished from public law, and is rather recognised than created by the State, rather protected than commanded.

4. Sovereignty: In the ancient idea, the sovereignty of the State was absolute. In the modern idea, the sovereignty of the State is constitutionally limited.
Differences between Ancient and Modern State regarding:

5. Direct Government Representative Government: In the ancient idea, public authority was directly exercised by its holders. In the modern idea, the modern State is representative.

6. The city the nation: The Greek States were essentially city States. Modern States are essentially national States. The city is only a community in the State, and not the heart of the State.

7. Differentiation of functions: In the ancient State public activities were distinguished by their nature and objects, but usually the same assemblies and magistrates exercised different functions, legislative and administrative. In the modern State different activities have different organs, and thus the earlier distinctions in the objects of authority have passed into a personal separation of functions.

8. International relations: The ancient State felt itself limited externally only by the resistance of other States, and not by a common international law. Modern States recognise international law as a limit to their dominion.
Differences between the Mediaeval and Modern State regarding:

1. Divine human origin: The middle ages derived the State and the authority of the State from God. The modern State is founded by human means on human nature.

2. Theology Science: The conception of the State was based on and regulated by theological principles. The fundamental principles of the State are determined by the human sciences of philosophy and history.

3. Theocracy: The ideal of the mediaeval State was not indeed like that of the old oriental peoples, a direct theocracy, but an indirect theocracy. All theocracy is repellent to the political consciousness of modern nations. The modern State is a human constitutional arrangement.

4. Religion: The mediaeval State depended upon community of belief, and demanded unity of creed. Unbelievers and heretics had no political rights, they were persecuted and exterminated; at the best they were merely tolerated. The modern State does not consider religion a condition of legal status. Public and private law are independent of creed.
Differences between the Mediaeval and Modern State regarding:

5. The Church: Mediaeval Christendom considered the Church as spiritual, and therefore higher; the State as bodily, and therefore lower. The modern State regards itself as a person, consisting at once of spirit (the national spirit) and body (the constitution).

6. Education: In the middle ages the Church guided the education of the young, and exercised authority over science. The modern State leaves only religious education to the Church, the school is a State school, science is free from ecclesiastical authority, and its freedom is protected by the State.

7. Public and Private Law: Public and private law were not distinguished, territorial sovereignty was held to resemble property in land, and the royal power a family right. Public and private law are distinguished, and public rights imply public duties.

8. Particularism Centralization: The middle ages produced the feudal system. The power of the State was split up, and there was a gradual descent from God to the king, from him to the princes, then to the knights and the towns. The modern State is an organization of the nation and preserves a central unity in its authority. States are formed on a national basis, and tend to become great in size. Law is national and human, and applies to all equally.
Differences between the Mediaeval and Modern State regarding:

9. Representation: Representation was according to estates. The aristocratic estates of the clergy and the nobility dominated. Law was different in each estate. The modern State requires a uniform representation of the people. The great classes of the people have the chief power: the basis is democratic.

10. Liberties Liberty: Great and small lords had the freedom of their dynasties and orders so extensively protected, that the authority of the State was weakened. On the other hand the peasantry were kept in an unfree condition. The modern State develops the common freedom of citizenship in all classes, and compels every one to submit to its authority.

11. Sphere of State-action: The medieaeval State was merely a legal State; but the administration of justice was indifferently guarded, and people were often left to maintain their own rights. Government and administration were weak and little developed. The modern State, because constitutional, is likewise a legal State; but at the same time it concerns itself with economics and culture, and above all with politics. Government is strong, and administration is carefully developed with a view to the welfare of the nation, and of society.

12. Unconscious custom conscious legislation: The mediaeval State had little consciousness of its own spirit. It was determined by instincts and tendencies. The modern State is conscious of itself, it acts according to principles and from legislation, reason rather than from instinct. Legislation is the principal source of its law.