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Author(s): Hans Kelsen

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## FOUNDATIONS OF DEMOCRACY<sup>1</sup>

HANS Kelsen

### I. DEMOCRACY AND PHILOSOPHY

#### DEMOCRACY AS "GOVERNMENT BY THE PEOPLE": A POLITICAL PROCEDURE

THE political idea of the nineteenth century, born in the American and French revolutions of the eighteenth century, was democracy. To be sure, there were also in Western civilization remarkable forces working for the maintenance of the autocracy principle. But its representatives were stigmatized as reactionaries. The future belonged to a government by the people. This was the hope of everybody who believed in progress, who stood up for higher standards of social life. It was, above all, the young, rising bourgeoisie which fought for this idea.

In the twentieth century, however, the intellectual and political situation has changed. The immediate effect of the First World War—it is true—seemed to be a victory of the democratic principle. The newly erected states adopted democratic constitutions. The German Reich, the most powerful bastion of monarchy, became a republic. But the ink on the peace document of Versailles was not yet dry when in Italy the Fascist government came into power and in Germany the National Socialist party began its victorious drive. Together with them a

new political doctrine was advocated, passionately opposed to democracy and proclaiming a new way of political salvation: dictatorship. There should be no doubt about the great attraction which the new idol exerted over the bourgeois intelligentsia, not only in Italy and Germany, but everywhere in the Western world. And although fascism and national socialism have been destroyed as political realities in the Second World War, their ideologies have not disappeared and still directly, or indirectly, counteract the democratic creed.

A more dangerous adversary than fascism and national socialism is Soviet communism, which is fighting the democratic idea under the disguise of a democratic terminology. It seems that the symbol of democracy has assumed such a generally recognized value that the substance of democracy cannot be abandoned without maintaining the symbol. Well-known is the cynical statement: If fascism should come to the United States it would be called democracy.<sup>2</sup> Hence the symbol must change its meaning so radically that it can be used to designate the very contrary: In Soviet political theory the dictatorship of the Communist party, pretending to be the dictatorship of the

proletariat, is presented as democracy. It is of the greatest importance to disclose the conceptual device through which this distortion of the symbol could be achieved.

The original meaning of the term "democracy," coined in the political theory of ancient Greece, was: government by the people (*demos* = people, *kratein* = govern). The essence of the political phenomenon designated by the term was the participation of the governed in the government, the principle of freedom in the sense of political self-determination; and this was the meaning with which the term has been taken over by the political theory of Western civilization. It stands to reason that in antiquity as well as in our time a government by the people is desired because such a government is supposed to be a government for the people. A government "for the people" means a government acting in the interest of the people. But the question as to what is the interest of the people may be answered in different ways, and what the people themselves believe to be their interest is not necessarily the only possible answer. It may even be doubted whether there is such a thing as an opinion of the people about their own interest and a will of the people directed at its realization. Hence a government may consider itself to be a government for the people—and as a matter of fact every government does so—although it may not be a government by the people at all. Already in ancient Greece adversaries of democracy, like Plato and Aristotle, pointed out that a government by the people as a government by men inexperienced in governmental practice and without the necessary knowledge of the facts and problems of political life may be not at all in the interest of the people and thus may prove to be a government against

the people. Again and again, political writers tried to demonstrate that autocracy, be it hereditary monarchy or leader-dictatorship, is a better government for the people than a government by the people, i.e., democracy. That there is something true in this argument and that "government for the people" is not identical with "government by the people" cannot be denied. Since not only democracy but also its very contrary, autocracy, may be a government for the people, this quality cannot be an element of the definition of democracy. This is also the reason why the doctrine that democracy presupposes the belief that there exists an objectively ascertainable common good and that the people are able to know it and therefore to make it the content of their will is erroneous. If it were correct, democracy would not be possible. For it is easy to show that there is no such thing as an objectively ascertainable common good, that the question as to what is the common good can be answered only by subjective value judgments which may differ essentially from each other; and that even if it existed, the average man, and hence the people, would hardly be able to know it. It cannot be denied that the people as a mass of individuals of different economic and cultural standards have no uniform will, that only the individual human being has a real will, that the so-called "will of the people" is a figure of speech and not a reality. But the form of government which is defined as "government by the people" does not presuppose a will of the people directed at the realization of that which, according to the opinion of the people, is the common good. The term designates a government in which the people directly or indirectly participate, that is to say, a government exercised by majority decisions of a popular assembly

or of a body or bodies of individuals or even by a single individual elected by the people. The individuals elected by the people are called its representatives. This representation of the people means the relationship, constituted by election, between the electorate and the elected. By "people" all the adult individuals are to be understood who are subject to the government exercised directly by the assembly of these individuals or indirectly by the elected representatives. Democratic elections are those which are based on universal, equal, free, and secret suffrage. According to the extent to which these requirements, especially the universality of suffrage, are fulfilled, the democratic principle may be realized in different degrees. It has considerably increased during the twentieth century by the fact that the right of voting, restricted during the nineteenth century to taxpaying people and to the male sex, has been extended to nontaxpaying wage earners and to women. Democracy became a mass democracy. Whether the government of an unrestricted democracy realizes to a greater extent than the government of a restricted democracy the problematic opinion or the no less problematic will of people or the mysterious common good according to the opinion and the will of the people is another question. However that question may be answered, no answer whatsoever justifies rejecting the concept of democracy as government by the people and replacing it by another concept, especially by the concept of a government for the people.

Hence, participation in the government, and that means in the creation and application of the general and individual norms of the social order constituting the community, must be considered as the essential characteristic of democracy.

Whether this participation is direct or indirect, that is to say, whether there is a direct or a representative democracy, it is in both cases a *procedure*, a specific method of creating and applying the social order constituting the community, which is the criterion of that political system which is properly called democracy. It is not a specific content of the social order insofar as the procedure in question is not itself a content of, that is to say, regulated by, this order. The method of creating the order is always regulated by the order itself if the order is a legal order. For it is characteristic of the law that it regulates its own creation and application.<sup>3</sup> To be sure, the modern concept of democracy prevailing in Western civilization is not quite identical with the original, the antique, concept, insofar as the latter has been modified by political liberalism, the tendency of which is to restrict the power of government in the interest of the freedom of the individual. Under this influence guarantees for certain intellectual freedoms, especially freedom of conscience, have been included in the concept of democracy, so that a social order which does not contain such a guaranty would not be considered democratic, even if the procedure for its creation and application guarantees the participation of the governed in the government. However, the liberal or modern democracy is only a special type of democracy. It is of importance to be aware that the principle of democracy and that of liberalism are not identical, that there exists even a certain antagonism between them. For according to the principle of democracy the power of the people is unrestricted, or as the French Declaration of the Rights of Men and Citizens formulates it: "The principle of all sovereignty resides essentially in the nation." This is the idea of the sover-

eignty of the people. Liberalism, however, means restriction of governmental power, whatever form the government may assume. It means also restriction of democratic power. Hence democracy is essentially a government *by* the people. The procedural element remains in the foreground, the liberal element—as a particular content of the social order—being of secondary importance. Even the liberal democracy is in the first place a specific procedure.

It has been said that democracy as a political method, that is to say, as a certain type of institutional arrangement for arriving at political, legislative, and administrative decisions, is “incapable of being an end in itself irrespective of what decisions it will produce under given historical conditions”;<sup>4</sup> and that as a mere method it cannot “necessarily, always and everywhere, serve certain interests or ideals for which we do mean to fight and die unconditionally”; that “the democratic method does not necessarily guarantee a greater amount of individual freedom than another political method would permit in similar circumstances”;<sup>5</sup> and, in particular, that democracy cannot “always safeguard freedom of conscience better than autocracy.”<sup>6</sup> This inference from the procedural character of democracy is not quite correct. If we define democracy as a political method by which the social order is created and applied by those subject to the order, so that political freedom, in the sense of self-determination, is secured, then democracy necessarily, always and everywhere, serves this ideal of political freedom. And if we include in our definition the idea that the social order, created in the way just indicated, in order to be democratic, must guarantee certain intellectual freedoms, such as freedom of conscience, freedom of press, etc., then

democracy necessarily, always and everywhere, serves also this ideal of intellectual freedom. If in a concrete case the social order is not created in a way corresponding to the definition, or does not contain the guaranties of freedom, it is not democracy which does not serve the ideals. The ideals are not served because democracy has been abandoned. This critique confuses the idea of democracy with a political reality which wrongly interprets itself as democracy, although it does not correspond to the idea.

It further confuses the question as to whether democracy can necessarily serve a certain ideal with the question as to whether democracy can be itself an absolute ideal. It seems that the author infers from the negative answer he gives to the first question a negative answer to the second one. But although the answer to the first question has certainly to be in the affirmative, the answer to the second question may be in the negative. The ideal of freedom—as any social ideal—is from the point of view of political science only a relative ideal. But it may be from the point of view of emotional evaluation the highest, the supreme, ideal of an individual, a value which the individual prefers to any other value conflicting with the former. I may fight and die unconditionally for the freedom democracy is able to realize, although I may admit that from the point of view of rational science my ideal is only a relative one. Schumpeter quite correctly says: “To realize the relative validity of one’s convictions and yet stand for them unflinchingly is what distinguishes a civilized man from a barbarian.”<sup>7</sup>

As a method or procedure, democracy is a “form” of government. For the procedure by which a social order is created and applied is considered to be formal, in contradistinction to the content of the

order as a material or substantial element. If, however, democracy is primarily a form, a form of a state or a form of government, it must be kept in mind that the antagonism of form and substance or form and content is only a relative one, that one and the same thing may appear from one point of view as form and from another as substance or content. There is, in particular, no objective principle that constitutes a difference between the value of the one and that of the other. In some respects the form, in others the content or substance, may be of greater importance. The argument of "formalism," frequently used in order to disparage a certain train of thought and especially a political scheme, is mostly a device for the purpose of hiding an antagonistic interest which is the true reason of the opposition. There is therefore no better means to obstruct the movement for democracy, to pave the way for autocracy, to dissuade the people from their desire for participation in government, than to depreciate the definition of democracy as a procedure by the argument that it is "formalistic," to make the people believe that their desire is fulfilled if the government acts in their interest, that they have achieved the longed for democracy if they have a government for the people. The political doctrine which furnishes the appropriate ideology for such a tendency emphasizes the point that the essence of democracy is a government in the interest of the mass of the people, that the participation of the people in the government is of secondary importance. If a government is for the people, that is to say, if it acts in the interest of the people, it realizes the will of the people, and hence it is also a government by the people. For what everybody "wills" is his interest; and if a government realizes the interest of the

people, it is the will of the people and hence the people who govern, even if the government is not elected by the people on the basis of a universal, equal, free, and secret suffrage or is not elected at all or elected on the basis of an electoral system which does not allow everybody to express freely his political will. The objection that in such a case the interest which the government tries to realize may not be what the people themselves consider to be their interest is rejected by the argument that the people may be in error about their "true" interest, and if the government realizes the true interest of the people, it represents also the true will of the people and thus is to be considered as a "true" democracy—in contradistinction to a merely formal or sham democracy. In such a "true" democracy the people may be "represented" by an elite, an *avant garde*, or even by a charismatic leader. All that is necessary to do is to shift in the definition of democracy the accent from "government by the people" to "government for the people."

#### THE SOVIET DOCTRINE OF DEMOCRACY

This shift is a characteristic feature of the Soviet doctrine according to which the dictatorship of the Communist party is democracy.<sup>8</sup> The tendency to put in the foreground of the political ideology the interest of the masses appears already in the *Communist Manifesto*, where the establishment of the dictatorship of the proletariat, the immediate goal of the socialist movement, is presented as the victory of democracy. "The first step in the revolution by the working class" is "to win the battle of democracy." The "proletarian movement" is characterized as "the self-conscious, independent movement of the immense majority, in the interest of the immense majority." Following this line of thought,

Lenin declares that the dictatorship of the proletariat, i.e., the "organization of the vanguard of the oppressed," is "an immense expansion of democracy, for it becomes democracy for the poor, *democracy for the people*, and not [as the bourgeois democracy] democracy for the rich."<sup>9</sup> The essential characteristic of this democracy is that it "leads to the extension of the actual enjoyment of democracy to those who are oppressed by capitalism, to the toiling classes, to a degree hitherto unprecedented in world history."<sup>10</sup> What is decisive is not the formalistic criterion of representative institutions but the material realization of the interests of the masses. Hence Lenin declared that "socialist democracy is not contradictory to individual management and dictatorship in any way, that the will of a class may sometimes be carried out by a dictator, who at times may do more alone and who is frequently more necessary."<sup>11</sup> "Lenin taught us," wrote *Pravda*, "that the dictatorship of the proletariat in a class society represents the interest of the majority and is *therefore* a form of proletarian democracy."<sup>12</sup>

But the democracy of the dictatorship of the proletariat is not the last step in the development of socialist democracy. "Democracy means equality," but bourgeois democracy means only "formal" equality, whereas the socialist democracy is "going beyond formal equality to real equality, i.e., to applying the rule: from each according to his ability, to each according to his needs."<sup>13</sup> This is the Marxian formula for justice in the Communist stateless society of the future. In this democracy the people have no share in the government, for there is no government at all.

This perversion of the concept of democracy from a government by the people, and that can mean in a modern

state only by representatives elected by the people, to a political regime in the interest of the people is not only theoretically inadmissible because of a misuse of terminology, but it is also politically most problematical. For it substitutes as the criterion of the form of government defined as democracy a highly subjective value judgment—the interest of the people—for the objectively ascertainable fact of representation by elected organs. Every government may—and, as pointed out, actually every government does—assert that it is acting in the interest of the people. Since there is no objective criterion for what is called the interest of the people, the phrase "government for the people" is an empty formula apt to be used for an ideological justification of any government whatsoever.<sup>14</sup> It is highly significant that as long as the ideologists of the National Socialist party did not dare turn openly against democracy, they used exactly the same device as the ideologists of the Communist party. They disparaged the democratic political system of Germany as plutocracy, as a merely "formal" democracy which in reality guaranteed a minority of the rich to govern over the majority of the poor, and asserted that the Nazi party as an elite of the German people intended to realize the true will of this people: the greatness and glory of the German race.

#### A NEW DOCTRINE OF REPRESENTATION

The perversion of the concept of democracy which has just been characterized is not restricted to the Soviet or the National Socialist political doctrine. A quite similar pattern of thought has recently been presented as the theory of representation advocated by a "new science of politics."<sup>15</sup> The author distinguishes between a merely "elemental"

and an "existential" type of representation, just as the Soviet theorists distinguish between a merely "formal" and a "real" democracy. By elemental type of representation is understood that representation in which "the members of the legislative assembly hold their membership by virtue of popular election." The author further characterizes it by referring to "the American election of a chief executive by the people," to "the English system of a committee of the parliamentary majority as the ministry," to "the Swiss system of having the executive elected by the two houses in common session," and even to a monarchical government "as long as the monarch can act only with the countersignature of a responsible minister"; by emphasizing that the representative must be elected "by all persons of age who are resident in a territorial district," that the elections shall be "reasonably frequent," and that political parties may be "the organizers and mediators of the election procedure."<sup>16</sup> The "elemental" type of representation is more or less identical with that called in Soviet political theory the merely "formal" democracy of the bourgeois states. This elemental type of representation, or—as it is also called—representation in a merely "constitutional sense,"<sup>17</sup> is according to the new science of politics theoretically a concept of little "cognitive value."<sup>18</sup> It is "elemental" because it refers only to the "external existence of society,"<sup>19</sup> "to simple data of the external world."<sup>20</sup> But society as an aggregate of interhuman relations can exist only in the external world, and consequently representation as a social phenomenon can only refer to data of the external world. As a matter of fact, the "existential" representation, which the new science of politics tries to substitute for the merely elemental representation,

refers, as we shall see, to exactly the same external existence of society as the latter.

In order to proceed from the elemental to the existential type of representation, the author of the new science of politics maintains: "The elemental type of representative institutions"—that is, representation by organs elected on the basis of universal and free suffrage—"does not exhaust the problem of representation."<sup>21</sup> This is certainly true. There exists not only a democratic but also a nondemocratic type of representation. The statement that an individual "represents" a community means that the individual is acting as an organ of the community, and he is acting as an organ of the community when he fulfils certain functions determined by the social order constituting the community. If the order, as in the case of the state, is a legal order, the functions determined by this order are the creation and application of the order. It stands to reason that the legal order must be a valid order; and it is valid if it is by and large effective, that is to say, obeyed by those subject to the order. Only if an individual acts as an organ of the state can his actions be imputed to the state; and this means that his action can be interpreted as an action of the state and the acting individual be considered as a representative of the state. The legal order determines not only the function but also the individual who has to fulfil the function, the organ. There are different ways of determining the organ. If the organ is to be an assembly of individuals subject to the legal order or individuals elected by these individuals, a democracy or, what amounts to the same, a democratic type of representation is established. But the community, especially the state, is represented not only if it is organized as a democracy.



An autocratic state, too, is represented by organs, although they are not determined in a democratic way. Since any organized community has organs, there is representation whenever there is an organized community, especially a state.

However, in so-called representative democracies the organs are considered by traditional political theory to represent the state by representing the people of the state. The statement that the legislative organ, the parliament, and the supreme executive organ, the president in a democratic state, represent the people—as pointed out—means nothing else but that the individuals subject to the legal order constituting the state exercise a decisive influence on the creation of the legislative and executive organs in question, insofar as the constitution authorizes them to elect these organs. It is true that representation of the state and representation of the people of the state are two different concepts, which traditional political theory does not always distinguish clearly enough. But there can be no doubt about the meaning of the statements concerned when traditional political theory refers to representative institutions. As is so frequently the case, one and the same term is used in a wider as well as in a narrower sense. Just as “constitutional” monarchy designates a monarchy which has a specific, namely, a more or less democratic, constitution, although an absolute monarchy, too, has a constitution and thus is, in this sense, also a constitutional monarchy, the term “representative institutions” signifies a democratic type of representation, though there exists also a nondemocratic type of representation. Just as there is no state without a constitution, although the term “constitution” is used also in a narrower sense, namely, for a special type of constitution, there is no state without

representation, though the term “representation” is used also in a narrower sense, namely, for a specific type of representation. To use a term in a wider and in a narrower sense is not the best of terminological practices, but there is nothing “elemental” in it. Besides, the author of the new science of politics himself characterizes the democratic type of representation as “representation in a constitutional sense,” although any other type of representation, including the “existential” type, can only be representation in a constitutional sense, since any type of representation must be established by a constitution.

Much more important than the double meaning of representation, out of which hardly any misunderstanding can arise, is the fact that the term “representation” can claim to mean not only representation of the state but at the same time representation of the people of the state only and exclusively if it refers to representation by organs elected in a democratic way. For if the statement that a state organ represents the people is not to imply a gross fiction, it can mean nothing else but that the individuals subject to the legal order constituting the state are entitled to exercise decisive influence on the creation of the organs. The new science of politics seems not to be interested in avoiding this fiction.

As a matter of fact, the democratic type of representation is declared merely elemental, not because it does not exhaust the problem of representation but for another reason. It is elemental because it is, according to the new science, meaningless. The way in which the democratic process of voting is described is quite significant: “In the theoretization of representative institutions on this [elemental] level, the concepts which enter into the construction of the descrip-

tive type refer . . . to men and women, to their age, to their voting which consists in placing check marks on pieces of paper by the side of names printed on them, to operations of counting and calculation that will result in the designation of other human beings as representatives, to the behavior of representatives that will result in formal acts recognizable as such through external data, etc.”<sup>22</sup> The tendency of this description is evident. The democratic process is presented as something that has no bearing on the essence of the phenomenon in question. It has only a formal character; it is of secondary importance. “The procedure of representation is meaningful only when certain requirements concerning its substance are fulfilled”; “the establishment of the procedure does not automatically provide the desired substance.”<sup>23</sup> By “the establishment of the procedure” only the election procedure can be meant. And if it is not the democratic procedure that by itself provides “the desired substance,” then, perhaps, a nondemocratic procedure may provide it. Thus, everything depends on the meaning of “the substance.” What does it mean? Since the “elemental” concept of representation is to be replaced by the “existential” concept, it probably means something like existence. When the author of the new science of politics rejects the elemental concept on account of its little cognitive value, he says that “the existence” of the democratic countries, the representative institutions of which are described in this elementary way by referring to the fact that their organs are elected by the people, “must be taken for granted without too many questions about what makes them exist or what existence means.”<sup>24</sup> This statement can only convey the idea that the definition of democratic representation as represen-

tation by elected organs is of little value because election of the organs by the people does not in itself guarantee the existence, or a satisfactory existence, of the state. This critique of the so-called elemental concept of representation confuses two different questions: the question of what is democratic representation, and the question of whether democratic representation assures the existence, or satisfactory existence, of the state. It is the confusion of the essence of a political phenomenon with its value; and this confusion is a serious methodological error. With respect to the “substance” of representation, we are informed that “certain mediatory institutions, the parties, have something to do with securing or corrupting this substance,” and that “the substance in question is vaguely associated with the will of the people, but what precisely is meant by the symbol ‘people’ does not become clear.”<sup>25</sup> This is rather strange, since the clear meaning of the symbol “people” within the elemental type of representation is: the greatest possible number of the members of the community able to participate in the procedure of democratic representation. This is evidently not to be the meaning that the new science of politics wishes to attribute to the symbol “people” as an element of the existential type of representation. But the symbol “people” is not abandoned. Existential representation, too, it seems, claims to be, in some way or another, representation of the people. As far as the “mediatory institutions, the parties . . . securing or corrupting this substance” are concerned, the author of the new science refers to the fact that there exists a variety of opinion concerning the effect of political parties on the working of a representative system, which he summarizes as follows:

A representative system is truly representative when there are no parties, when there is one party, when there are two or more parties, when the two parties can be considered factions of one party . . . a representative system will not work if there are two or more parties who disagree on points of principle.<sup>26</sup>

There, again, he confuses the question as to the essence of democratic representation with the question as to the conditions under which a democratic system works satisfactorily. It cannot be, and has never been, denied by those who advocate the above-mentioned opinions that political parties are possible in a democracy and that a constitution which does not allow the free formation of political parties by admitting either no party at all or only one party is not democratic. The principle that only one party is to be allowed in order to guarantee the workability of the government is a common element of the antidemocratic ideologies of fascism, national socialism, and communism. Fascist Italy and National Socialist Germany were, and Communist Russia still is, a typical "one-party state." This term can have no other meaning. For, if the constitution, as in a democracy, guarantees free formation of political parties, the coming into existence of more than one party is inevitable. A democracy cannot be a one-party state. Until now, we were of the opinion that there is a vital difference between a political system that allows only one party and a political system under which the formation of parties is free, and that in a one-party state, where there are no free elections because the citizens can vote only for the candidates of one party, the government cannot be considered as representing the people. But the new science of politics informs us that:

A type concept like the "one-party state" must be considered as theoretically of dubious value; it may have some practical use for brief

reference in current political debate, but it is obviously not sufficiently clarified to be of relevance in science. It belongs to the elemental class like the elemental type concept of representative institutions.<sup>27</sup>

But a one-party state may, as we shall see, offer an ideal case of "existential" representation.

The most characteristic type of one-party state is the Soviet Union. The author of the new science of politics says of this state: "While there may be radical disagreement on the question whether the Soviet government represents the people, there can be no doubt whatsoever that the Soviet government represents the Soviet society as a political society in form for action in history."<sup>28</sup> He does not state in an unambiguous way that the Soviet government does not represent the people; he does not say that it represents the Soviet *state* and not the Soviet people. The only thing he decidedly asserts is that the Soviet government represents the Soviet "society." But by Soviet society the Soviet people may be understood, the representation of which is in question. For, in order to show that the Soviet government represents the Soviet society, he refers to the fact that "the legislative and administrative acts of the Soviet government are domestically effective in the sense that the governmental commands find obedience with the people," and he points to the fact that "the Soviet government can effectively operate an enormous military machine fed by the human and material resources of the Soviet society." The Soviet government represents the Soviet society because it effectively controls the Soviet people. In this connection, he says: "Under the title of political societies in form for action, the clearly distinguishable power units in history come into view."

These "power units" are usually called states. Why does the new science avoid this term? Why does it not expressly distinguish representation of the state from representation of the people? We read:

Political societies, in order to be in form for action, must have an internal structure that will enable some of its members—the rulers . . . to find habitual obedience for their acts of command; and these acts must serve the existential necessities of a society, such as the defense of the realm and administration of justice.<sup>29</sup>

It is a generally recognized principle that a body of individuals in order to be considered as the government of a state must be independent from other state governments and able to obtain for the legal order under which they are acting as government the permanent obedience of the subjects. This principle applies to any government, whether democratic or autocratic. The principle is only a particular application of the more general principle that the legal order constituting the state is valid only if it is, by and large, effective, that is to say, obeyed by the individuals whose behavior it regulates. It seems that the new science of politics seriously presents this principle, taken for granted by the old political and legal science, under the new term of "existential" representation. For it declares "defense" and "administration of justice" as "the existential necessities of a society" and states:

[The] process in which human beings form themselves into a society for action shall be called the articulation of a society. As the result of political articulation we find human beings, the rulers, who can act for the society, men whose acts are not imputed to their own persons but to the society as a whole—with the consequence that, for instance, the pronouncement of a general rule regulating an area of human life will not be understood as an exercise in moral philosophy but will be experienced by the members of the society as the declaration of a rule with obligatory force for them-

selves. When his acts are effectively imputed in this manner, a person is the representative of a society.<sup>30</sup>

The author emphasizes that in this context "the meaning of representation" is "based on effective imputation," which can only mean that the imputation of the acts of the ruler to the state takes place only if his rule is effective.

It is evident that the principle according to which the legal order constituting the state is valid only if it is to a certain extent effective has no direct relation to the question of representation, that is to say, to the determination, by the legal order, of organs of the community constituted by this order, the individuals competent to represent the state. Only a valid legal order can determine the representatives, and only a relatively effective legal order is valid. The principle of effectiveness refers to the legal order constituting the state, not to the organs of the state. It is not the organs which are effective; it is the norms which they in conformity with a valid legal order create and apply which are effective. That the government is effective means that the norms which are issued by this organ and which form a part of the legal order constituting the state are effective. The acts performed by an organ of the state, especially by the government, are acts of the state, that is to say, imputable to the state, and hence the individual performing these acts represents the state, not because the organ is effective, but because the individual and his acts are determined by a valid, and that means by a relatively effective, legal order. Since only a valid, that is, a relatively effective, legal order constitutes the community called "state," only on the basis of such a legal order are organs of a state, and that means representation, possible, whether it is democratic or nondemo-

cratic representation, representation of the state which is or is not at the same time representation of the people. Effectiveness—as a quality of the constituent order—is a condition of any type of representation, because it is a condition of the existence of the state. Whether or not a body of individuals, as the government of a state, represents the state and at the same time the people of the state does not depend on the effectiveness of the commands, that is, the norms, which it issues, for a body of individuals is the government of a state only if it acts in conformity with an effective legal order constituting the state, whether democratic or autocratic, and if the norms issued by this body, forming an essential part of the legal order, are by and large obeyed. Whether a government, which always represents the state, represents also the people of the state, that is to say, whether it is a democratic government, depends only and exclusively on the answer to the question whether or not it is established in a democratic way, that is to say, elected on the basis of universal and free suffrage. Hence it is impossible to differentiate the democratic type of representation from any other type of representation by the criterion of effectiveness.

This is just what the new science of politics endeavors to do when it deprecates the democratic type of representation as “elemental” because it does not—as does the existential type—imply the element of effectiveness. Only by obliterating the difference between representation of the state and representation of the people can the new science of politics maintain that there exists a difference of cognitive value between the democratic representation as merely an “elemental” representation and the representation of the state as an “existential” representa-

tion. By obliterating this difference, by avoiding the term “representation of the state,” by using the ambiguous formula “representation of society,” the new science of politics creates the impression that only that concept of representation which includes the element of effectiveness is the correct one, and that this type of representation always implies, in some way, representation of the people. “Obviously,” says the author, “the representative ruler of an articulated society cannot represent it as a whole without standing in some sort of relationship to the other members of the society.”<sup>81</sup> By “the other members of the society” only the people can be understood:

Under pressure of the democratic symbolism, the resistance to distinguishing between the two relations terminologically has become so strong that it has also affected political theory. . . . The government represents the people, and the symbol “people” has absorbed the two meanings which, in medieval language, for instance, could be distinguished without emotional resistance as the “realm” and the “subjects.”<sup>82</sup>

The “two relations” which under the pressure of democratic symbolism are not distinguished are: the relationship of the ruler to the society as a whole, and the relationship of the ruler to “the other members of the society.” The statement that the government in a democracy represents the people as subject to the government means that the government by representing the people as the society not including the members of the government, the “other members of the society,” represents the society as a whole because the members of the government belong to the people as subject to the government. They at the same time govern and are subject to the government. As members of the government they are not—as is the ruler in an autocracy—exempt from the government. It is just for

this reason that only in a democracy the government represents the society as a whole, because it represents the society including the members of the government. But it is very likely that the new science of politics understands by "society as a whole" the state. For this term supposedly has the same meaning as the medieval term "realm," in contradistinction to the term "subjects." This terminology corresponds to the modern distinction between "state" and "people." The statement that a democratic government represents the people does, indeed, mean that the government by representing the people represents the state. Again we ask: Why does the new science of politics refrain from using the modern term "state," which is much less ambiguous than the medieval term "realm," which literally means "kingdom"? Why does it speak of "society as a whole," when it really means state? Evidently because representation of "the society as a whole" implies necessarily representation of the "other members of the society," because the existential representative of the state has to be considered as representing also the people. "The representative ruler of an articulated society" can only be a ruler who effectively represents the society; and if he effectively represents the society, he represents it "as a whole," especially if "society as a whole" means the "state." It can only be the "society as a whole" which a ruler in the existential sense, an existential ruler, represents; and by the "representative of an articulated society" referred to in the above-quoted statement, obviously an "existential" ruler is meant. But every government—whether democratic or autocratic—is a ruler in the existential sense, an "existential" ruler. And now the new science of politics declares that the representative ruler of an articulated

society cannot represent it as a whole—and that probably means, cannot represent the state—without standing in some sort of relationship to the other members of the society, that is to say, to the people. That he stands in a relationship to the people can only mean that he represents the people, for representation of the people is one of the two relations terminologically not distinguished under the pressure of democratic symbolism. The ruler must stand "in some sort" of relationship to the other members of the society, that is, to the people, but not necessarily in that sort of relationship which is constituted by elections on the basis of universal, equal, free, and secret suffrage. For this sort of relationship is only "elemental," not "existential."

The Soviet government, as the new science of politics asserts, represents the Soviet society "as a political society" in the most effective way, because "the legislative and administrative acts of the Soviet government are domestically effective in the sense that the governmental commands find obedience with the people," and "the Soviet government can effectively operate an enormous military machine fed by the human and material resources of the Soviet society";<sup>33</sup> and that can only mean that the Soviet government represents the Soviet society "as a whole," especially if "society as a whole" means the state. Hence the Soviet government is the ideal type of an existential ruler, a "representative ruler of an articulated society" represented as a whole by the ruler. If a representative ruler of an articulated society cannot represent it as a whole without standing in some relation to the other members of the society, that is to say, without representing in some way the people, then the Soviet government, which is certainly no democratic government, represents the

Soviet people. This, of course, is not expressly maintained by the new science of politics. But it is clearly implied in its doctrine of representation with its tendency to belittle the importance of the democratic type of representation as merely elemental, to put in the foreground the existential type of representation in which the element of effectiveness is emphasized.

As a result of this doctrine of representation the new science of politics conveys the warning: "If a government is nothing but representative in the constitutional sense, a representative ruler in the existential sense will sooner or later make an end of it; and quite possibly the new existential ruler will not be too representative in the constitutional sense."<sup>34</sup> The representative ruler in the "existential sense," we remember, cannot represent the society as a whole "without standing in some sort of relationship to the other members of the society," that is to say, to the people. He too represents, somehow, the people, although he may not be too "representative" in the democratic sense, but a ruler who represents the people in a fascistic sense—"Fuehrer" or a "Duce" who effectively organizes the mass of the people for action and may claim to realize democracy.

Our analysis of the theory of representation advocated by the new science of politics shows that it is of the utmost importance to maintain as strictly as possible just that concept of representation which this science disparages as merely "elemental," or what amounts to the same, the concept of democracy as the concept of a government representing the people in a merely "constitutional" sense, and to reject its replacement by a concept of "existential" representation, which only obscures the fundamental antagonism between democracy and au-

tocracy and thus obstructs objective understanding of the essence of democracy.

To achieve this understanding it does not suffice to describe the typical structures of the two antagonistic systems of organization. For if we recognize that the entire history of human society is a never-ending struggle between the will to power of a vigorous personality who tries to subject the multitude and to suppress their resistance against domination by the will of another, that is, their desire for self-determination, and if we admit that in the history of human thought the controversy about the value of autocracy and democracy is just as undecided as the conflict of the two political regimes in reality, that there too the fight never ends but is lost for the one and won for the other over and over again, we may assume that there is much more at stake than a problem of social technique, the choice between two different types of organization, and look for the roots of the antagonism in opposite views of the world: we may try to find out the connection which exists between politics and philosophy.

In the following sections I intend to show that there exists, indeed, not only an external parallelism but an inner relationship between the antagonism of autocracy and democracy, on the one hand, and philosophical absolutism and relativism, on the other, that autocracy as political absolutism is co-ordinated with philosophical absolutism and democracy as political relativism with philosophical relativism.<sup>35</sup>

#### PHILOSOPHICAL ABSOLUTISM AND RELATIVISM

Since the time Aristotle presented his *Politics* as the second part of a treatise of which the first one was his *Ethics*, it is a truism that political theory and that part

of philosophy which is called "ethics" have been in close connection. But there exists also a certain affinity, less generally recognized, between theory of politics and other parts of philosophy, such as epistemology, that is, the theory of cognition, and the theory of values. The main problem of political theory is the relationship between the subject and the object of domination; the main problem of epistemology is the relationship between the subject and the object of cognition. The process of domination is not so different from that of cognition by which the subject tries to be master of his object by bringing some order into the chaos of sensual perceptions; and it is not too far from the process of evaluation by which the subject declares an object as good or evil and thus sits in judgment upon the object. It is just within epistemology and theory of values that the antagonism between philosophical absolutism and philosophical relativism has its seat, which—as I shall try to show—is analogous to the antagonism between autocracy and democracy as they represent political absolutism, on the one hand, and political relativism, on the other, respectively.

In order to avoid misunderstandings with respect to the meaning of this analogy some preliminary remarks are necessary. Since, as pointed out, the center of politics and the theories of cognition and value is the relationship of subject and object, the character of the politicizing and philosophizing subject, his original disposition must be of decisive influence on the formation of the views about his relation to the object of domination as well as of cognition and evaluation. The common root of political creed and philosophical conviction remains always the mentality of the politician and philosopher, the nature of his ego that is to say,

the way in which this ego experiences itself in its relation to the other who claims to be an ego himself and to the thing which makes no such claim. Only if we recognize that the formation of the political and philosophical systems is determined, in the last analysis, by peculiarities of the human mind may we explain why the antagonism between these systems is so insurmountable, why mutual understanding is so difficult, if not impossible, why there are such exasperated passions involved in the conflict, even if it takes place only in the intellectual sphere as a difference of opinion, and yet is not a clash in the struggle for power. A typology of political and philosophical doctrines must finally result in a characterology, or at least the former must try to combine its results with that of the latter. Because it is the same human being who tries to interpret his relations to his fellow-men and the order of these relations as well as his relation to the world at large, we may assume that a definite political creed is co-ordinated with a definite view of the world. But just because it is within the soul of the empirical human being and not within a sphere of pure reason that politics and philosophy originate, we must not expect that a definite political view will always and everywhere be combined with the philosophical system which logically corresponds to it. In the history of political and philosophical theories their connection can be demonstrated by an analysis of the works of the most representative thinkers. But it would be a great mistake to ignore the very effective forces of the human mind which may abolish this connection and prevent political attitudes to associate with the corresponding philosophical views, and vice versa. The human mind is not completely dominated by reason, and hence not always logical.



The emotional forces may divert man's thinking from its original direction. It is necessary to take into consideration the external circumstances by which—though philosophical speculation may not be restricted—the freedom of political opinion is abolished. It is further to be noticed that political judgments, and especially the decision in favor of democracy or autocracy, are frequently based neither on a thorough investigation of facts nor on a conscientious self-examination but are the outcome of a momentary situation or a transient mood. Also, one must not underestimate the fact that every political regime is inevitably calling for an opposition, and thus those who, for some reason or another, are dissatisfied in a democracy will probably be for autocracy, and those who, for some reason or another, are disappointed in an autocracy will turn to democracy. Sometimes it is the same malcontents—and perhaps for good reason malcontent—who are always against the actually established and for the not yet or no longer established regime. Many who under a democratic government attribute all possible evils to democracy would be convinced democrats under a Fascist government and would probably be in favor of fascism if a democratic government were long enough in power to provoke considerable opposition. But these are only the small fry, who do not count very much for the solution of our problem. As far as the prominent people, especially the great thinkers, are concerned, the connection between their political and philosophical views is sometimes not demonstrable because the philosopher has not developed a political theory and the politician or political theorist has not yet reached the stage of consciously posing the philosophical problem. Only with these reservations can the relationship between politics and philosophy be maintained.

Philosophical absolutism is the metaphysical view that there is an absolute reality, i.e., a reality that exists independently of human cognition. Hence its existence is beyond space and time, to which human cognition is restricted. Philosophical relativism, on the other hand, advocates the empirical doctrine that reality exists only within human cognition, and that, as the object of cognition, reality is relative to the knowing subject. The absolute, the thing in itself, is beyond human experience; it is inaccessible to human knowledge and therefore unknowable.

To the assumption of absolute existence corresponds the possibility of absolute truth and absolute values, denied by philosophical relativism, which recognizes only relative truth and relative values. Only if the judgments about reality refer ultimately to an absolute existence may they aim at absolute truth, that is to say, claim to be true not only in relation to the human beings as the judging subjects, i.e., from the point of view of human reason, but also from the point of view of a superhuman, a divine, the absolute reason. If there is an absolute reality, it must coincide with absolute value. The absolute necessarily implies perfection. Absolute existence is identical with absolute authority as the source of absolute values. The personification of the absolute, its presentation as the omnipotent and absolutely just creator of the universe, whose will is the law of nature as well as of man, is the inevitable consequence of philosophical absolutism. Its metaphysics shows an irresistible tendency toward monotheistic religion. It is essentially connected with the view that value is immanent in reality as a creation or emanation of the absolute good. This metaphysics has the tendency to identify truth, that is, conformity with reality, with justice, meaning conformity with a

value. Hence a judgment about what is just or unjust can be as absolute as a judgment about what is true or false. Value judgments can claim to be valid for everybody, always and everywhere, and not only in relation to the judging subject, if they refer to values inherent in an absolute reality or, what amounts to the same, are established by an absolute authority. Philosophical relativism, on the other hand, as antimetaphysical empiricism (or positivism), insists upon a clear separation of reality and value and distinguishes between propositions about reality and genuine value judgments, which, in the last analysis, are not based on a rational cognition of reality but on the emotional factors of human consciousness, on man's wishes and fears. Since they do not refer to values immanent in an absolute reality, they cannot establish absolute, but only relative, values. A relativistic philosophy is decidedly empiristic and rationalistic and consequently has an outspoken inclination to skepticism.

The hypothesis of philosophical absolutism that there is an absolute existence independent of human knowledge leads to the assumption that the function of knowledge is merely to reflect, like a mirror, the objects existing in themselves; whereas relativistic epistemology, in its most consistent presentation by Kant, interprets the process of cognition as the creation of its object. This view implies that the human subject of knowledge is—epistemologically—the creator of his world, a world which is constituted in and by his knowledge. This, of course, does not mean that the process of cognition has an arbitrary character. The constitution of the object of cognition by the process of cognition does not mean that the subject creates the object as God creates the world. There is a correlation between the subject and the object of cog-

nition. There are normative laws determining this process. In complying with these norms, rational cognition of reality—in contradistinction to the expression of subjective emotions, the basis of value judgments—is objective. But these norms originate in the human mind, the subject of cognition being the autonomous law-giver. Hence, freedom of the knowing subject—not the metaphysical freedom of will but freedom of cognition in the sense of self-determination—is a fundamental prerequisite of the relativistic theory of knowledge. Philosophical absolutism, on the other hand, if consistent, must conceive of the subject of knowledge as completely determined by heteronomous laws immanent in objective reality and as subject to the absolute, especially if the absolute is imagined as a personal being and superhuman authority.

The specific character of the relativistic theory of knowledge involves two perils. The one is a paradoxical solipsism; that is, the assumption that the ego as the subject of knowledge is the only existent reality, the impossibility of recognizing the simultaneous existence of other egos, the egotistic negation of the *tu*. Such assumption would involve a relativistic epistemology in a self-contradiction. For if the ego is the only existent reality, it must be an absolute reality. Uncompromised solipsism, too, is philosophical absolutism. The other danger is a no less paradoxical pluralism. Since the world exists only in the knowledge of the subject according to this view, the ego is, so to speak, the center of his own world. If, however, the existence of many egos must be admitted, the consequence seems to be inevitable that there are as many worlds as there are knowing subjects. Philosophical relativism deliberately avoids solipsism as well as pluralism. Taking into consideration—as true rela-

tivism—the mutual relations among the various subjects of knowledge, this theory compensates its inability to secure the objective existence of the one and same world for all subjects by the assumption that the individuals, as subjects of knowledge, are equal. This assumption implies also that the various processes of rational cognition in the minds of the subjects are—in contradistinction to their emotional reactions—equal; and thus the further assumption becomes possible that the objects of knowledge, as the results of these individual processes, are in conformity with one another, an assumption confirmed by the external behavior of the individuals. To be sure, there is an undeniable conflict between absolute freedom and equality. But the subject of cognition is not absolutely, he is only relatively, free, free under the laws of rational cognition; and this freedom is not incompatible with the equality of all the subjects of cognition. The restriction of freedom by a law under which all subjects are equal is essential to philosophical relativism. From the point of view of philosophical absolutism, on the other hand, it is not the equality of the subjects which is essential but, on the contrary, their fundamental inequality in relation to the absolute and supreme being.

#### THE IDEA OF NATURAL AND OF SOCIAL FREEDOM

If freedom and equality are essential elements of philosophical relativism, its analogy with political democracy becomes obvious. For freedom and equality are the fundamental ideas of democracy and the two primitive instincts of man as a social being; the desire for freedom and the feeling of equality are at its basis. It is, first of all, the reaction against compulsion implied in any kind of social real-

ity, the protest against a foreign will to which the own will should submit, the resistance against order, against the uneasiness of heteronomy; it is nature itself which in the quest of freedom rebels against society. Man feels the burden of a foreign will imposed upon him as social order, which is all the more unbearable the more the consciousness of his own value rejects the pretension of anybody else to represent a higher value. The more elementary his feeling toward the one who claims to be his superior is, the more he is likely to ask: he is a man like me; we are equal; where is his right to dominate me? Thus the negative idea of equality is supporting the likewise negative idea of freedom.

From the assumption that men are equal the principle might be deduced that no one has a right to dominate another. However, experience teaches that if we want to remain equal in social reality, we must allow ourselves to be dominated. But although freedom and equality seem not to be realizable at the same time, political ideology insists upon combining them in the idea of democracy. Cicero, one of the masters of political ideology, has expressed this combination in the famous statement: "*Itaque nulla alia in civitate, nisi in qua populi potestas summa est, ullum domicilium libertas habet: qua quidem certe nihil potest esse dulcius et quae, si aequa non est, ne libertas quidem est*" (freedom has its seat only in a state where supreme power is with the people, and there can be nothing more pleasant than that freedom, which is no freedom at all if it is not equal).

In order to become a social category the symbol of freedom must undergo a fundamental change of meaning. It must cease to mean the negation of any social order, a state of nature characterized by

the absence of any kind of government, and must assume the meaning of a specific method of establishing social order, of a specific type of government. If society in general and the state in particular are to be possible, a normative order regulating the mutual behavior of men must be valid, and consequently domination of man over man through such an order must be accepted. If, however, domination is inevitable, if we cannot help being dominated, we want to be dominated by ourselves. Natural freedom is transformed into social or political freedom. To be socially or politically free means, it is true, to be subject to a normative order; it means freedom under social law. But it means: to be subject only to one's own, not to a foreign, will; to a normative order, a law in the establishment of which the subject participates. It is just through this metamorphosis that the idea of freedom can become the decisive criterion in the antagonism of democracy and autocracy and thereby the leitmotiv for the systematization of the forms of social organization.

#### THE METAPHYSICAL IDEA OF FREEDOM

The transition from natural to social freedom, fundamental to the idea of democracy, implies the dualism of nature and society which is in close connection with the distinction between reality and value, characteristic of a relativistic philosophy. Society as a system different from nature is possible only as a normative order of human behavior, in contradistinction to the causal order of natural phenomena. A norm, that is, the expression of the idea that something ought to be, constitutes a value. Man's ideas about what ought to be or what ought to be done have, as pointed out, their origin in his wishes and fears. In this sense the

subjective value constituted by the norm is opposed to the objective reality constituted by the law of causality as a category of rational cognition. If nature is created by God and is thus the manifestation of his absolutely good will, there can be no difference between the laws of nature and social norms, since the laws of nature are the expression of God's will, his commands directed at nature, that is to say, they are norms. There is, according to this metaphysical view, which is at the basis of the natural law doctrine, no difference between nature and society because nature is itself a universal, cosmic society, governed by God. In open contradiction to this fundamental presupposition, the metaphysical speculation of philosophical absolutism advocates the doctrine that man's will, although subject to the will of God, is free. In its theological version this view is presented in the no less contradictory dogma that man, although totally different from God, is created in God's image; and that his will, just as the will of God, is a cause but not an effect of other causes, a first cause, a *prima causa*. This is the metaphysical freedom of man which consists in his exemption from the law of causality as implied in the will of God.

Freedom of man in this sense is considered by a metaphysical anthropology as an essential appurtenance of man as a member of society, that is, as subject to obligations and responsibilities. The main argument of this view is that if man is not free in this sense, if his will is determined by the law of causality, he cannot be made responsible for his actions. Hence the existence of a normative order—be it morals or law—presupposes the metaphysical freedom of man. This view—so-called indeterminism—is decidedly rejected by a rationalistic, antimetaphysical philosophy, not because of the

contradiction involved in the idea of a human will subject to, but exempt from, the all-powerful will of God—this is a concern of the metaphysical speculation at the basis of indeterminism—but because of the inadmissible self-contradiction which consists in the assumption that a phenomenon of natural reality, such as the human will, is exempt from the law of causality constituting the natural reality. It can be shown that the illusive idea of a free will is due to the fact that philosophical absolutism does not separate reality from value, nature from society, causality from normativity. If we are aware that the order of nature and the order of society are two different orders, we must admit that if the one is constituted by the principle of causality, the other must be constituted by another principle. Since human behavior may be considered at one time as a natural, at another time as a social, phenomenon, human behavior may be subject to two different schemes of interpretation, which do not exclude each other but are applicable side by side, so that human behavior, as natural phenomenon, may be determined by the laws of causality and, nevertheless, as social phenomenon may be “free.” Then, to be free cannot mean to be exempt from the law of causality, i.e., a restriction of this principle, but must have another meaning, in accordance with the principle constituting social order. And, indeed, if we proceed in this way we see that man is responsible for his actions not because he is free in the metaphysical sense of being exempt from the principle of causality but that he is free—in a rational sense—because he is responsible. For to be responsible for his actions means that he is punished or rewarded for these actions, and he is punished or rewarded if moral or legal norms attach punishment or reward to

them. To attach punishment or reward to human behavior does not only not exclude the causal determination of this behavior but necessarily presupposes the possibility of such determination. For punishment is attached to certain behavior because it is supposed that man will refrain from such behavior out of fear of the punishment; and reward is attached to certain behavior because it is supposed that man will behave in this way out of the wish to merit the reward. If man’s behavior, and that means, in the last analysis, his will, were not determinable by definite causes, a normative order regulating his behavior by attaching punishment or reward to it and thus establishing his responsibility would be meaningless. In order to designate the connection between a human act as condition and punishment or reward as consequence established by a social norm, in contradistinction to the connection of cause and effect established in a law of nature, the term “imputation” has been suggested.<sup>36</sup> Just as causality is the fundamental principle of the cognition of nature, imputation is the fundamental principle of the cognition of society as a normative order. The decisive difference between the two principles is that the chain of causes and effects has an indefinite number of links so that there can be no first cause, every cause being necessarily the effect of another cause, whereas the chain of imputation has only two links, crime and punishment, merit and reward, so that if punishment is attributed to crime, reward to merit, imputation comes to its end. That man as a member of society, subject to a normative order, is “free” does not mean that his will is the starting point of causality; it means that he is the endpoint of imputation. The illusive idea of the human will as a *prima causa* is the result of the

metaphysical confusion of reality with value, nature with society, causality with imputation, that is, the misinterpretation of the endpoint of imputation as a first cause. Just as the idea of natural freedom as the absence of government has to be transformed into the concept of political freedom as participation in government, the idea of metaphysical freedom as a starting point of causality has to be transformed into the idea of rational freedom as the endpoint of imputation.

#### ROUSSEAU'S DOCTRINE OF DEMOCRACY

The definition of freedom as political self-determination of the citizen, that is to say, as participation in the government, is usually opposed as the idea of freedom prevailing among the ancient Greeks to the individualistic idea cherished by the German people in early times of a freedom from government, of a status of more or less pronounced anarchy. This is hardly correct, since the German tribes did not live in a state of anarchy. Besides, the difference in question is not at all a historic, ethnographic one. The step from the so-called Germanic to the classical Greek conception of freedom is only the first stage of the inevitable process of transformation, or denaturation, which the original instinct of freedom has undergone on the road leading humanity from the state of nature into the state of society. This change of meaning is most characteristic of the mechanism of our social thinking. The extraordinary importance which the idea of freedom has in political ideology can be explained only by the fact that this idea originates in an ultimate source of the human soul, in the primitive instinct which pushes the individual against society. And yet the intellectual reflection of the antisocial tendency, the idea of freedom, becomes—through an almost

mysterious self-deception—the expression of a definite position of the individual within society. The freedom of anarchy becomes the freedom of democracy.

The change is greater than it might appear at first sight. Rousseau, one of the most efficient ideologists of democracy, formulates the problem of the best constitution, and this is, from his point of view, the problem of democracy:

To find a form of association which may defend and protect with the whole force of the community the person and the property of every associate, and by means of which each, coalescing with all, may nevertheless obey only himself, and remain free as before. Such is the fundamental problem of which the social contract furnishes the solution.<sup>37</sup>

By defining freedom as a status where the individual obeys only himself, that is to say, is subject only to his own will, Rousseau starts from the idea of natural freedom, the freedom of anarchy, incompatible with society. It stands to reason that he cannot maintain his definition. He only rejects parliamentary democracy, because he does not recognize the possibility of representation:

Sovereignty . . . cannot be represented; it lies essentially in the general will, and will does not admit of representation, it is either the same or other. There is no intermediate possibility. The deputies of the people, therefore, are not and cannot be its representatives; they are merely its stewards, and can carry through no definitive acts. Every law the people has not ratified in person is null and void—is, in fact, not a law. The people of England regards itself as free; but it is grossly mistaken, it is free only during the election of members of parliament. As soon as they are elected, slavery overtakes it, and it is nothing.<sup>38</sup>

Rousseau consequently advocates the principle of direct democracy. However, even if the will of the state is created directly by the decision of a popular assembly, the individual is free only at the

moment he is casting his vote, and even then only if he is voting with the majority, not if he belongs to the overruled minority. Consequently, restriction, if not exclusion, of the possibility of being overruled seems to correspond to the democratic principle of freedom: qualified majority, if possible, unanimity, is required as a guaranty of freedom. However, even such a radical apostle of freedom as Rousseau requires unanimity only for the original contract constituting the state. This limitation of the unanimity principle to the constituent contract is justified not merely by reason of expediency. If the principle of freedom requires unanimity for the conclusion of the constituent contract because freedom means to be bound only by one's own will, then it is consistent to require unanimous consent of the individuals subject to the normative order established by the contract also as condition for the continuous validity of this order, so that everybody is free to withdraw from the community constituted by the order as soon as he refuses to recognize its binding force. This consequence shows clearly the incompatibility of Rousseau's definition of freedom, the idea of natural freedom, with social order. Such an order, by its very nature, is possible only if its validity is to a certain degree independent of the will of those subject to it. If a norm prescribing that an individual ought to behave in a certain way makes its validity dependent on the consent of this individual, if he is obliged to behave in a certain way only if he is willing to behave in this way, the norm loses its very meaning. A social order in general and a legal order, the law of the state, in particular presuppose the possibility of a difference between the content of the order and the will of the individuals subject to it. If the tension between these two poles, between the *ought* and the *is*,

is zero, and that means if the value of freedom is infinite, there can be no question of subjection to a normative order. Consequently, the social order, which according to the social-contract theory can be established only by a unanimous decision of the individuals to be subject to it, can be changed and thus developed by majority decisions. This is what Rousseau teaches. After having defined freedom in his first formulation of the problem of social contract as being subject exclusively to one's own will, to have to obey nobody but himself, he reformulates the problem as follows: "Each of us puts his person and all his power in common under the supreme direction of the general will, and, in our corporate capacity, we receive each member as an indivisible part of the whole." Here he introduces the concept of "general will" as distinct from that of the "will of all," a most mysterious concept, which he never clearly defines. Then he takes into consideration the possibility of a conflict between the general will and the will of a single individual and declares: "In order then that the social contract may not be an empty formula, it tacitly includes the undertaking, which alone can give force to the rest, that whoever refuses to obey the general will shall be compelled to do so by whole body. This means nothing less than that he will be forced to be free."<sup>39</sup> Now no longer does "freedom" mean to be subject only to one's own will. Freedom is compatible with being subject to the general will. It consists in "sharing in the sovereign power," the sovereign being formed wholly of the individuals who compose it,<sup>40</sup> that is to say, of the members of the community. On this basis Rousseau distinguishes between citizen and subject and substitutes for the "natural liberty" the "civil liberty." He says:

What man loses by the social contract is his natural liberty and an unlimited right to everything he tries to get and succeeds in getting; what he gains is civil liberty. . . . We must clearly distinguish natural liberty, which is founded only by the strength of the individual, from civil liberty, which is limited by the general will.<sup>41</sup>

How radical this change of meaning is can be seen in the statement that the individual whose will is not in conformity with the general will may be forced to conform and thus be *forced* to be free. To illustrate this freedom to which a man may be forced, Rousseau refers to the fact that in Genoa the word *liberty* may be read over the front of the prison and on the chains of the galley slaves, and he adds: "this application of the device is good and just."

The transformation of the natural into a quite different political freedom—the "civil liberty" of Rousseau—is obvious all the more as Rousseau admits that the general will may be produced by a majority vote.

There is but one law which, from its nature, needs unanimous consent. This is the social contract, for civil association is the most voluntary of all acts. Every man being born free and his own master, no one under any pretext whatsoever can make any man subject without his consent. To decide that the son of a slave is born a slave is to decide that he is not born a man.<sup>42</sup>

It is a paradoxical fact that Rousseau just at the moment when his transformation of the concept of freedom reaches its culmination point tries to maintain—in open contradiction to his previous statements—the original idea of natural freedom, the principle that "no one under any pretext whatsoever can make any man subject without his consent." Then immediately the question arises: What about those who vote against the majority? Are they bound by a law adopted in this way? Rousseau's answer is this: "If

then there are opponents when the social contract is made, their opposition does not invalidate the contract, but merely prevents them from being included in it. They are foreigners among citizens." That seems to mean that those who vote against the law adopted by a majority are not bound by it. But this, of course, Rousseau cannot accept. He continues: "When the state is instituted, residence constitutes consent: to dwell within the territory is to submit to the sovereign."<sup>43</sup> It is the notorious fiction of Roman law: *qui tacet consentire videtur*. But in the next statement he proclaims the majority-vote principle without reference to this fiction: "Apart from this primitive contract, the vote of the majority always binds the rest. This follows from the contract itself." That means that the majority-vote principle is projected into the social contract as the basic norm of the state order. But then the question arises how to justify this principle by the idea of natural freedom? "But it is asked," says Rousseau, "how a man can be both free and forced to conform to wills that are not his own. How are the opponents at once free and subject to laws they have not agreed to?" In order to show how a man may be considered as free, that is to say, to be subject only to his own will, even if he is bound by a law against the adoption of which he voted, Rousseau undertakes a reinterpretation of the meaning of the voting procedure. By voting for or against the adoption of a law, the citizen does not express his own will but his opinion about the general will.

I retort that the question is wrongly put. The citizen gives his consent to all laws, including those which are passed in spite of his opposition, and even those which punish him when he dares to break any of them. The conscious will of all the members of the state is the general will. By virtue of it they are citizens and free.



When in the popular assembly a law is proposed, what the people are asked is not exactly whether they approve or reject the proposal, but whether they are in conformity with the general will. Each man in giving his vote states his opinion on that point, and the general will is found by counting votes. When therefore the opinion that is contrary to my own prevails, this proves neither more nor less than that I am mistaken, and that what I thought to be the general will was not so. If my particular opinion had carried the day, I should have achieved the opposite of which was my will; and it is in that case that I should not have been free. This presupposes, indeed, that all the qualities of the general will reside in the majority. When they cease to do so, whatever side a man may take, liberty is no longer possible.<sup>44</sup>

But just before, we have learned that "the conscious will of all the members of the state is the general will," and that also only because the will of the members of the minority is implied in this general will are they supposed to have given their consent to a law passed in spite of their opposition; and, hence, they are free because subject only to their own will. Since it cannot be denied that a man voting for or against the adoption of a law expresses not only his opinion but also his particular will, Rousseau's construction of the voting procedure presupposes that a man has two wills, his particular will as a subject and his will as a citizen, which is implied in the general will, and that these two wills may be in conflict, so that a man may will something and at the same time will the contrary. Rousseau says expressly: "In fact each individual, as a man, may have a particular will contrary or dissimilar to the general will which he has as a citizen."<sup>45</sup> But even if one accepts Rousseau's interpretation of voting as expression of opinion and not of will, the question remains: Why is the opinion of the majority true and that of the minority false? And if it may be true at one time,

why is it not true at another time, when the opinion of those who were in the minority gets the majority in another voting procedure? It is obvious that Rousseau has entangled himself in all these contradictions only in order to save the illusion of natural, i.e., absolute freedom. It is probably to this attempt that his work in spite of these contradictions owes its extraordinary success.

#### THE MAJORITY VOTE PRINCIPLE

If the principle of majority for the development of the social order is accepted, the idea of natural freedom can no longer be completely realized; only an approximation to this idea is possible. That democracy is still considered as self-determination, that its freedom still means that everybody is subject only to his own will, although the will of the majority is binding, is a further step in the metamorphosis of the idea of freedom.

Even the individual who votes with the majority is not subject only to his own will. He becomes immediately aware of this fact when he changes the will expressed in his vote. The fact that such change of his individual will is legally irrelevant shows clearly that he is subject to a foreign will or, formulated without the use of a metaphor, to the objective validity of the social order.<sup>46</sup> He is again free in the sense of being subject exclusively to his own will only if the change of his will is confirmed by a majority. This concordance of the will of the individual with the social order that may be changed by the will of the majority is all the more difficult, this guaranty of individual freedom all the more reduced, the more qualified the majority is that is required for a change of the established order, of the so-called will of the state. If unanimity is required, this guaranty is practically abolished. A strange am-

bivalence of the political mechanism becomes here manifest. The same principle which in the first establishment of the social order protects individual freedom now destroys it if it is no longer possible to withdraw from this order. Original creation of social order does not occur in the reality of our social experience. The individual is always born into an already established social order and normally also into a pre-existent state in the creation of which he did not participate. Only the change, the development, of this order is practically in question. In this respect the principle of a simple, not a qualified, majority constitutes the relatively greatest approximation to the idea of freedom. According to this principle, among the subjects of the social order the number of those who approve the order will always be larger than the number of those who—entirely or in part—disapprove but remain bound by the order. At the moment when the number of those who disapprove the order, or one of its norms, becomes greater than the number of those who approve, a change is possible by which a situation is re-established in which the order is in concordance with a number of subjects which is greater than the number of subjects with whom it is in discordance. The idea underlying the principle of majority is that the social order shall be in concordance with as many subjects as possible and in discordance with as few as possible.

Political freedom means agreement between the individual will and the collective will expressed in the social order. Consequently it is the principle of simple majority which secures the highest degree of political freedom that is possible within society. If an order could not be changed by the will of a simple majority of the subjects but only by the will of all (that means, unanimously), or by the

will of a qualified majority (for instance, by a two-thirds or a three-fourths majority vote), then one single individual, or a minority of individuals, could prevent a change of the order. And then the order could be in discordance with a number of subjects which would be greater than the number of those with whose will it is in concordance.

The principle of majority, the greatest possible approximation to the idea of freedom in political reality, presupposes as an essential condition the principle of equality. For the view that the degree of freedom in society is proportionate to the number of free individuals implies that all individuals are of equal political value and that everybody has the same claim to freedom, that is, the same claim that the collective will be in concordance with his individual will. Only if it is irrelevant whether the one or the other is free in this sense (because the one is politically equal to the other) is the postulate justified that as many as possible shall be free, that the mere number of free individuals is decisive. This synthesis of freedom and equality is at the basis of the democratic idea concerning the relationship between the social order (as the collective will) and the individual will, between the subject and the object of domination, just as the synthesis of freedom and equality is at the basis of the relativistic idea concerning the relationship between the subject and the object of cognition.

#### DEMOCRATIC TYPE OF PERSONALITY

From a psychological point of view the synthesis of freedom and equality, the essential characteristic of democracy, means that the individual, the ego, wants freedom not only for himself but also for the others, for the *tu*. And this is possible only if the ego experiences itself not as something unique, incomparable and

unreproducible, but, at least in principle, as equal with the *tu*. Only if the individual considers the undeniable differences which exist between himself and the others as not essential, only if the ego- or self-consciousness is reduced to some extent by the feeling to be equal with others, can the ego honor the claim of the *tu* to be also an ego. This is just the intellectual situation of a relativistic philosophy. The personality whose desire for freedom is modified by his feeling of equality recognizes himself in the other. He represents the altruistic type, for he does not experience the other as his enemy but is inclined to see in his fellow-man his friend. He is the sympathizing, peace-loving kind of man whose tendency toward aggression is diverted from its original direction against others to himself and thus is manifested in the tendency toward self-criticism and an increased disposition of a feeling of guilt and a strong consciousness of responsibility. It is not as paradoxical as it may seem on first sight that it is just to the type of relatively lowered self-consciousness that a form of government corresponds, a form which is characterized as self-determination, meaning minimization of government. For the attitude of the individual toward the problem of government is essentially determined by the intensity of the will to power within the individual. And the individual, even as subject to government, is inclined, if living under a form of government which he approves, to identify himself with the government.

The stronger the will to power, the less the appreciation of freedom. The total negation of the value of freedom, the maximization of domination—this is the idea of autocracy, the principle of political absolutism. It is characterized by the fact that the whole power of the state is

concentrated in one single individual, the ruler. Its idea is well formulated in the famous words attributed to Louis XIV, *l'état c'est moi*, in direct opposition to democracy, the motto of which is, *l'état c'est nous*. The ruler's and not the people's will is the law. For the people are subject to the ruler without participating in his power, which for this reason is unrestricted and has an inherent tendency toward totalitarianism. In this sense political absolutism means for the ruled the complete renunciation of self-determination. It is incompatible with the idea of equality because justifiable only by the assumption of an essential difference between the ruled and the ruler.

The parallelism which exists between philosophical and political absolutism is evident. The relationship between the object of knowledge, the absolute, and the subject of knowledge, the individual human being, is quite similar to that between an absolute government and its subjects. The unlimited power of such government is beyond any influence on the part of its subjects, who are bound to obey the laws without participating in their creation; similarly, the absolute is beyond our experience, and the object of knowledge, in the theory of philosophical absolutism, is independent of the subject of knowledge, totally determined in his cognition by heteronomous laws. Philosophical absolutism may very well be characterized as epistemological totalitarianism. According to this view, the constitution of the universe is certainly not a democracy. The creature does not participate in the creation.

There exists not only an external parallelism between political and philosophical absolutism; the former has in fact the unmistakable tendency to use the latter as an ideological instrument. To justify

his unlimited power and the unconditional submission of all the others, the ruler must present himself, directly or indirectly, as authorized by the only true absolute, the supreme superhuman being, as his descendant or deputy or as inspired by him in a mystical way. Where the political ideology of an autocratic and totalitarian government does not permit recourse to the absolute of a historic religion, as in National Socialism or Bolshevism, it shows an unconcealed disposition to assume a religious character itself by absolutizing its basic value: the idea of the nation, the idea of socialism.

Psychologically, political absolutism corresponds to a type of exaggerated ego-consciousness. The incapacity or disinclination of the individual to recognize and to respect his fellow-man as another ego, as an entity of the same kind as his own originally experienced ego, prevents this sort of man from accepting equality as a social ideal, just as his ardent urge of aggression and intensive will to power preclude freedom and peace as political values. It is a characteristic fact that the individual raises his self-consciousness by identifying himself with his superego, the ideal ego, and that the dictator endowed with unlimited power represents to himself the ideal ego. Hence it is not at all a contradiction but, from a psychological point of view, quite consistent to say that it is just this type of man who favors strict discipline, even blind obedience, and, indeed, finds happiness in obeying no less than in commanding. Identification with authority—that is the secret of obedience.

#### THE PRINCIPLE OF TOLERANCE

Since the principle of freedom and equality tends toward a minimization of domination, democracy cannot be an absolute domination, not even an absolute

domination of the majority. For domination by the majority of the people distinguishes itself from any other domination by the fact that it not only presupposes by definition an opposition, namely, the minority, but also politically recognizes its existence and protects its rights. Nothing shows more clearly the misuse of terminology in Soviet political theory than the fact that it defines the democracy which the dictatorship of the proletariat pretends to be, the democracy for the majority of the poor and not for the minority of the rich, as an organization of violence for the suppression of this minority. "The dictatorship of the proletariat"—the true democracy—says Lenin,<sup>47</sup> "imposes a series of restrictions on the freedom of the oppressors, the exploiters, the capitalists," who under the dictatorship of the proletariat are no longer oppressors, exploiters, and capitalists, who could be only former oppressors, exploiters, and capitalists and are, if they still exist, simply the minority of the people. Among all the facts which deprive the Soviet state of the right to call itself a democracy, it is above all the fact that it considers as its main task the suppression by violence of the minority.

It is of the greatest importance to note that the transformation of the idea of natural freedom, as the idea of absence of government, into the idea of political freedom, as the idea of participation in government, does not imply a complete abandonment of the former. What remains is the principle of a certain restriction of the power of the government, the fundamental principle of political liberalism. Modern democracy cannot be separated from political liberalism. Its principle is that the government must not interfere with certain spheres of interests of the individual, which are to be protected by law as fundamental human

rights or freedoms. It is by the respect of these rights that minorities are safeguarded against arbitrary rule by majorities. Because the permanent tension between majority and minority, government and opposition, results in the dialectical process so characteristic of the democratic formation of the will of the state, that one rightly may say: democracy is discussion. Consequently the will of the state, that is to say, the content of the legal order, may be the result of a compromise.<sup>48</sup> Because this type of government guarantees internal peace, it is preferred by the peace-loving, nonaggressive type of character. Hence freedom of religion, freedom of opinion and press, belong to the essence of democracy; and above all belongs freedom of science, based on the belief in the possibility of objective cognition. The appreciation of rational science and the tendency to keep it free from any intrusion by metaphysical or religious speculations are significant features of modern democracy such as it has been formed under the influence of political liberalism. The idea of freedom which is at the basis of political liberalism not only implies the postulate that the external behavior of the individual in relation to other individuals shall be subject—as far as this is possible—to his own will, and if to the will of the state, this can be only a will in the establishment of which his own will participates, but also the postulate that the internal behavior of the individual, his thinking, shall be subject only to his own reason and not to a transcendental authority existing or supposed to exist beyond his reason, an authority in which his reason has no share because it is not accessible to his reason. The liberalism inherent in modern democracy means not only political but also intellectual autonomy of the individual, autonomy of rea-

son, which is the very essence of rationalism.

This attitude, especially the respect for science, corresponds perfectly to that kind of person which we have described as specifically democratic. In the great dilemma between volition and cognition, between the wish to dominate the world and that to understand it, the pendulum swings more in the direction of cognition than volition, more toward understanding than dominating, just because with this type of character the will to power, the intensity of the ego-experience, is relatively reduced and self-criticism relatively strengthened; hence, belief in critical, and thus objective, science is secured.

In an autocracy, on the other hand, no opposition is tolerated. There exists no discussion, no compromise; there is only dictate. Hence there is no freedom of religion or opinion. If volition prevails over cognition, justice prevails over truth. But the question as to what is just is to be decided exclusively by the authority of the state to which not only the will but also the opinion of the citizens are subject, so that nonconformity with this authority is not only an error but at the same time a punishable crime. It stands to reason that under such a political regime there can be no freedom of science, which is tolerated only as a pliant instrument of the government. Nothing is more significant of a turn to an intellectual attitude more or less in favor of autocracy than the abandonment of the belief in the possibility of an objective science, that is, a science which is independent from political interests and hence worthy of freedom. The existence of democracy is endangered if the ideal of objective cognition is placed behind other ideals. Such an intellectual movement goes usually hand in hand with the

tendency to attribute to the irrational a higher value than to the rational. In the conflict between religion and science the former prevails over the latter.

#### THE RATIONALISTIC CHARACTER OF DEMOCRACY

The rationalistic character of democracy manifests itself especially in the tendency to establish the legal order of the state as a system of general norms created by a procedure well organized for this purpose. There is a clear intention of determining, by a pre-established law, the individual acts of the courts and administrative organs in order to make them—as far as possible—calculable. There exists an outspoken need for rationalizing the process in which the power of the state is displayed. This is the reason why legislation is considered to be the basis of the other functions of the state. The ideal of legality plays a decisive role: it is assumed that the individual acts of state may be justified by their conformity with the general norms of the law. Legal security rather than absolute justice is in the foreground of legal consciousness. Autocracy, on the other hand, disdains such rationalization of power. It avoids, as far as possible, any determination of the acts of state, especially of the acts of an autocratic ruler, by pre-established general norms, which could imply a restriction of discretion. As supreme legislator the autocrat is considered not to be bound by the laws issued by himself: *princeps legibus solutus est*. In Plato's ideal state, which is the archetype of an autocracy, there are no general rules of law at all. The "royal judges" have an unlimited power of discretion in deciding concrete cases. This, of course, is possible only because Plato's state is a very small community. In a state of an average size the autocrat is

not able to perform all the necessary administrative and judicial acts and has to appoint subordinate organs. In order to have his intentions realized by these organs, he may bind them by laws determining their activities. But he retains for himself the absolute right to grant in every case any exemption from the laws that he thinks appropriate. Hence there can be no legal security in an autocracy. Nevertheless each manifestation of state power claims to be the realization of justice. And this justice refuses to express itself in general principles; it defies, by its very nature, any definition. It reveals itself only in individual decisions perfectly adapted to the particularities of the concrete case. The secret of justice is in the exclusive possession of the ruler; it is his personal virtue, his divine capacity, implanted in him by divine grace; it is the legitimation of his dictatorial power. Consequently an autocratic regime, in contradistinction to a democratic one, refuses to make public its aims by promulgating a program. And if it is pressed to do so, the program is either a series of empty phrases or promises, the fulfilment of most contradictory wishes. Against criticism one argues that the program does not and cannot contain the essential achievements to be performed by the regime. Pulsating life can neither be grasped nor regulated by general rules. Everything depends on the concrete action, on the mystery of the creative *rairios*.

Since in a democracy legal security, legality, and calculability of the functions of state are required, institutions for the purpose of controlling these functions in order to guarantee their lawfulness are established. As a consequence the principle of publicity prevails. The tendency to unveil the facts is specifically democratic; and this tendency leads a

superficial and malevolent interpretation of this form of government to the unfounded judgment that corruption is more frequent in democracy than in autocracy, whereas—in truth—corruption only remains invisible in the latter, since there the contrary principle prevails. In an autocratic regime, there are no measures of control, which are supposed only to diminish the effectiveness of the government, and no publicity; there is only the intensive endeavor to veil everything that could be harmful to the authority of the government and undermine the discipline of the officials and the obedience of the citizens.

As pointed out, the rationalistic and critical attitudes of democracy manifest themselves also in a certain aversion to the religious, metaphysical ideologies which autocracy utilizes in order to maintain its power. The struggle in which democracy overcomes autocracy is to a great part conducted in the name of critical reason against ideologies which appeal to the irrational forces of the human soul. However, since no government seems to be able to act without the help of certain justifying ideologies, democratic governments too make use of them. But, as a rule, democratic ideologies are more rationalistic, nearer to reality, and hence less effective than those used by autocratic governments. Since the hold on the subjects by autocratic governments is more intense, they need a more dense veil to cover their true nature. To be sure, occasionally in a democracy the same religious, metaphysical ideologies are used to which autocratic governments owe or are supposed to owe their success, as, for instance, the idea that the popular government realizes the will of God. But the slogan *vox populi vox dei* has never been taken too seriously. The halo of an inspired mon-

arch who pretends to hold his office by the grace of God or the charisma of a leader who claims to be inspired by supernatural forces can hardly be attributed to the people, to Mr. and Mrs. America. A democracy which tries to justify itself in this way would come suspiciously near to the fable of the ass in the skin of a lion.

#### THE PROBLEM OF LEADERSHIP

The antagonism between democracy and autocracy appears also in the different ways in which rulership is interpreted. In the ideology of autocracy the ruler represents an absolute value. Being of divine origin or endowed with supernatural forces, he is not considered an organ which is or can be created by the community. He is imagined as an authority that stands outside the community, which is constituted and held together by him. Therefore origin and creation of the ruler are not problems that could be solved by rational cognition. The political reality, namely, the inevitable usurpation of rulership, is assiduously veiled by the myth of the leader. In a democracy, on the other hand, the question of how to appoint the magistrates stands in the bright light of rational consideration. Rulership represents not an absolute but only a relative value. All the organs of the community are elected only for a short period. Even the chief executive is a "leader" only for a certain time and only in certain respects, since not only his term of office but also his competence is limited. He is, even in his capacity as the head of the state, a citizen like all the others and is subject to criticism. From the fact that the ruler in an autocracy is transcendent to, and in a democracy immanent in, the community follows that in the first case the man who exercises this function is

considered to stand above the social order and consequently not responsible to the community constituted by it or—as it is ideologically formulated—responsible only to God and himself, whereas in the second case he stands under the social order and hence responsible to it. Since in democracy rulership has no supernatural quality, and the ruler is created by a rational, publicly controllable procedure, rulership cannot be the permanent monopoly of a single person. Publicity, criticism, and responsibility make it impossible that a ruler becomes irremovable. Democracy is characterized by a more or less quick change of rulership. It has, in this respect, a dynamic nature. A steady rise from the community of the ruled to the position of ruler takes place. Autocracy, on the other hand, shows an outspoken static character: the relationship between ruler and ruled has the tendency of being frozen.

On the whole, democracy has no ground which is favorable to the principle of authority in general and to the Fuehrer-ideal in particular. Insofar as the father is the archetype of authority, because the original experience of all authority, democracy is, according to its idea, a fatherless society. It is intended to be a community of equals. Its principle is co-ordination; its most primitive form is a mother-right organization, where men living together are brothers, the sons of the same mother. The trinity of the French Revolution, liberty, equality, and fraternity, is its true symbol. Autocracy, on the other hand, is by its very nature a paternal community. The child-father relationship is its corresponding category. Super- and subordination, not co-ordination, i.e., hierarchical articulation, is its structure. It is just for this reason that one might attribute to it rather than to democracy a better chance

to survive. And, indeed, it seems as if in history autocracies fill much greater spaces of time than democracies, which appear—so to speak—only in the entr'actes of the drama of mankind. Democracy seems to have less power of resistance than autocracy, which without any consideration destroys every opponent, whereas democracy, with its principle of legality, freedom of opinion, protection of minorities, tolerance, directly favors its enemy. It is a paradoxical privilege of this form of government, a doubtful advantage which it has over autocracy that it may, by its own specific methods of forming the will of the state, abolish itself. But the fact that in an autocracy there is no constitutional way of smoothing down the conflicts of interests, which after all exist here too, constitutes a serious danger. From the point of view of psycho-political technique, the mechanism of democratic institutions aims at raising the political emotions of the masses and especially of the opposition parties above the threshold of social consciousness in order to let them “*abreagieren*” (abreact). The social equilibrium in the autocracy, on the other hand, is based on the repression of the political emotions in a sphere which could be compared with that of the unconscious. We shall leave undecided which technique is more appropriate to safeguard the government against revolutionary overthrow.

Among the attempts, mentioned before, to obscure the antagonism between democracy and autocracy, the tendency to present the problem of democracy as a problem of leadership is of an importance which should not be underestimated. It has been evoked by the undeniable success which fascism and nationalism had during a certain time. It aims at a new doctrine of democracy which, in opposi-



tion to the old one, emphasizes the necessity of efficient leadership. Its result is the concept of an authoritarian democracy, which, of course, is a contradiction in terms. But it enabled the followers of this doctrine to recognize fascism as democracy.<sup>49</sup> "Fascism," declared Mussolini, "is opposed to democracy, which equates the nation to the majority, lowering it to the level of that majority; nevertheless it is the *purest form of democracy* if the nation is conceived, as it should be, qualitatively and not quantitatively, as the most powerful ideal (most powerful because most moral, most coherent, most true) which acts within the nation as the conscience and the will of a few, even of one, which ideal tends to become active within the conscience and the will of all, that is to say, of all those who rightly constitute a nation. . . ."<sup>50</sup>

It cannot, of course, be denied that within a democratic state there is such a thing as leadership, that the democratic form of government does not prevent, although it does not favor, the coming into existence of powerful leaders who may obtain the enthusiastic support of the masses. Nor can it be denied that the rise of such a personality may result in the abolishment of this form of government and its replacement by an open autocracy or a dictatorship which pretends to be democracy. It is also true that constitutional measures such as the institution of recall, that is, the procedure by which a public official may be removed from office by a vote of the people, or those intended to prevent ostracism, as in antique democracy, have proved to be not very effective. But these facts do not justify the identification of the problem of democracy with that of leadership. The problem of democracy is not the problem of the most effective government; others may be more effective. It is the problem of a government guaranteeing

the greatest possible amount of individual freedom. Consequently, the wish for effective government, or what is supposed to be an effective government, does not justify the substitution in place of the definition of democracy as government by the people a definition from which the people as an active power are eliminated and maintained only as a passive factor insofar as their approval of the leader expressed in some way or another is required. Such definitions have only the effect—if not the intention—of covering the retreat from the democratic position by a democratic terminology.

#### DEMOCRACY AND PEACE

The pattern of internal policy just described corresponds to a definite standard of external policy. The democratic type is decidedly inclined to cherish a pacifistic ideal, whereas the autocratic type shows unmistakable symptoms of imperialism. Of course democracies too have waged wars of conquest. But the readiness for such actions is here much weaker, the inner political inhibitions to overcome much stronger, than in an autocracy. Consequently, there exists a clear tendency to justify foreign policy by a rationalistic, pacifistic ideology. It is necessary to present the war which one wages or intends to wage as a war of defense imposed upon the peace-loving government by the enemy—a measure which an autocracy with its heroic ideology does not need. Or the aim of the war is declared to be the final pacification of the world, or a part of it, through an international organization, which shows all the characteristics of a democracy—a community of states with equal rights under a kind of government composed of elected representatives and a world court competent to settle international conflicts—as the first step toward the development of a world state. This is an idea

which from the point of view of an autocratic-imperialistic conviction not only does not represent any value at all but is decidedly rejected as a leveling mania, which ultimately must lead to the destruction of civilization, the progress of which depends on the struggle for life and the survival of the fittest.

#### DEMOCRACY AND THE THEORY OF THE STATE

The different ideas of the relationship which exists or should exist between one's own state and other states are closely connected with the theories of the nature of the state which are congenial, respectively, to the democratic and to the autocratic types of personality. The latter, with his hypertrophic self-consciousness based on his identification with a powerful autocrat, is predestined to advocate the doctrine that the state is an entity different from the mass of individual human beings, a superindividual, somehow a collective reality, a mystic organism, and, as such, a supreme authority, the realization of absolute value. It is the concept of sovereignty which accomplishes the absolutization, the divinization, of the state, represented in its totality by the divine ruler. Philosophical absolutism, as pointed out, may result from a view which, in its attempt to conceive the world, starts from the ego but ignores the *tu*, refuses to recognize its claim to be an ego too, and thus leads to an absolutization of the unique, sovereign ego within whose conception and will the whole universe together with all the others who in vain claim to be egos is comprised. In just the same way political absolutism starts in its interpretation of international relations from the interpreter's own sovereign state. It is a significant consequence of the doctrine of the absolute sovereignty of the state that the sovereignty of one state excludes the

sovereignty of the others, that the state which is the starting point of this interpretation must be considered as the only sovereign state. Consequently the legal existence of other communities as states and the validity of the normative order regulating the conduct of the sovereign state in its relations with these states must be based on the recognition, and thus the will, of the sovereign state, which is the starting point of this interpretation. Since the legal existence of such states and the application of international law to their relationships with the sovereign state depend on this recognition, these states cannot be considered as sovereign in the absolute sense of the term. From this point of view the international legal order appears not as a normative order superior to the state or, what amounts to the same thing, to the national legal order, but—if as a legal order at all—as part of the legal order of the sovereign state which recognizes the validity of the international legal order for itself. Thus the entire world of the law is conceived of as implied in the will of the absolute state-ego, the sovereign state.

Diametrically opposed to this view of the state and its relations with other states is the theory according to which the state is not a mysterious substance different from its members, i.e., the human beings forming the state, and hence a transcendental reality beyond rational, empirical cognition but a specific normative order regulating the mutual behavior of men. This doctrine refuses to look for the existence of the state in a sphere beyond or above; it finds this existence in the validity and efficacy of a normative order and consequently in the minds of the human beings who are the subjects of the obligations and rights stipulated by this order. This political theory is not directed at an absolutization but, on the

contrary, at a relativization of the state. It denounces the concept of sovereignty as the ideology of a definite power policy and hence denies that this concept is applicable in a scientific description of political or legal reality. By demonstrating that absolute sovereignty is not and cannot be an essential quality of the state existing side by side with other states, it removes one of the most stubborn prejudices which prevent political and legal science from recognizing the possibility of an international legal order constituting an international community of which the state is a member, just as corporations are members of the state. This theory shows that the state as a legal community is an intermediate stage in a series of legal phenomena which leads from the universal international community of states, over particular international organizations, to the individual state and from the individual state to the associations incorporated in the state, ending finally with the individual human being as the legal subject.

It follows from all that has been said before that this anti-ideological, rationalistic, and relativistic political theory corresponds to that intellectual type which has been described as democratic. It is a scientific theory of political and legal reality to which the autocratic type prefers a metaphysical-theological interpretation of social phenomena in general and of the state in particular. Only the democratic type will allow an objective analysis of the different forms of government, the democratic form included. Nobody who believes in political absolutism will examine democracy on an equal footing with autocracy without a value judgment implied in his examination. To evaluate and hence to approve or to disapprove political reality is more important to him than value-free cognition. If the antagonism between democracy and

autocracy can be reduced to a difference in the inner habitus of men, then the antagonism between a scientific attitude oriented toward the value of cognition and a political attitude oriented toward another, the social, value may also be brought in connection with the antagonism between political relativism and political absolutism. Then it is quite understandable why a genuine science of politics prospers better within a democracy where its freedom, its independence from the government, is guaranteed than within an autocracy where only political ideologies can be developed, and why the one who prefers democracy to autocracy has a stronger disposition for a scientific cognition of society in general, and state and law in particular, than the one whom his character pushes toward autocracy and thereby to an ideological attitude.

#### DEMOCRACY IN THE HISTORY OF POLITICAL IDEAS

If the result of the foregoing analysis concerning the relationship between democracy and relativism, on one hand, and autocracy and absolutism, on the other, is not yet considered as sufficiently convincing, I refer to the historical fact that almost all outstanding representatives of a relativistic philosophy were politically in favor of democracy, whereas followers of philosophical absolutism, the great metaphysicians, were in favor of political absolutism and against democracy.

The Sophists, in antiquity, were relativists. Their most prominent philosopher Protagoras taught that man is the measure of all things; and their representative poet Euripides glorified democracy. But Plato, the greatest metaphysician of all times, advocated, against Protagoras, the principle, God is the measure of all things; and God as the absolute good is at the center of his doc-

trine of ideas. At the same time he rejects democracy as a contemptible form of government. His criticism aims in the first place at the constitution of his native town, the focus of his political interests. In order to judge its objective value it should be confronted with the picture of the Athenian democracy conveyed to us in the *History of the Peloponnesian War* written by Thucydides, one of the greatest and most reliable of historians, not more than a generation prior to Plato. These are the words which Thucydides puts in the mouth of Pericles:

It is true that our government is called a democracy, because its administration is in the hands, not of the few, but of the many; yet while as regards the law all men are on an equality for the settlement of their private disputes, as regards the value set on them it is as each man is in any way distinguished that he is preferred to public honours, not because he belongs to a particular class, but because of personal merits; nor, again, on the ground of poverty is a man barred from a public career by obscurity of rank if he but has it in him to do the state service. And not only in our public life are we liberal, but also as regards our freedom from suspicion of one another in the pursuits of every-day life, for we do not feel resentment at our neighbour if he does as he likes, nor yet do we put on sour looks which, though harmless, are painful to behold. But while we thus avoid giving offence in our private intercourse, in our public life we are restrained from lawlessness chiefly through fear, for we render obedience to those in authority and to the laws, and especially to those laws which are ordained for the succour of the oppressed and those which, though unwritten, bring upon the transgressor a disgrace which all men recognize. . . . Wealth we employ rather as an opportunity for action than as a subject for boasting; and with us it is not a shame for a man to acknowledge poverty, but the greater shame is for him not to do his best to avoid it. And you will find united in the same persons an interest at once in private and in public affairs, and in others of us who give attention chiefly to business, you will find no lack of insight into political matters. For we alone regard the man who takes no part in public affairs, not as one who minds his own business, but as

good for nothing; and we Athenians decide public questions for ourselves or at least endeavour to arrive at a sound understanding of them in the belief that it is not debate that is a hindrance to action but rather not to be instructed by debate before the time comes for action. . . . In a word, then, I say that our city as a whole is the school of Hellas.<sup>51</sup>

In his dialogue *Republic*, Plato defines democracy not as government by the people—or as government by “the many,” as Thucydides did—but as a government by the poor. “When the poor win, the result is a democracy. They kill some of the opposite party, banish others, and grant the rest an equal share in civil rights and government, officials being usually appointed by lot.”<sup>52</sup> Freedom, indeed, is the fundamental principle of democracy, but this freedom is nothing but anarchy:

First of all, they are all free. Liberty and free speech are rife everywhere; anyone is allowed to do what he likes. . . . That being so, every man will arrange his own manner of life to suit his pleasure. The result will be a greater variety of individuals than under any other constitution. So it may be the finest of all with its variegated pattern of all sorts of characters. Many people may think it the best, just as women and children might admire a mixture of colours of every shade in the pattern of a dress. . . . [In a democracy] you are not obliged to be in authority, however competent you may be, or to submit to authority, if you do not like it; you need not fight when your fellow citizens are at war, nor remain at peace when they do, unless you want peace; and though you may have no legal right to hold office or sit on juries, you will do so all the same if the fancy takes. A wonderful pleasant life, surely just for the moment. . . . In a democracy you must have seen how men condemned to death or exile stay on and go about in public, and no one takes any more notice than he would of a spirit that walked invisible. There is so much tolerance and superiority to petty considerations; such a contempt for all those fine principles we laid down in founding our commonwealth . . . a democracy tramples all such notions under foot; with a magnificent indifference to the sort of life a man has led before he

enters politics, it will promote to honour anyone who merely calls himself the people's friend. . . . These, then, and such as these, are the features of a democracy, an agreeable form of anarchy, with plenty of variety and equality of a peculiar kind for equals and unequals alike.<sup>53</sup>

Of the democratic type of man Plato says: "His life is subject to no order or restraint and he has no wish to change an existence which he calls pleasant, free, and happy. That well describes the life of one whose motto is liberty and equality."<sup>54</sup>

Nobody can assert that this is an objective description of the idea of democracy or its actual realization in Athens. It is a caricature drawn by a passionate enemy. Plato's hatred of democratic freedom manifests itself in the following statement, meant as a serious argument against democracy: "The full measure of popular liberty is reached when the slaves of both sexes are quite as free as the owners who paid for them, and I had almost forgotten to mention the spirit of freedom and equality in the mutual relations of men and women." In his grotesque exaggeration, he goes so far as to say: "No one who had not seen it would believe how much more freedom the domestic animals enjoy in a democracy than elsewhere. The very dogs behave as if the proverb 'like mistress, like maid' applied to them; and the horses and donkeys catch the habit of walking down the street with all the dignity of freemen, running into anyone they meet who does not get out of their way. The whole place is simply bursting with the spirit of liberty."<sup>55</sup>

Liberty has no political value. This becomes manifest in the constitution of the ideal state outlined in the *Republic*. The main purpose of this sketch is to justify the postulate that philosophy shall dominate within the individual as well as

within society. Of course, not any philosophy whatsoever but only the true philosophy, the philosophy of Plato, which alone leads to the vision of the idea of the good; and only those who are capable of this vision are entitled to govern.<sup>56</sup> The mass of the people "can never be philosophical"; only very few are able "to consort with philosophy."<sup>57</sup> Consequently the mass of the people are absolutely unable to govern themselves. Only a few are "naturally fitted to combine philosophical study with political leadership, while the rest of the world should accept their guidance and let philosophy alone."<sup>58</sup> These are the principles that determine the constitution of Plato's ideal state, the population of which is divided into two classes: the one comprising the mass of the working people, the farmers, artisans, and traders, whose function is to satisfy the economic needs of the community; and the other, the so-called guardians or warriors, are a group of men and women whose function is to defend the state against external enemies and to maintain order within the state—they form the army and police of the state. From this class a small number of individuals are selected by way of special training; they are called the philosophers. The training enables them to have a vision of the idea of the good and thus "take it as a pattern for the right ordering of the state";<sup>59</sup> most of their time will be spent in study, and only in turn will they act as rulers. Plato does not exclude the possibility that only one of them will exercise this function. He frequently speaks of "the philosopher"—in the singular—as the ruler. He says that control of the state shall be given to "the philosopher,"<sup>60</sup> and that the philosopher "in constant companionship with the divine order of the world will reproduce that order in his soul and, so far as man may,

become godlike."<sup>61</sup> He emphasizes that a state is happiest under "a true king,"<sup>62</sup> i.e., the philosopher-king. Neither the mass of the people nor the members of the class of warriors have a share in the government, the power of which is not restricted by any laws. It is a perfect autocracy.

In Aristotle's *Metaphysics* the absolute appears as the first mover who himself is unmoved.<sup>63</sup> There must be "something which moves without being moved, being eternal, substance, and actuality."<sup>64</sup> This unmoved mover is at the same time pure and absolute reason. It is the highest good, the godhead. In the absolute being, in the being as such, an absolute monarchy is recognized. This conception is definitively expressed in the words, "the world refuses to be governed badly," to which the Homer quotation is added, "the rule of many is no good; one ruler let there be."<sup>65</sup>

In conformity with his metaphysics Aristotle declares in his *Politics* that monarchy—that is, a state where "one person governs for the common good"—is the best form of government; but democracy is stigmatized as a corruption, as the degeneration of a form of government which he calls "polity" and which he characterizes as a state where "the citizens at large govern for the common good," whereas in a democracy the government applies its power in its own interest.<sup>66</sup> This is a strange terminology, for the term "polity," as Aristotle expressly admits, is "a common name for all governments"; and in other connections he uses "democracy," the generally accepted term for government by the many or the citizens at large, just in this sense. This deviation from the traditional terminology can be explained only by Aristotle's intention to deprecate that form of government which was consid-

ered and appreciated in Hellas as democracy. Even the polity, i.e., a government by the many exercised for the common good, holds only the third place in his six-form scheme of constitutions, which distinguishes three good forms of the state: monarchy, aristocracy, and polity; and three bad forms: tyranny, oligarchy, and democracy.<sup>67</sup>

Aristotle's teleological interpretation of nature—a consequence of his metaphysics—is in direct opposition to the mechanistic view of the atomists, who strictly rejected causes that were simultaneously ends and thus became the founders of modern science. It was not by chance that Democritus, who together with Leucippus developed the antimetaphysical theory of atoms, declared: "Poverty in democracy is as preferable to pretended prosperity in monarchy as freedom is to slavery."

In the Middle Ages, the metaphysics of the Christian religion goes hand in hand with the conviction that monarchy, the image of the divine rule of the universe, is the best form of government. The theology of Thomas Aquinas is the classical example of this coincidence of philosophical and political absolutism. In his work *De Regimine Principum* Thomas says:

The aim of any ruler should be to secure the well-being of the realm whose government he undertakes. . . . But the welfare and prosperity of a community lies in the preservation of its unity. . . . Now it is clear that that which is itself a unity can more easily produce unity than that which is a plurality: just as that which is itself hot is best adapted to heating things. So government by one person is more likely to be successful than government by many. . . . That is best which more nearly approaches a natural process, since nature always works in the best way. But in nature, government is always by one. Among members of the body there is one which moves all the rest, namely, the heart: in the soul there is one faculty which is pre-eminent, namely,

reason. The bees have one king, and in the whole universe there is one God, Creator and Lord of all. And this is quite according to reason: for all plurality derives from unity. So, since the product of art is but an imitation of work of nature, and since a work of art is the better for being a faithful representation of its natural pattern, it follows of necessity that the best form of government in human society is that which is exercised by one person.<sup>68</sup>

The same ideas are presented in his *Summa Theologica*.<sup>69</sup> Nicholas of Cusa, on the other hand, who in his philosophy declared the absolute as unknowable, in his political theory advocated the freedom and the equality of men. In modern times, Spinoza combined his antimetaphysical pantheism with an outspoken preference for democratic principles in the moral and political fields; but the metaphysician Leibniz defended monarchy. The English founders of antimetaphysical empiricism were decided opponents of political absolutism. Locke affirmed that absolute monarchy was inconsistent with civil society and could not be a form of government at all. To be sure, Hume, who much more than Kant deserves to be called the destroyer of metaphysics, did not go as far as Locke; but he wrote in his brilliant essay *Of the Original Contract* that the consent of the people is the best foundation of government, and in his essay *Idea of a Perfect Commonwealth* he sketched the constitution of a democratic republic. Kant, following Hume, showed in his philosophy of nature the futility of any metaphysical speculation, but in his ethics he reintroduced the absolute, which he so systematically excluded from his theoretical philosophy. Likewise, his political attitude was not very consistent. He sympathized with the French Revolution and admired Rousseau; but he lived under the absolute monarchy of the Prussian police state and had to be cautious in his

political statements. So in his political theory he did not dare express his true opinion. Hegel, on the other hand, the philosopher of the absolute and objective spirit, was also a protagonist of absolute monarchy.

#### DEMOCRACY AS POLITICAL RELATIVISM

It was a disciple of Hegel who, in the fight against the democratic movement in Germany during the nineteenth century, formulated the catchword: Authority, not majority! And, indeed, if one believes in the existence of the absolute, and consequently in absolute values, in the absolute good—to use Plato's terminology—is it not meaningless to let a majority vote decide what is politically good? To legislate, and that means to determine the contents of a social order, not according to what objectively is the best for the individuals subject to this order, but according to what these individuals, or their majority, rightly or wrongly believe to be their best—this consequence of the democratic principles of freedom and equality is justifiable only if there is no absolute answer to the question as to what is the best, if there is no such a thing as an absolute good. To let a majority of ignorant men decide instead of reserving the decision to the only one who, in virtue of his divine origin or inspiration, has the exclusive knowledge of the absolute good—this is not the most absurd method if it is believed that such knowledge is impossible and that, consequently, no single individual has the right to enforce his will upon the others. That value judgments have only relative validity—one of the basic principles of philosophical relativism—implies that opposite value judgments are neither logically nor morally excluded. One of the fundamental principles of democracy is that everybody has to respect the po-

litical opinion of everybody else, since all are equal and free. Tolerance, minority rights, freedom of speech, and freedom of thought, so characteristic of democracy, have no place within a political system based on the belief in absolute values. This belief irresistibly leads—and has always led—to a situation in which the one who assumes to possess the secret of the absolute good claims to have the right to impose his opinion as well as his will upon the others, who, if they do not agree, are in error. And to be in error is, according to this view, to be wrong, and hence punishable. If, however, it is recognized that only relative values are accessible to human knowledge and human will, then it is justifiable to enforce a social order against reluctant individuals only if this order is in harmony with the greatest possible number of equal individuals, that is to say, with the will of the majority. It may be that the opinion of the minority, and not the opinion of the majority, is correct. Solely because of this possibility, which only philosophical relativism can admit—that what is right today may be wrong tomorrow—the minority must have a chance to express freely their opinion and must have full opportunity of becoming the majority. Only if it is not possible to decide in an absolute way what is right and what is wrong is it advisable to discuss the issue and, after discussion, to submit to a compromise.<sup>70</sup>

This is the true meaning of the political system which we call democracy and which we may oppose to political absolutism only because it is political relativism.<sup>71</sup>

#### JESUS AND DEMOCRACY

In chapter 18 of the Gospel of St. John, the trial of Jesus is described. The simple story in its naïve wording is one of

the most sublime pieces of world literature and, without intending it, grows into a tragic symbol of the antagonism between absolutism and relativism.

It was at the time of Passover when Jesus, accused of pretending to be the son of God and king of the Jews, was brought before Pilate, the Roman procurator. And Pilate ironically asked Jesus, who in the eyes of the Roman was but a poor fool, "Then, you are the king of the Jews?" But Jesus took this question very seriously and, burning with the ardor of his divine mission, answered: "You say so. I am a king. To this end I was born and for this cause came I into the world, that I should bear witness to the truth. Everyone who is on the side of the truth listens to my voice." Then Pilate asked: "What is truth?" And because he, the skeptical relativist, did not know what the truth was, the absolute truth in which this man believed, he—quite consistently—proceeded in a democratic way by putting the decision of the case to a popular vote. He went out again to the Jews, relates the Gospel, and said to them: "I find in him no fault at all. But you have a custom that I should release to you one at the Passover. Do you wish that I set free to you this king of the Jews?" Then cried they all again, saying: "Not this man, but Barabbas." The Gospel adds: "Now Barabbas was a robber."

For those who believe in the son of God and king of the Jews as witness of the absolute truth, this plebiscite is certainly a strong argument against democracy. And this argument we political scientists must accept. But only under one condition: that we are as sure of our political truth, to be enforced, if necessary, with blood and tears—that we are as sure of our truth as was, of his truth, the son of God.



## II. DEMOCRACY AND RELIGION

### DEMOCRACY AS A PROBLEM OF JUSTICE

THE foregoing examination of the philosophical foundation of democracy is not and cannot be directed at an absolute justification of this type of political organization; it does not and cannot intend to prove that democracy is the best form of government. It is a scientific, and that means an objective, analysis of a social phenomenon and not its evaluation in the sense that it presupposes a definite social value as unconditionally valid and demonstrates democracy as the realization of this value. Such a justification is not possible from the point of view of a political science which cannot recognize a definite social value to the exclusion of another but can only ascertain that in social reality different and contradictory social values are recognized and examine the appropriate means for their realization. For the relationship between means and end is a relationship between cause and effect, objectively ascertainable by science, whereas the recognition of an end as an ultimate value, which is itself not the means for a further end, lies beyond scientific cognition. Hence a scientific theory of democracy can only maintain that this form of government tries to realize freedom together with equality of the individual and that *if* these values are to be realized, democracy is the appropriate means; which implies that if social values other than freedom and equality of the individual members of the community are to be realized, as for instance, the power of the nation, democracy may not be the appropriate form of government. This, of

course, is—if a justification at all—only a conditional justification of democracy, the only justification a relativistic philosophy based on science and not on metaphysics or religion can afford. It leaves the decision about the social value to be realized to the individual acting in political reality. It does not and cannot take the burden of this grave responsibility off his shoulders.

This is, in the last analysis, the reason why a relativistic philosophy of value meets with such passionate resistance. For many people are not able, and not willing, to accept the responsibility for the decision about the social value to be realized, especially in a situation in which their decision may have fatal consequences for their personal welfare. Therefore they try to shift it from their own conscience to an outside authority competent to tell them what is right and wrong, to answer their question, what is justice?—seeking for an unconditional justification in terms of which they long to appease their conscience. Such an authority they find in religion. This fact explains the steadily increasing intellectual movement directed against rationalistic positivism and relativism toward religious metaphysics and natural law so characteristic of our time of high political tensions. Christian theology, leading this movement, offers a vindication of democracy which promises to be more effective than the problematical, because conditional, justification implied in a merely scientific theory of legal and political positivism. From the point of view of Christian theology the problem of de-

mocracy is presented and supposedly solved as a problem of divine, and that means of absolute, justice or, what amounts to the same, of Christian natural law. Most significant products of recent democratic theology are the writings of two outstanding Protestant theologians: the Swiss Emil Brunner's *Gerechtigkeit: Eine Lehre von den Grundgesetzen der Gesellschaftsordnung*,<sup>1</sup> and the American Reinhold Niebuhr's *The Children of Light and the Children of Darkness: A Vindication of Democracy and a Critique of Its Traditional Defense*.<sup>2</sup> A characteristic representative of modern Catholic political philosophy is the French thinker Jacques Maritain, who in his book *Christianisme et démocratie*<sup>3</sup> tries to prove an essential connection between democracy and religion from the Catholic point of view. I intend to present in the following a critical analysis of the main ideas of these writers, not only in order to demonstrate that Christian theology, too, can justify democracy only as a relative value, but also—and in the first place—to examine the claim of theology that it furnishes a foundation for democracy which it attempts to verify by showing that there is an essential connection between democracy and Christian religion.

Brunner as well as Niebuhr start their crusade against relativistic positivism or skeptical secularism, as Niebuhr puts it, with the accusation that this intellectual attitude is responsible for totalitarianism, especially National Socialism. This is an argument which plays a very important part in the antirelativistic movement and is used not only by theologians in favor of religion, but also by thinkers, not connected with a particular historic religion, in favor of metaphysical speculation in general. Hence it deserves careful consideration.

#### RELATIVISTIC POSITIVISM RESPONSIBLE FOR TOTALITARIANISM

Brunner writes, "The whole world is crying out for justice";<sup>4</sup> and this desire for justice "is a constant factor in all human history."<sup>5</sup> The vague sense of just and unjust, which everyone has, must be transformed into clear thought, into the principle of justice; and this principle is implied in the "conception of the Christian law of nature. It is the conception of justice as eternal, supernatural and absolutely valid";<sup>6</sup> "it was the Western conception of justice for two thousand years." But it has disintegrated. It was "the positivism of the nineteenth century, with its denial of the metaphysical and superhuman, which dissolved the idea of justice by proclaiming the relativity of all views of justice. Thereby the idea of justice was stripped of all divine dignity and law abandoned to the vagaries of human will. The view that justice is of its nature relative became the dogma of the jurists."<sup>7</sup> As a consequence of this disintegration of the idea of justice, Brunner declares:

It was only to be expected that one day a political power devoid of all religious scruples should discard the last vestiges of the traditional idea of justice and proclaim the will of the ruling power as the sole canon of appeal in matters of law. The totalitarian State is simply and solely legal positivism in political practice, the abrogation in actual fact of the classical and Christian idea of a divine "law of nature." If there is no divine standard of justice, there is no criterion for the legal system set up by a State. If there is no justice transcending the State, then the State can declare anything it likes to be law; there is no limit set to its arbitrariness save its actual power to give force to its will. If it does so in the form of a logically coherent system, it thereby fulfils the one condition to which the legality of law is bound in the formalistic view of law. The totalitarian State is the inevitable result of the slow disintegration of the idea of justice in the Western world.<sup>8</sup>

The totalitarian state, this "monster of injustice,"<sup>9</sup> is not "the invention of a handful of criminals in the grand style," but "the ineluctable consequence" of a "positivism void of faith and inimical to metaphysics and religion," "the inevitable result of man's loss of faith in a *divine* law, in an eternal justice. Yet the alternative stands clearly revealed. Either there is a valid criterion, a justice which stands above us all, a challenge presented to us, not by us, a standard rule of justice binding on every State and every system of law, or there is no justice, but only power organized in one fashion or another and setting itself up as law."<sup>10</sup> This means: If there is no absolute justice there is no justice at all. Justice is by its very nature an absolute value, and only a value posited by God can be absolute.

The consequence of this view—opposed to relativistic positivism—would be that there can be only one, the absolute divine, and not also another, merely relative, justice. If justice is, by its very nature as a divine value, absolute, a relative justice is a contradiction in terms. Only if theology accepts this consequence can it reject relativistic positivism in general and a relativistic theory of democracy in particular. However, Brunner recognizes, in addition to the absolute divine justice, a relative justice, the human justice of positive law. He says, "It is true that all social systems which we human beings create are only relatively just."<sup>11</sup> Positive law is only relatively just because its attempt to be just can never reach its goal. For it is absolute justice

which the best of human laws strive to express, though they never reach their goal in the attempt. Hence it is the element of perpetual ferment in all human systems. Yet it is foolish and wrong to maintain that justice is a relative thing because no human system can fully express this law of justice. That is as unreason-

able as to maintain that the notion of the straight line is a relative one because no human being has yet been able to draw a straight line. It is just *because* we can conceive an absolutely straight line that we can say that no man has ever drawn a straight line. It is just because we have knowledge of the law of absolute justice that we can say that all human laws are mere approximations to the truly just.<sup>12</sup>

Hence there are, according to this theology, two justices: an absolute divine and a relative human justice.

The argument set forth against relativistic positivism, that this philosophy makes the totalitarian state possible, that "if the positivistic theory of law is right, there is no possibility of waging war against the totalitarian State as a monster of injustice,"<sup>13</sup> is a political argument, and as such, even if it were true, could prove nothing against relativism as an epistemological principle. The proposition that only relative values are accessible to human cognition cannot be disproved by the proposition that there are evils in this world, especially social evils, that is to say, facts which some people condemn as evil, whereas others—as in the case of the totalitarian state—praise them as good, even as realization of a higher justice. A statement may be true although the belief in its truth may have effects which from some point of view or another may be considered as evil, just as a statement may be false although the erroneous belief in its truth may have consequences which from some point of view or another may be considered as good. Hence Plato's famous doctrine of the useful lies. Besides, Brunner's assertion that relativism is responsible for the totalitarian state is in open contradiction to the undeniable fact that the classical justification of the totalitarian state, as pointed out earlier, is furnished just by that philosophy which more than any other has rejected relativism and em-

phatically asserted the transcendental existence of absolute values—Plato's doctrine of the ideas on the basis of which he outlined the constitution of his ideal state, which in every respect is a totalitarian autocracy. Totalitarian ideologists, therefore, have always referred to Plato's philosophical absolutism and recognized in the Platonic state the model for their political schemes. Brunner is not very consistent in this respect. For in another connection he makes the church responsible for the totalitarian state. He says:

The Church, which to-day protests, and rightly so, against the oppression it suffers at the hands of the totalitarian State, would do well to remember who first set the State the bad example of religious intolerance by using the secular arm to safeguard by force what can only spring from a free act of the will. The Church should always bethink itself with shame that it was the first teacher of the totalitarian State at nearly every point.<sup>14</sup>

The Church gave an example to the totalitarian State by using the State to intervene in the inner life—inquisition, moral police, monopoly of propaganda, persecution of dissidents and compulsory uniformity must largely be laid to its charge.<sup>15</sup>

This is true. But the church could be "the teacher of the totalitarian state in nearly every point," not because she represented "a positivism void of faith and inimical to metaphysics and religion," but because she taught just the contrary: the belief in absolute justice.

Brunner's assertion that we may not infer from the imperfect, and in this sense only relative, justice of the positive law, that there exists only a relative and not an absolute justice, is based on a false analogy. One cannot compare the idea of absolute justice with the notion of a straight line and the merely relatively just positive law with an actually drawn straight line. For absolute justice is the

idea of a value, whereas a straight line is a notion of geometry, i.e., a science directed at reality. This notion is thinkable and can be defined in a rational, unambiguous way, although a straight line which completely corresponds to the definition cannot actually be drawn. The idea of absolute justice, however, as the essence of God, is beyond human cognition; it is not thinkable and rationally definable, and hence it is also not defined by Brunner, who only asserts to know of it. But he cannot prove that what he—according to his assertion—knows of absolute justice forms the content of God's will. What he presents as his knowledge of absolute justice is very contradictory and far from the "clear thought" into which everybody's vague sense of just and unjust has to be transformed, according to Brunner's own suggestion. He misinterprets relativistic positivism by attributing to this philosophy the consideration that positive law is only relatively just because it does not completely correspond to absolute justice. Such consideration would, indeed, presuppose the existence of an absolute justice. Relativistic positivism considers positive law as only relatively just because it assumes that an absolute justice is unknowable, that one may, religiously, believe in the absolute, and that means in God, but that one cannot comprehend it; that it is by its very nature beyond human cognition and consequently no possible object of science, which can have nothing to do with the absolute in general and absolute justice in particular.

#### EMIL BRUNNER'S THEOLOGY OF JUSTICE

It stands to reason that if there is an absolute justice at all, there can be only one such absolute justice. If there are two justices, neither of them can be ab-

solute. Nevertheless Brunner distinguishes not only an absolute and a relative justice but also two kinds of absolute justice. The "earthly" or "worldly" justice, "the just rendering to each man of his due," the justice of the *summum cuique*, the principle to requite good with good, evil with evil, the justice of retribution, the "justice of the institutions of this world," the "justice of social systems," the justice of "polity," on the one hand, and, on the other, the "heavenly justice," the "righteousness of God," the "biblical justice," the "justice of the faith," which returns good for evil and forgives the transgressor seventy times seven, the principle of divine love. Then he declares that he will deal in his book only with the earthly, not with the heavenly justice. The "justice of the institutions of this world"—"that is the justice which is the theme of the present work. Our object is to inquire into its origin and nature, to discover the principle by which just dealing is distinguished from unjust, just criticism from unjust, just wages from unjust, a just from an unjust polity."<sup>16</sup> If the problem of democracy is a problem of justice, then it is this earthly and not the heavenly justice according to which the question is to be decided whether democracy is a just or unjust social system. But how is it possible to deal with the earthly justice without dealing with the heavenly justice, how is it possible to distinguish between a just and an unjust social order without basing this distinction on the heavenly justice, and that can mean only the divine justice, if, as Brunner emphasizes, only the sacred norm of divine, eternal justice is the yardstick with which we can measure the value of institutions, the plummet by which we can align what we build?<sup>17</sup> How can Brunner refuse to deal with the "justice of faith,"

if the disintegration of justice, as he asserts, is the result of man's "loss of faith in a *divine* law," of a positivism "void of faith" and inimical to metaphysics and religion? If a "worldly" justice, as the "justice of the institutions of this world," is to be distinguished from a "heavenly" justice, as the "justice of faith," we must assume that by the former is meant the justice of a social order, established by man on earth, in contradistinction to a divine order, which is established by God in heaven. Justice is "worldly" insofar as it refers to worldly things, to things of this world, especially to social orders established by man. Justice is "heavenly" insofar as it refers to heavenly things, things which are not of this world. Hence knowledge restricted to worldly or earthly justice can be only a knowledge of relative justice. This is precisely the view of relativistic positivism, which refuses to deal with a heavenly justice and restricts cognition to earthly things, in particular to human social orders to which this philosophy—just as Brunner's social theology—attributes only relative justice.

But on closer examination one notices that the "worldly" or "earthly" justice that Brunner opposes to the "heavenly" justice, the "justice of faith, the righteousness of God," is, according to his opinion, also a supernatural, divine justice. He says, "The idea of justice and the concept of a divine law of justice are one and the same thing."<sup>18</sup> The justice of the institutions of this world is a divine justice, for this world is created by God; the order of this world, the order of nature, is the expression of God's will:

For the believer in the God of Scriptural revelation, the orders of nature are creations of the divine will. They are as and because God "called" them into being. "And God said let there be—and there was." "For he spake, and

it was done; he commanded, and it stood fast." God is not an immanent world *logos*, but the legislator of the world. The law of the world is the manifestation of a creative will. And the law of justice is also the law of a divine will. Underlying the *sum cuique* there is the order of creation, the will of the Creator which determines what is each man's due. The law, the order of creation, is that primal order to which every man appeals, even though unwittingly, who thinks the thought of justice. What is dimly apprehended by the plain man's sense of justice—everyman's sense of justice—is revealed in divine revelation as the order established by the Creator.<sup>19</sup>

The justice which renders to everybody his due, the justice of retribution—and that is the "earthly justice"—is "the divine law of justice." It "refers to a primal allocation, to the act of creation, whereby each man receives what is due to him." This "order of creation" in which the will of the creator is manifested is, according to Brunner, the "Christian law of nature."<sup>20</sup> It is the "connection between nature and the will of God, firmly rooted in the faith in creation, which enabled Christian theologians and jurists to appropriate the conception of the *lex naturae* and the *jus naturae*, of the 'law of nature.'<sup>21</sup> Hence, according to Brunner, there are not one but two absolute divine justices: the divine justice of the law which returns good for evil and the divine justice of retribution, the justice of the *sum cuique*, which returns good for good and evil for evil. It is difficult to understand why the one is called "heavenly" and the other "earthly" justice, since both originate in God and thus in heaven, in a transcendental sphere, and both express a divine, supernatural will. Brunner himself says of the justice which he designates as "earthly," that is, the justice of the order of divine creation, which he opposes to the "heavenly" justice: "This primal order is of its nature superhuman,

supernatural and eternal."<sup>22</sup> How can an "earthly" justice be beyond everything which is "earthly," and that means human, natural, and within time? It is, for a nontheologian, completely understandable how the principle of retribution, the norm according to which the evildoer is to be punished, can be considered as absolute justice, if the contrary principle, the principle of love, according to which the evildoer must not be punished but forgiven, is recognized as absolute justice, and how both principles, which exclude each other, can be the will of one and the same absolute authority.<sup>23</sup> Since, however, the problem of democracy lies only within the sphere of one of the two absolute justices, the earthly justice, its highly problematical relationship to the other, the heavenly justice, may be left out of the question. We are interested only in the relationship of that absolute, divine justice which Brunner calls the "earthly" justice, on the one hand, and the relative justice of social orders established by man in general and positive law in particular, on the other. For democracy is a social order established by man for man and as a legal order is positive law.

#### THE CHRISTIAN NATURAL LAW DOCTRINE

The assertion that there exists an absolute justice necessarily implies the assumption that it is possible to know this justice. For if the absolute justice were unknowable, it would not be admissible to assert its existence. If, as Brunner evidently assumes, the absolute, divine justice of the primal order of creation, the Christian law of nature, can be known—and Brunner's work is an attempt to present it—the question arises why this earthly justice is not realized on this earth, why man although he knows or at least is able to know the absolute justice

realizes only a relative one. If the reason of the merely relative justice of human institutions is not the fact that absolute justice is unknown or unknowable, the only possible answer to the question is that the absolute justice cannot be realized on earth because it cannot be applied to social reality, which by its very nature escapes regulation by an order of absolute justice. Although this answer is open to the objection that an order which is not applicable to social reality cannot be the justice for which man living in this reality is crying, it is nevertheless the answer of Brunner's social theology. He says:

Every law of nature, every theory of justice which takes its stand on an absolute, divine law of justice, is of its nature static. The very immutability of the divine law is decisive in this connection. Justice, in this acceptance of the term, is that which is firmly established, at all times unalterable. This immutability, however, stands in a certain opposition to the eternal flux of history. Anyone whose thought is directed by concrete, ever-changing human reality, feels *any* kind of law of nature, hence *any* form of immutable justice, as an outrage on life. What was yesterday just may be crass injustice to-day. . . . Hence justice must change with changing life.<sup>24</sup>

Brunner admits that this insight "lends a certain justification to the assertion that all justice is relative."<sup>25</sup> But it is much more than a "certain," it is a complete justification of relativism. For Brunner goes even so far as to assert that "there *must* be a difference, if not an antithesis, between positive law and the law of nature. Hence the notion of justice necessarily undergoes a modification in its application to the positive law of the State. We might for the present define this modification as a mitigation due to its adjustment to actual reality. Relative justice comes into being."<sup>26</sup> But how can a static order, that is to say, an order

which presupposes permanence and hence applies only to a status where no change takes place, be adapted to a status of endless change? Relative justice is not and cannot be an adaptation of absolute justice to social reality; it is the substitution of relative justice for the inapplicable absolute justice. Quite correctly Brunner says:

Absolute justice would not be just, but unjust, as a system of state law within given reality. It would not serve the end which justice has to serve—namely, submission to God's law of life, but would have exactly the contrary effect. In the system of positive law, relative justice is superior to absolute justice because absolute justice would, from the outset, be no more than a fiction, a lie, and an outrage on life.<sup>27</sup>

That means that from the standpoint of man and his endeavor to regulate his social relations, a principle which claims to be justice, but which he must consider as "a fiction, a lie, and an outrage on life," is no justice at all. If all "social systems which we human beings create are only relatively just," such a relatively just system is not, as Brunner maintains, "only possible if we are guided by an idea of absolute justice, if we align what we build by the plummet of divine justice";<sup>28</sup> because we cannot be guided by a fiction, a lie, and an outrage on life; nor can a divine justice which is a fiction, a lie, and an outrage on life be the plummet by which we align what we build. What the social theology of Brunner has to say about the relationship of absolute justice to social reality amounts exactly to the assertion of relativistic positivism: that such an absolute justice does not exist; what exists as a normative order, and that means what is valid, is positive law, and that means a relative justice only.

In discussing the question of the rela-

tionship between the divine natural law and the positive law of the state, Brunner, in conformity with the natural law doctrine of the Reformers and their followers in the seventeenth and eighteenth centuries, says that from the fact that a positive law is in conflict with the natural law and hence unjust does not follow that the positive law is not to be obeyed: "No State law can tolerate a competition of this kind presented by a second legal system. The laws of the State actually obtaining must possess a monopoly of binding legal force; the law of nature must claim no binding legal force for itself if the legal security of the State is to remain unshaken."<sup>29</sup> What, then, is the function of a natural law which is not valid? It has, according to Brunner, "the function of a criterion." But if the absolute justice of the Christian law of nature refers to a status where no change takes place, it cannot serve as the criterion of justice of a dynamic order which applies to a continuously changing social reality. This social theology tries in vain to differentiate itself from relativistic positivism, which it so passionately rejects.

Although Brunner emphasizes the static character of the absolute divine justice of the Christian natural law, from which he infers its antagonism to the positive, and because of the antagonism only relatively just, law, the principles which he presents as those of the Christian law of nature are not at all essentially static and certainly not necessarily antagonistic to positive law. They are, on the contrary, perfectly realizable in positive law and, to a great extent, actually realized. These principles are freedom of religious practice; man's right to his life, but restricted by the right of the community to inflict capital punishment and to impose the duty of military service;

the right of private property; the right of man to obtain livelihood from the earth by the work of his hands; the right of the child to an adequate development.<sup>30</sup> These rights he pretends to deduce from the "order of creation," which is the order of nature as created by God and manifesting his absolutely just will. This means that Brunner, in spite of his opposition to the rationalistic natural law doctrine, and as did the followers of this doctrine, tries to deduce the principle of a just social order from nature.

It is rather astonishing that a Christian theology does not find God's absolute justice in the Scriptures, which, if they are revelations at all, are the revelations of His justice; and even more astonishing are the arguments set forth by Brunner to justify his setting aside the Scriptures.<sup>31</sup> These arguments are here of no interest. From a nontheological point of view, it is quite understandable that the Scriptures are not made the basis of a modern theory of justice. For what the Old Testament reports about the justice of God, especially the primitive principle "eye for eye, tooth for tooth," is repulsive to Christian morality of our time and in open conflict with the command of Christ to love even the evildoer, which is hardly applicable in social reality. As far as political justice is concerned, God's will revealed through Moses as well as through Christ points undoubtedly toward a theocracy, whether it is to be conceived of as the historical kingdom of David or the future Kingdom of God on earth. Nowadays even theologians are reluctant to declare theocracy as the best form of government.

If Scriptural revelation is no answer to the question of divine justice, then, indeed, the revelation of God's will in nature remains as the only possible source. But how to find God's will in nature, or—



formulated more correctly—what can we deduce from the fundamental assumption of Christian theology that nature, as it actually exists and is known by us, is created and ruled by God, that “God is the legislator of the world,”<sup>32</sup> as Brunner himself puts it? If there is any conclusion at all that could be drawn from the fundamental presupposition of Christian theology with respect to the question of political justice, it could be only a negative one. Provided that God’s government of the world is to be considered as the ideal type of government—and this is an argument that is frequently used—democracy is not a just form of government.<sup>33</sup> Men do not participate in the divine government. But in view of the fact that there actually exist not only autocratic but also democratic governments, and that these democratic governments, just as the autocratic ones, can exist only through the will of God, the antidemocratic conclusion is not convincing. As a matter of fact, no conclusion concerning justice or injustice of social institutions is possible. For the unavoidable consequence of the fundamental presupposition is that everything that exists, exists through the will of God, that an existence without or against the will of God is unthinkable. Consequently the fundamental presupposition of a theological interpretation of nature is eliminated as a basis of a doctrine of justice distinguishing between good and evil social phenomena. This distinction can be based by Christian theology only on Scriptural revelation, on the story in Genesis of the fall of man, the myth of the evil coming into the divine world. It is the doctrine of the two natures, a prelapsarian and a postlapsarian nature. It is an indispensable prerequisite of any moral theology, and consequently also of Brunner’s theology:

The secular world, the life which justice has to rule, is not merely the world created by God, but a world which has fallen away from the order of creation. Human nature as we all know is not simply the human nature created by God, but a nature whose core and centre has fallen away from God. Hence the concept of nature in Christian teaching is twofold, in that it denotes both the original order and that which has fallen away and violated that original order.<sup>34</sup>

But the concept of a nature or world not created by God is in contradiction to the fundamental presupposition of a world or nature created by God. It cannot be deduced from this presupposition, from the revelation of God’s will in nature, but only from Scriptural revelation. Hence it is impossible to base a theological doctrine of justice on anything else but on Biblical revelation, on the teachings of Moses and Jesus. Any attempt at deducing principles of divine justice from the “order of creation,” and that means from nature, involves the logical fallacy, which consists in concluding from that which *is*, that which *ought* or *ought not* to be. The objective principles of justice, allegedly deduced from nature, are in truth highly subjective value judgments projected into nature, and if nature is interpreted as an expression of the will of God, they are imputed by the interpreter to the intention of the divine creator. This applies to all natural law doctrines and especially to Brunner’s theology of a Christian law of nature. Since Brunner, as a Protestant theologian, approves of the economic and political systems established in the Western world, he finds their principles in the divine order of creation; since he disapproves of the economic and political systems of Communism, he does not hesitate to assure that God does not will it. Here we are interested only in the application of this theology of justice to the problem of democracy.

FREEDOM AND EQUALITY ACCORDING  
TO PROTESTANT THEOLOGY

Since the idea of democracy is the idea of freedom, combined with the idea of equality, we must first of all learn what Christian theology has to teach with respect to these two ideas. From our analysis of the intellectual foundations of the antagonistic forms of government it follows that freedom is the primary, equality only a secondary, factor in the structure of democracy. It is significant, therefore, that according to Brunner's social theology, "in the Christian understanding of man, the cardinal fact is not freedom, but man's relation to God, the sovereignty of God."<sup>35</sup> Man's relation to God is his subjection to God's sovereign will, constituting man's obligation of unconditional obedience. Although Brunner has to show that there is something like freedom of man compatible with his subjection to God, and although he tries to distinguish this freedom of the faith from another freedom of Christian justice—with which we shall deal later—he lays more stress on the principle of equality than on that of freedom. He quite correctly distinguishes between the merely formal equality<sup>36</sup> of men, which consists in the fact that all are equally subject to the law, the equality before the law, from the equality of treatment, the principle that men "*ought* to be treated alike."<sup>37</sup> But he is aware of the fact that men are actually not equal. "Human beings are *never* equal. Equality of treatment is only possible because and in so far as actual inequality is set aside and disregarded as immaterial."<sup>38</sup> Hence the decisive question concerning the justice of treatment is: which inequalities are so immaterial that they ought to be ignored in conferring rights and imposing duties on men, and which inequalities are so essential that they ought to be taken into con-

sideration in establishing a social order? To this question Brunner asserts with great emphasis that only religion has an answer:

It is a fallacy to believe that the proposition, "The essential in men is equal," is based on perception. Pure perception tells us nothing about the essential or inessential. It tells us only and always that men are equal *and* unequal. But no experience can tell us whether that which is equal in all is essential—essential, that is, in the sense that it alone is taken into account in the distribution of something, so that equal treatment is just treatment. It is, on the contrary, a conviction of faith.<sup>39</sup>

Hence, to answer the question recourse to the divine order of creation is necessary. But, first, Brunner does not "discuss in which case it is justifiable to disregard inequality and in which not." He only asserts: "The fact that it can ever be disregarded, and that it can be disregarded with the full consciousness of just dealing, derives solely from the fact that man is regarded as part of that primal order which has power over him as over every other, and which has foreordained his 'due.'"<sup>40</sup> This is a statement without foundation. The order of creation shows only that differences exist. But there is not the slightest possibility of inferring from the mere existence of these differences a distinction between essential and unessential ones. Brunner repeatedly asserts: "Empirical observation teaches us that human beings are just as much equal as unequal, but fails to tell us whether or how far that which is unequal is essential."<sup>41</sup> But since it is only by "empirical observation" that we know the order of creation, we cannot expect to learn from this kind of revelation more than from empirical observation. Scriptural revelation, it is true, is not transmitted to us through empirical observation of nature created by God. But this revelation, too, does not contain an an-

swer to our question. The equality of men which results from the teaching of the Scriptures, that man has been created in the image of God, is the same formal equality as the equality before the law. And the same formal equality results from the order of creation constituting the law of nature to which all creatures without regard to their differences are equally subject. In a chapter devoted to the problem "The Ground of Equality," Brunner says we may find the answer to the question of the just relationship between equality and inequality in the primal order of creation, because this order "renders to each man his 'due.'"<sup>42</sup> But at the end of this chapter we read: "Does *sum cuique* mean—to each man the same? We have already seen that this is not the case, that not only the equality of human beings must be respected, but their inequality also."<sup>43</sup> And in the following chapter dealing with "The Ground of Inequality," we read: "For the secret of the Christian conception of justice is not equality, but the blend of equality and inequality. The blend, however, has exactly the same origin as the Christian idea of equality."<sup>44</sup> But the question is: how is equality and inequality blended in the Christian conception of justice? Brunner thinks he may come nearer to the answer by substituting the "spiritual" for the "physical" aspect of the problem. "What counts is not the physical but the spiritual man, and not even the spiritual *man*, but the spiritual principle in man."<sup>45</sup> In contrast to Stoic philosophy

the Christian view is not based on an impersonal spiritual principle, on a *nous* or *logos* pervading all things, a world reason in which all human beings substantially participate, but on the personal will of God. The Christian principle of the dignity of the person is unconditionally personal; the personal God creates the personal and individual human being and predestinates

him to communion with Himself. . . . Hence individuality is never inessential, but is just as integral a part of man's being as that which is common to all men. God does not love mankind in general; He loves the individual in his own nature, created by Himself . . . God does not create schemes; He creates individuals. By calling a man "Thou" He bestows upon him his own unmistakable countenance, his individuality. The inequality which results from individuality is just as much created and willed by God as that which is common to all mankind.<sup>46</sup>

Thus men as spiritual personalities or individuals are no less different than men as physical beings. Hence Brunner's theology comes to the result: "Not only equality is God's will, but inequality also, the specific nature of every individual human being, and the specific nature of every individual species."<sup>47</sup> This is, of course, no answer to the question as to which inequalities are essential and which are not. Instead of answering this question, Brunner turns to the general problem of the relationship between the individual and the community. He asserts: "Community can only exist where there is difference; without difference, there is unity, but not community. Community presupposes reciprocal giving and taking, community is reciprocal exchange and completion."<sup>48</sup> In a community the individuals are mutually dependent. "In Christianity . . . this mutual dependence is the goal of creation, the proof of and preparation for the supreme destiny of fellowship. It is a tenet of the Christian creed that no man is sufficient unto himself."<sup>49</sup> This wisdom is no particular achievement of Christian theology and no solution of the problem of equality. But Brunner thinks that it results in a "new conception of justice": "The *sum cuique* can never be interpreted as 'the same to all.' Human beings are equal, for all have the same destiny

and the same dignity; they are equal in that everyone is responsible to God; therefore all have the same right to be recognized as persons."<sup>50</sup> The equality of dignity or of all men as persons is the same formal equality as the equality before the law of the state or the law of nature. It implies no answer to the decisive question. Of the equality of men as persons, Brunner says: "But this equality of dignity is combined with a difference in kind and function, and that is not immaterial, inessential, but an element of the same destiny. Hence to each man is due not only equality but inequality; it is in actual fact 'to each his *due*,' to each shall be rendered what is indefeasibly his, what is not another's."<sup>51</sup> This is a typical example of an answer that is no answer at all. For the question as to what is the just relationship between equality and inequality remains open. And nothing is added by the statement: "Hence, in the Christian idea of justice, equality and the equal right of all are primary, while the difference of what is due to each in the fellowship is, though not inessential, secondary";<sup>52</sup> or by the final conclusion: "The Christian religion is the only one . . . which emphasizes equally the equality and inequality of human beings and recognizes the independence of the individual as well as his subordination to a social whole as anchored in the will of God. Hence Christianity alone can protect men from the demands both of one-sided individualism and one-sided collectivism."<sup>53</sup> It is superfluous to note that to reach such empty generalities no recourse to the divine order of creation is necessary, even if it were possible to deduce them from this source, which, of course, is not the case.

The idea of freedom, as pointed out, is not in the foreground of social theology, which is concerned with the sovereignty

of God and hence has to conceive of man as subject to God's will and not as essentially free. But since it is supposed that man cannot be considered morally responsible if he is not free, that is, if he is determined in his actions by an external cause or authority, social theology must try to reconcile man's subjection to God's omnipotent will with man's freedom. The self-contradiction implied in this endeavor becomes evident in Brunner's statement: "It is only in freedom that man can do God's will as a loving creature who obeys of his own free will."<sup>54</sup> The freedom of man, subject to God's will, the *libertas christiana*, is his obedience. This of course is no freedom at all, or what amounts to the same, is a mystic freedom, the freedom of faith. Since, as Brunner asserts, it "does not come within the scope of the theory of justice,"<sup>55</sup> we may leave it undiscussed. Political freedom, as a principle of justice, "has its origin in the structure of created order."<sup>56</sup> But just as it is impossible to deduce from the sovereignty of God, from His omnipotent, all-determining will, the *libertas christiana*, the Christian freedom of man, is it impossible to deduce political freedom from the order of creation, which constitutes a strict law, the law which natural science calls the law of causality. Of this order of creation, Brunner says: "Every creature *must* be what God created it to be, and in so far as freedom is given to it, i.e. in everything that is not the fulfillment of the law of creation in itself, every creature *must* respect the order of creation established by the Creator. It *must* respect every other creature as a thing created, willed by God."<sup>57</sup> Brunner, it is true, presents a series of freedoms or human rights, mentioned above.<sup>58</sup> But he does not—and cannot—deduce them from, but projects them into, the order of crea-

tion, just as the followers of the natural law doctrine of the seventeenth and eighteenth centuries did. The freedoms allegedly deduced from the divine order of creation are all negative freedoms, constituting restrictions of the government, such as the right to freedom of religious practice, man's right to his life, the right of property, the freedom in the use of sexual faculties. There are two rights which seem to imply a positive function of the government: the right of man to obtain his livelihood from the earth by the work of his hands or, more generally formulated, the right to work, and the right of a child to an adequate development. But, with respect to the former, Brunner expressly declares that it does not mean "a constitutional guarantee by the State of the right to work."<sup>59</sup> With respect to the right to adequate development, emphasis is laid on the prohibition of any "interference with a child's healthy growth, physical and mental."<sup>60</sup>

The most significant fact is that, among the freedoms which according to this social theology are directly established by God's will expressed in the order of creation, there is no mention of the positive freedom, the right of man to participate in the government of the state, the freedom of democracy. This social theology does not justify democracy—as it, for instance, justifies private property—as being comprised in the will of God. Democracy is a problem "of the distribution of political power." Its justice depends on the justice of its laws:

The justice of the laws obtaining in a State is in the first instance independent of who promulgates those laws and is responsible for their execution. Even an absolute monarch can promulgate just laws and rule in the sense of justice. And *vice versa*, even in a republic or a democracy, unjust law can be created by the will of the majority, while the just law that was

necessary is not created. The question of the justice of the law is primarily independent of the distribution of power in the State. On the contrary, it is a fatal prejudice of modern times that the republican or democratic constitution of itself guarantees the justice of law. The classical example in disproof of that belief is the Athenian democracy in the post-Periclean age. The decisive factor is not who wields the power in the State, but whether the actually existing sovereign power is guided by the knowledge and intention of justice.<sup>61</sup>

This means that democracy is as good or as bad as autocracy, that political freedom, that is, the participation of the governed in the government, is not recognized as a value by this doctrine. It is only the negative freedom of liberalism in its connection with private property in which this theology is interested. That this freedom is impossible without private property, established by creation, is repeatedly maintained.<sup>62</sup>

It must be admitted that this attitude of indifference toward the problem of political freedom, the very problem of democracy, is quite consistent from the point of view of Christian religion. Its vital interests may be protected as well as violated under any form of government; and autocratic governments may be even more in favor of a Christian ideology than democratic ones. It is also understandable that a Christian theology is more interested in freedom from, that is, in restriction of, rather than participation in, government, freedom of religion being its main concern. Less understandable is its apology for economic freedom, its rather astonishing attempt to base the right of private property on the divine, eternal order of creation. This, however, is a problem which we shall discuss later.

It stands to reason that Brunner, as a loyal Swiss citizen, declares: "To forestall any misunderstanding, it must be said at once that democracy, given the

necessary conditions, is doubtless the most just of all polities, because it gives every citizen a share in the responsibility for the exercise of political power."<sup>63</sup> But he immediately adds:

That statement, however, of itself implies that democracy is not *in all circumstances* the best political order, the one which provides the best guarantee of justice. It does so only in definite circumstances which we Swiss particularly, having lived under democratic institutions longer than any nation on earth, are only too inclined to take for granted. There are circumstances in which democracy can be the worst of all political orders—namely, when the people are not ripe for it, or when social conditions are so disorganized that only a strong central will, a "strong hand," is capable of curbing the anarchy latent or manifest in the body social.<sup>64</sup>

This is an argument which has always been used by a dictator when overthrowing a democratic regime. If the social philosophy presented by Brunner affords any justification of democracy at all, it is only a highly relative one and hence can in this respect claim no advantage over relativistic positivism. But it is doubtful whether this theology is even a relative justification of democracy if a true democracy, a government elected on the basis of a universal and equal franchise, is in question. "Is it not a requirement of justice," asks Brunner, "that this right [of universal and equal franchise of all citizens] should exist?" His answer is: "Certainly not primarily. It is no requirement of justice that everyone should have an equal say in the State, for that would mean equal treatment of unequals in a connection in which inequality is of great actual importance. Men are neither equally capable of recognizing the just, nor equally able and willing to put it into action."<sup>65</sup> This answer is quite in harmony with the lack of appreciation this social theology shows for political freedom. It means no more and no

less than that a real democracy guaranteeing participation in government to the greatest possible number of citizens is unjust. Consequently Brunner rejects the doctrine of representation, meaning the principle that the organs elected by the people are, if not legally, politically bound to execute the will of the people or, more exactly formulated, the principle that the government is bound to execute the decisions of a parliament elected by the people. He says:

The so-called representatives of the people should not decide what their electors want, but what is right. And that is precisely what the truly democratic citizen expects of them. The same is true of the government. It has not to do what the people want but what is right. In actual fact it ought not even to do what the legislative body wants; it has to do justice, to do the right thing. In a genuine democracy with a responsible government, the government does not first consider the will of the people, but the weal of the people, justice. Where the government considers from the outset, not what is just, but the will of the people, the justice of the State is in a sorry plight. The government is not of its very nature really "government." The people elect a government which is to govern according to justice, not an executive to do the people's will.<sup>66</sup>

This is exactly the Soviet definition of "genuine" democracy. Since the term "democracy" cannot be deprived of its meaning as a government *by* the people, Brunner's critique of the idea of "representation" amounts to the thesis that government by the people does not require that the government execute the will of the people and thus has to be elected on the basis of universal and equal franchise of all citizens; rather, it requires only that the government consider the weal of the people, that is to say, acts in the interest of the people. Then, and only then, is the government by its very nature really the government of a genuine democracy. Whether this

doctrine is politically good or bad is not our concern. We are not pronouncing political value judgments, and we do not at all doubt that Brunner's view is based on his sincere belief in what he considers to be just. The only point in which we are interested here is the fact that this doctrine—presented as the result of theological considerations—is neither a theoretical basis nor a political vindication of democracy. It may, rather, serve anti-democratic tendencies.

THE VIEW OF REINHOLD NIEBUHR  
RELIGION IS THE NECESSARY  
BASIS OF DEMOCRACY

Like the Swiss theologian Brunner, the American theologian Reinhold Niebuhr makes a positivistic, that is to say, an areligious philosophy responsible for totalitarianism. He speaks of "secularism which attempts to achieve cultural unity" within a society split into opposite groups of material and intellectual interests "through the disavowal of traditional historical religions,"<sup>67</sup> and which, in its more sophisticated form, "represents a form of scepticism which is conscious of the relativity of all human perspectives. In this form it stands on the abyss of moral nihilism and threatens the whole of life with a sense of meaninglessness. Thus it creates a spiritual vacuum into which demonic religions easily rush."<sup>68</sup> By "demonic religions" he means, in the first place, National Socialism and other forms of extravagant nationalism.<sup>69</sup> It is the same idea which he expresses in the statement: "A consistent pessimism in regard to man's rational capacity for justice invariably leads to absolutistic political theories; for they prompt the conviction that only preponderant power can coerce the various vitalities of a community into a working harmony."<sup>70</sup> Furthermore: "The most

effective opponents of tyrannical government are today, as they have been in the past, men who can say, 'We must obey God rather than man.' Their resolution is possible because they have a vantage point from which they can discount the pretensions of demonic Caesars and from which they can defy malignant power as embodied in a given government."<sup>71</sup> If this statement means that Christian theology does and always did effectively resist tyrannical governments, its truth is not beyond doubt. For the source from which Christian theology takes the argument that "we must obey God rather than man" furnishes also the argument: all governments are given their powers from God; this argument has been formulated by St. Paul for the very purpose of being used in favor of a demonic Caesar, and since then has been again and again used to support tyrannical rulers such as Ivan the Terrible of Russia, Louis XIV of France, or Frederick II of Prussia. Also Mussolini and even Hitler found Christian theologians who justified their governments. Christian theology cannot claim to be recognized as an advocate of a definite political regime, because it can and actually did justify contrary regimes, just as it can and actually did defend as well as attack the distribution of property, as Niebuhr's excellent chapter on "The Community and Property" shows.<sup>72</sup> "The final resource against idolatrous national communities . . . must be found in the recognition of universal law by individuals, who have a source of moral insight beyond the partial and particular national communities."<sup>73</sup> Religion is, according to Niebuhr, the source of this insight. "Religious ideas and traditions may not be directly involved in the organization of a community. But they are the ultimate sources of the moral

standards from which political principles are derived. In any case both the foundation and the pinnacle of any cultural structure are religious; for any scheme of values is finally determined by the ultimate answer which is given to the ultimate question about the meaning of life."<sup>74</sup> Modern democracy requires a religious basis.<sup>75</sup> Consequently, Christian theology can vindicate the democratic political system more effectively than skeptic secularism, hampered by its disavowal of religion and its pessimism in regard to man's capacity for justice.

Niebuhr's critique of traditional democratic philosophy is not very consistent. On the one hand he blames this philosophy for its pessimism in regard to man's rational capacity for justice. "A free society," he says, "requires some confidence in the ability of men to reach tentative and tolerable adjustments between their competing interests and to arrive at some common notions of justice which transcend all partial interests."<sup>76</sup> To expect only "tentative and tolerable" adjustments between the competing interests is the characteristic result of that pessimistic view according to which human reason is not able to reach perfect, that is, absolutely just, solutions for human conflicts. Niebuhr does not say that the "common notions of justice," to which he here refers, are to be understood as notions of an absolute justice, although his recourse to religion seems to point in this direction. He does not, in contradistinction to Brunner, expressly require that our political value judgments be guided by the idea of an absolute justice, because he is quite aware of the limitations of human nature, whose achievements are, as he says, "infected with sinful corruption."<sup>77</sup> Consequently he arrives, as we shall see, at a completely relativistic justification of democ-

racy. On the other hand, he sees the reason for the insufficiency of the traditional justification of democracy "by the liberal culture" in the "excessively optimistic estimates of human nature and of human history with which the democratic credo has been historically associated."<sup>78</sup> Pessimism in regard to man's rational capacity for justice is not quite compatible with excessively optimistic estimates of human nature. Liberalism is not necessarily combined with an optimistic overestimation of human nature and certainly not with "a too great reliance upon the human capacity for transcendence over self-interest."<sup>79</sup> There are many representatives of liberalism, especially liberal economists, who take into full account man's egoistic tendencies, and none of the leading liberal philosophers, in his confidence in human nature, went so far as to consider a coercive order as superfluous. It was just because he had no confidence in human nature that one of the outstanding representatives of political liberalism, Wilhelm von Humboldt, in spite of his radical individualism, recognized the state as a "necessary evil."<sup>80</sup> Niebuhr, who reproaches the liberal democratic theory with its "general confidence of an identity between self-interest and the commonweal,"<sup>81</sup> must admit that if there were not a possibility of a harmony between self-interest and the commonweal, "any form of social harmony among men would be impossible; and certainly a democratic version of such harmony would be quite unthinkable."<sup>82</sup> He emphasizes that "the same man who displays this capacity" of transcending his self-interest "also reveals varying degrees of the power of self-interest and of the subservience of the mind to these interests."<sup>83</sup> No liberal philosopher has ignored this fact. Niebuhr's critique is directed against an im-



aginary opponent, constructed for this purpose. He believes "that a Christian view of human nature is more adequate for the development of a democratic society"<sup>84</sup> than the liberal view. But there is not only the pessimistic Christian view of man as "infected with sinful corruption" but also a Christian belief in man as the image of God, which is certainly more optimistic than any liberal view of human nature could be.

"The consistent optimism of our liberal culture," says Niebuhr, "has prevented modern democratic societies both from gauging the perils of freedom accurately and from appreciating democracy fully as the only alternative to injustice and oppression."<sup>85</sup> Hence his task is to show that democracy is the only alternative to injustice, and that means the realization of absolute justice. For if democracy is demonstrated as relatively just only, it cannot be the "only" alternative to injustice. This is the decisive difference between an absolute and a merely relative justice: that only the former, but not the latter, excludes the possibility of another justice. The judgment that a norm or social institution is relatively just means that it is just only under definite conditions; consequently the judgment implies that under other conditions the norm or institution may not be just, and another, even an opposite norm or institution, may be just. Only the judgment that something is absolutely, that is to say, under all conditions, just excludes such a possibility. However, the political philosophy of Niebuhr, based on "religious and theological convictions,"<sup>86</sup> is far from fulfilling this task. It is even not in a position to recognize this task. For it is in open contradiction to the very nature of its religious-theological basis, since it is an unmistakable form of political relativism.

#### RELIGIOUS RELATIVISM

At first sight it might seem that Niebuhr, as a consequence of his religious-theological convictions, rejects relativism. He assumes that the "use of restrictive power" by the rulers and the community would be "purely arbitrary if it were not informed by some general principles of justice, which define the right order of life in a community." These "general principles of justice" are, as he expressly declares, the "natural law." He refers to the fact "that there are no living communities which do not have some notions of justice, beyond their historic laws, by which they seek to gauge the justice of their legislative enactments." He ascertains, evidently with regret, "that in the present stage of liberal democratic thought, moral theory has become too relativistic to make appeal to natural law as plausible as in other centuries," and again emphasizes that "every human society does have something like a natural-law concept; for it assumes that there are more immutable and purer principles of justice than those actually embodied in its obviously relative laws."<sup>87</sup> "The final question to confront the proponent of a democratic and free society," he asserts, "is whether the freedom of a society should extend to the point of allowing these principles to be called into question." He asks: "Should they not stand above criticism or amendment? If they are themselves subjected to the democratic process and if they are made dependent upon the moods and vagaries of various communities and epochs, have we not sacrificed the final criterion of justice and order, by which we might set bounds to what is inordinate in both individual and collective impulses?"<sup>88</sup> The answer to these questions can be only in the affirmative. For

if the principles of justice or natural law are subjected to criticism and the democratic process, very different and even contradictory ideas about what is just become possible, and then the "final" criterion of justice is indeed sacrificed. Hence the principles of justice must be declared to be not accessible to critical reason, to be derivable only from religious belief. This is what Niebuhr seems to maintain. He says: "Every society needs working principles of justice, as criteria for its positive law and system of restraints. The profoundest of these actually transcend reason and lie rooted in religious conceptions of the meaning of existence."<sup>89</sup> This means that Niebuhr believes in the existence of a natural law as the criterion of justice for positive law and that this natural law has its source in religion. Since he identifies religion with Christianity, religion means the belief in an absolutely just God. Hence a natural law based on Christian religion necessarily claims to represent absolute justice. Only as an absolute justice can it be that criterion for positive law which Niebuhr has in mind. In order to be such a criterion, natural law must differ from positive law, and the difference consists in nothing else but in the fact that natural law is or pretends to be absolutely just, whereas positive law is only relatively just; and every positive law is relatively just, that is to say, just under a definite condition, under the condition that some social value is presupposed which the law claims to realize, but without being able to claim that this value is absolutely supreme and hence the only one to be realized if in conflict with another. If natural law, too, is only relatively just, if a system of natural law cannot be presented with the claim of being the only possible natural law, if there are various and even contradictory

systems of natural law, then the question arises which of the different systems of natural law should be the criterion for the positive law; and to this question a relativistic natural law doctrine has no answer. Thus natural law has no advantage over positive law. For then the difference between a system of norms which is presented as natural law and a system of norms which has the character of positive law is exactly the same as the difference between two systems of positive law, and that means that there is no absolute reason to prefer the one to the other, because the decisive question as to the supreme value to be realized by the law remains unanswered. A relative natural law is a contradiction in terms.

It is just such a relative natural law to which Niebuhr refers as the necessary criterion for positive law. For, although he insists on the belief in a natural law based on the Christian religion as the criterion for positive law, he, in the last analysis, does not accept the consequence that the principles of natural law must not be subjected to criticism and hence not to the democratic process, that is to say, he cannot deny the possibility of different ideas about the content of natural law without a possibility of deciding which is the right one, excluding the others. For he admits "that there is no historical reality, whether it be church or government, whether it be the reason of wise men or specialists, which is not involved in the flux and relativity of human existence; which is not subject to error and sin, and which is not tempted to exaggerate its errors and sins when they are made immune to criticism."<sup>90</sup> Hence "every historical statement" of the "principles of justice" is "subject to amendment. If it becomes fixed it will destroy some of the potentialities of a higher justice, which the mind of one

generation is unable to anticipate in the life of subsequent eras."<sup>91</sup> However, the principles of justice or natural law exist only in "historical statements." We know nothing about these principles but that which is expressed in "historical statements"; and if these statements refer only to a relative justice, we can have no knowledge of an absolute justice or natural law in the true sense of the term and are not entitled to maintain the existence of such justice or natural law. There is then no reason to assume that the justice which the mind of one generation is able to reach is "higher" than that of another generation. Besides, the principles of justice, formulated in historical statements, change not only from one generation to another but also from one society to another within the same generation and from one group to another within the same society.

Niebuhr carefully avoids referring to an absolute justice. He does not speak of the justice of natural law in its relation to positive law in terms of superlatives. He says only that the principles of natural law are "more immutable and purer" than those embodied in the "obviously relative" positive law. But if natural law is only "more" immutable than positive law and hence mutable and not absolutely immutable, then it is relative too. And if both are mutable, then the question arises why the one is more and the other less mutable or pure; and to this question there is no answer in a relativistic philosophy of justice such as that presented by Niebuhr. If the only principles of justice or natural law known by man and hence applicable in social reality are those expressed in historical statements, and if these statements are subject to amendment because subject to error and sin, and hence cannot claim to represent an absolute but only a relative justice, then there is no difference between Nie-

buhr's philosophy of justice and the relativistic moral theory which he rejects for the reason that it does not appeal to natural law as a plausible criterion for positive law. For this relativistic moral theory asserts exactly the same thing as Niebuhr emphasizes: that the ideas men have of justice represent only relative, not absolute, values. He says:

Natural-law theories which derive absolutely valid principles of morals and politics from reason invariably introduce contingent practical applications into the definition of the principle<sup>92</sup>

The principles of political morality, being inherently more relative than those of pure morality, cannot be stated without the introduction of relative and contingent factors.<sup>93</sup>

If a natural-law theory insists that absolute equality is a possibility of society, it becomes an ideology of some rebellious group which does not recognize that functional inequalities are necessary in all societies, however excessive they may be in the society which is under attack. If on the other hand functional inequalities are exactly defined, the definitions are bound to contain dubious justifications of some functional privileges, possessed by the dominant classes of the culture which hazards the definition.<sup>94</sup>

Even if natural-law concepts do not contain the ideological taint of a particular class or nation, they are bound to express the limited imagination of a particular epoch, which failed to take new historical possibilities into consideration. This alone would justify the ultimate freedom of a democratic society, in which not even the moral presuppositions upon which the society rests are withdrawn from constant scrutiny and re-examination. Only through such freedom can the premature arrest of new vitalities in history be prevented.<sup>95</sup>

A society which exempts ultimate principles from criticisms will find difficulty in dealing with the historical forces which have appropriated these truths as their special possession.<sup>96</sup>

These are statements to which the most radical relativist may wholeheartedly subscribe.

But Niebuhr makes the hopeless attempt to soften somehow the impression of his antiabsolutistic philosophy of justice by relativising its relativism. He thinks there are different degrees, "a descending scale of relativity." "The moral principle may be more valid than the political principles which are derived from it. The political principles may have greater validity than the specific applications by which they are made relevant to a particular situation."<sup>97</sup> Relativity is not a quality, like heat, which can have different degrees. The relativity of a value consists in its conditional character, and there is no possibility of being more or less conditioned. A moral or political value is conditioned or unconditioned. There are no intermediate stages between the one and the other. And the same applies to the concept of validity. That a norm referring to a certain human behavior is valid means that man ought to behave in this way and that he ought not to behave in the opposite way. There are no intermediate stages between the two situations. A general norm may be more or less effective, that is to say, in more or less cases obeyed or not obeyed. But its validity is not identical with its effectiveness. Even if it is not obeyed, and hence not effective in a concrete case, it is valid, and only if it is valid can it be disobeyed. The doctrine of a relative relativism is as untenable as the doctrine of a relative absolutism, that is, the doctrine of a relative natural law.

#### TOLERANCE ON A RELIGIOUS BASIS

Niebuhr quite correctly points out that one of the essential conditions of democracy is tolerance, and he does not ignore the fact that tolerance presupposes relativism. He says: "Democratic life requires a spirit of tolerant cooperation between individuals and groups. . . . Democracy may be challenged from

without. . . . But its internal peril lies in the conflict of various schools and classes of idealists, who profess different ideals but exhibit a common conviction that their own ideals are perfect."<sup>98</sup> That an ideal is perfect means that it represents an absolute value. Referring to democracy he says: "Every absolute devotion to relative political ends (and all political ends are relative) is a threat to communal peace."<sup>99</sup> This means that democracy presupposes relativism. But he cherishes the illusion—and as a theologian he has probably no other choice—that political relativism can be based on religion. However, religion is by its very nature belief in an absolute value, in an ideal which is perfect, because it is belief in God, who is the personification of perfectness, the absolute *par excellence*. A religious belief which admits that the object of the belief constitutes not an absolute but only a relative value, that it represents not an absolute but only a relative truth, and that, consequently, another religion, the belief in another God, another value, another truth, is not excluded and must therefore be tolerated is a contradiction in terms. It is on this contradiction that Niebuhr's relativistic theology is based.

He quite correctly sees the decisive problem in the need of maintaining social harmony, that is, freedom and peace, in spite of religious and other cultural diversities. He says that the solution of this problem "requires a very high form of religious commitment. It demands that each religion, or each version of a single faith, seek to proclaim its highest insights while yet preserving an humble and contrite recognition of the fact that all actual expressions of religious faith are subject to historical contingency and relativity. Such a recognition creates a spirit of tolerance and makes any religious or cultural movement hesitant to claim official validity for its form of religion or to de-

mand an official monopoly for its cult."<sup>100</sup> He does not go so far as to say that religious faith refers only to a relative value or relative truth. He restricts relativity to the expression of the faith. He points to "the difference between divine majesty and human creatureliness; between the unconditioned character of the divine and the conditioned character of all human enterprise."<sup>101</sup> The "unconditioned" character of the divine is the absoluteness of God, which is the very object of religious faith. It is only the "expression" of religious faith which, as a human enterprise, is declared by Niebuhr as conditioned, and that means as relative. But the very meaning of the expression of the faith in God is that the truth or value expressed is absolute. The absolute or relative character of a symbol—as the expression of an idea—depends on the meaning of the symbol. It is not the psychological act of expressing an idea, it is the meaning of this act which has an absolute or relative character. The expression of an idea is absolute if by this expression an absolute truth or value is meant, and it is relative if only a relative truth or value is intended or expressed. Hence if the object to which the expression refers is supposed to be absolute—and the object to which the expression of religious faith refers, God, is *the* absolute—the expression cannot be characterized as relative. Niebuhr says: "Religious faith ought . . . to encourage men to moderate their natural pride and to achieve some decent consciousness of the relativity of their own statement of even the most ultimate truth."<sup>102</sup> An "ultimate truth" is evidently the "ultimate answer which is given to the ultimate question about the meaning of life," and which finally determines "any scheme of values."<sup>103</sup> The ultimate answer to an ultimate question about the meaning of

life can only be an absolute truth. But to admit that the statement about a religious truth has only a relative character means that the truth to which the statement refers is only a relative—not an ultimate, i.e., absolute—and, hence, not a religious truth, in the specific sense of this term. Niebuhr says: Religious faith ought to teach men "that their religion is most certainly true if it recognizes the element of error and sin, of finiteness and contingency which creeps into the statement of even the sublimest truth."<sup>104</sup> To assert that a statement is certainly true if it must be admitted that this statement is possibly erroneous is a rather paradoxical contradiction. If the content of man's faith is founded upon statements or expressions of ultimate truth made by other men, and if human expression of faith is always only relatively true, no faith can claim to be in possession of an absolute truth; and then no faith exists that can claim a really religious character. For what a religious faith distinguishes from secular opinions is just its claim to refer to the absolute. If, however, a Christian believes that his religious faith is based on revelation, that is to say, on statements or expressions made by God or by His son, then he cannot admit that "the element of error and sin, of finiteness and contingency" may creep into these statements or expressions. Niebuhr's distinction between a religious faith in the absolute and a merely relative, because human, expression of this faith is meaningful only under the presupposition that God, i.e., absolute truth and absolute value, in His transcendence, is so far beyond man that neither his rational cognition nor his irrational faith is able to reach Him, and that consequently whatever may be expressed as his faith is subject to error and hence can claim only a relative

truth. The inevitable consequence of this assumption, that God as the absolute is not accessible to man, is that man cannot make any statement about His qualities or functions, His will or intentions. The theology of such a transcendent God can have no social impact at all. The will of a God absolutely unknown and unknowable to men cannot apply to human society.

Niebuhr's fundamental error is that he thinks he can base relativism on "religious humility." "The real point of contact between democracy and profound religion is in the spirit of humility which democracy requires and which must be one of the fruits of religion."<sup>105</sup> "According to Christian faith," he says, "the pride, which seeks to hide the conditioned and finite character of all human endeavour, is the very quintessence of sin."<sup>106</sup> But the Christian religion is, according to its own meaning, not a human but a divine endeavor; it is revealed by God and implanted by Him in man's heart. Even the most exaggerated pride a man takes in this religion does not and cannot constitute a sin, because this pride does not at all seek to hide the conditioned and finite character of a human endeavor. It is the natural pride of a man who is certain of an absolute, a divine truth. And this pride is compatible with, because the compensation for, the most sincere humility which manifests itself in the unconditional submission to this absolute truth. Religious humility is an emotion much too ambivalent to form the basis of a decision between democracy and autocracy.

Tolerance presupposes the relativity of the truth maintained or the value postulated; and the relativity of a truth or value implies that the opposite truth or value is not entirely excluded. This is the reason why the expression of an opposite

truth or propaganda for the opposite value must not be suppressed. If men who share a definite religious belief, in their capacity as members of the government of a state, adopt a policy of tolerance toward other religions, their decision is not determined by their religious, irrational belief in the absolute but by a highly rational wish to maintain peace together with freedom within the community. In the conflict between their religious and their political views, the latter prevails. That they tolerate a religion which is in opposition to their own, that their policy presupposes relativism, whereas their religion absolutism, is inconsistent. Niebuhr quotes Chesterton's statement that "tolerance is the virtue of people who do not believe anything."<sup>107</sup> This statement is certainly an exaggeration. Tolerance is rather the virtue of people whose religious conviction is not strong enough to overcome their political proclivity, to prevent them from the inconsistency of recognizing the possibility and legitimacy of other religious convictions. It is just on such an inconsistency that a religious ideology of democracy is based. But it must be admitted that it is not necessarily the most consistent ideology which is the most effective one.

Since Niebuhr is in favor of democratic tolerance which presupposes a relativistic view, he has recourse to the contradictory construction of religious relativism, because as a Christian theologian he cannot accept the relativism of a rationalistic, antimetaphysical, areligious, skeptical philosophy. He refers to such a philosophy, in the already quoted statement, as "secularism which attempts to achieve cultural unity through the disavowal of traditional historical religions,"<sup>108</sup> and he asserts that "in its more sophisticated form secularism represents a form of scepticism which is con-

scious of the relativity of all human perspectives."<sup>109</sup> But Niebuhr's religious relativism, which insists upon the relativity of all human enterprise, seems to be not very different from this sophisticated skepticism. According to Niebuhr, the difference consists in the fact that this skeptical secularism "stands on the abyss of moral nihilism and threatens the whole of life with a sense of meaninglessness. Thus it creates a spiritual vacuum into which demonic religions easily rush." By demonic religions—as pointed out—he means, in the first place, National Socialism. But a thinker who is so deeply involved in a relativistic view of social reality as to consider even religious faith as compatible with relativism should not share the traditional misinterpretation of positivistic philosophy by dogmatic metaphysics. Skepticism does not mean that cognition is impossible. That all truth is relative does not mean that there is no truth, just as the opinion that all moral values are only relative values does not mean that there are no moral values at all; and life is not meaningless to him who admits that others may attribute to life another meaning than he can find in it. The fact that a rationalistic philosophy refuses to fill the transcendental sphere beyond human experience with the products of an imagination nourished by man's wishes and fears is not at all responsible for the rise of demonic religions. To prevent the coming into existence of such religions is not the task of a positivistic philosophy, which holds itself aloof from any kind of religion. It is the very task of the religion which claims to be the true religion. The spiritual vacuum which a "demonic religion" can fill is just within the transcendental sphere to which positivistic philosophy has no claim, but which is the specific realm of Christian

religion. If there was a spiritual vacuum into which the Nazi religion rushed, it was left by Christianity. It amounts to an inadmissible shift of responsibility to ask why positivistic philosophy, and not to ask why Christianity, has failed to prevent National Socialism from filling a spiritual vacuum. And if relativism is the answer to this question, it is rather the relativism of a religion, a religious relativism, such as advocated by Niebuhr, that should be made responsible for the victory of another religion, which in its demonism maintains the illusion of absolutism. But the Nazi religion is only the ideological superstructure of a real movement which has its causes in economic and political facts and not in the insufficiency of a philosophical or religious system. And this movement has been brought to an end, not by an improved philosophy or religion, but by hard facts.

#### JACQUES MARITAIN'S PHILOSOPHY OF DEMOCRACY

A most remarkable attempt at connecting democracy with Christian religion was made by the Catholic philosopher Jacques Maritain in his book *Christianisme et démocratie*. He asserts that the democratic ideal has its origin in evangelical inspiration,<sup>110</sup> that is to say, in the teaching of the Gospel, that the democratic principles have been formed in the profane conscience by the action of the evangelical ferment.<sup>111</sup> He goes even so far as to maintain that democracy has not yet been realized. Bourgeois democracy, that is, atheistic democracy, is not the true democracy because it denies the Gospel, because the principle of democracy and the principle of Christianity have been separated. In order to become a "real" democracy, democracy must become entirely human, and it can become entirely human only by becoming Chris-

tian. Thus, only by becoming Christian can the very essence of democracy be realized.<sup>112</sup>

This is a device somewhat similar to that used by the Soviet doctrine of democracy, which also declares that in order to become a "real" democracy, the merely formal bourgeois democracy must turn into a democracy entirely human. The difference consists only in the fact that according to the Soviet doctrine democracy becomes entirely human, not by becoming Christian, but by becoming socialist.

Although Maritain emphasizes that the essence of democracy is Christianity, he must, on the other hand, admit that Christianity as a religious belief is indifferent with respect to political life. He says:

It is clear that Christianity and the Christian faith cannot be made subservient to any political system whatever, and hence not to democracy as a form of government or to democracy as a philosophy of human life and politics. This results from the fundamental distinction introduced by Christ between the things that belong to Caesar and the things that belong to God. . . . No doctrine or opinion of simply human origin, as true as it might be, only things revealed by God are imposed on the faith of the Christian soul. One may be a Christian and seek salvation in fighting for any political regime whatever, under the condition that it does not violate the natural law and the law of God. One can be a Christian and seek salvation by defending a political philosophy other than the democratic philosophy, just as one could be a Christian at the time of the Roman empire while accepting the social regime of slavery or, in the seventeenth century, while adhering to the political regime of the absolute monarchy.<sup>113</sup>

It is difficult to understand how the very essence of democracy can be Christianity if Christianity as a religion is indifferent to political systems in accordance with Christ's distinction between political and religious matters, if a man

can be a good Christian without being a democrat, and even adhering to the autocratic ideal. Maritain cannot deny that the Catholic church, in the name of Christian religion, has supported autocratic regimes and opposed democratic movements as long as they were not successful. He frankly admits:

We have seen the directing forces of the Christian social strata fight during a century against the democratic aspirations in the name of religion.<sup>114</sup>

It was not for the believers entirely faithful to the Catholic dogma, it was for rationalists to proclaim in France the rights of man and citizen.<sup>115</sup>

Neither Locke nor Jean Jacques Rousseau nor the Encyclopedists can be considered as thinkers faithfully maintaining the integrity of the Christian treasure.<sup>116</sup>

Maritain explains this fact as follows: it is not Christianity as a religious creed and a way to eternal life to which he refers when asserting an essential relationship between democracy and Christianity; it is Christianity as ferment of the social and political life of the people and as bearer of the temporal hope of man. It is not Christianity as treasury of divine truth, maintained and propagated by the church, it is Christianity as a historic energy at work in the world. It is not at the heights of theology but in the depths of profane conscience and profane existence that Christianity works,<sup>117</sup> that is to say, that Christianity becomes an essential element of democracy, that it constitutes a "real" democracy. But Christianity is by its very nature a religious creed; it can be a ferment of political life, a historic energy at work in the world only insofar as the Christian religious creed, its faith in a divine truth and its hope of eternal life, ferment the political life, as this creed becomes a historic energy working in the world. But if



Christianity as religious creed is politically indifferent, it cannot ferment political life and cannot become a historic energy at work in the world; consequently there cannot be an essential connection between Christianity and any political system. Maritain speaks of a "secularized Christianity,"<sup>118</sup> but this is a contradiction in terms.

It is perhaps possible to maintain—though it is difficult to prove—that a democratic government is more efficient when Christianity is the predominant religion of the people than if there is another religion or no religion at all prevailing, just as one may maintain that a democratic government is more efficient when it guarantees a capitalist rather than a socialist economic system, or vice versa. Maritain, who wrote his book during the Second World War, says: the Western democracies can win the peace after having won the war only "if the Christian inspiration and the democratic inspiration recognize each other and are reconciled."<sup>119</sup> This may be true; but even if true, it does not demonstrate an essential connection between democracy and Christianity. The question of the essence of democracy should not be confused with the question of the efficiency of democratic government. In the third part of this essay I shall show that it is not possible to demonstrate a connection between the essence of democracy and a definite economic system, even if it were possible to prove that democracy works better if associated with this than with another economic system. The same is true with respect to the relationship between democracy and religion: one cannot maintain that there exists a connection between the essence of democracy and a definite religious system because this system guarantees to democratic government a higher degree of efficiency

than any other religious system. The antique democracy was connected with a religion totally different from Christianity, and there is no reason to assume that a people who have another than a Christian religion should not be able to establish a true democracy. There are, as a matter of fact, at the present time democratic states within the non-Christian part of humanity, such as Mohammedan, Jewish, Hindu democracies. What Maritain actually tries to show is not exactly an essential relationship between democracy and Christian religion, but a relationship between democracy and certain moral-political principles which he supposes to have the character of natural law and which he—without sufficient reason—identifies, or considers to be in harmony, with the evangelical law (*"loi évangélique"*)<sup>120</sup> as the specific Christian morality. There is, however, only one principle of morality which is specifically Christian because it is enunciated by Christ and embraced by no other moral system: to give up retribution, not to requite good with good and evil with evil, but to requite evil with good, to love not only our neighbor but also our enemy, which means not punishing the evildoer but forgiving him. This is the new principle of Christian justice, the principle of love. But this principle is inapplicable in political reality; it is incompatible with any state as an order providing for coercive acts to be directed against the lawbreaker. The other principles of Christian morality are not specifically Christian or evangelical; they are proclaimed also—and have been proclaimed prior to the Gospel—by other moral systems and are applicable within any society and not only in a democratically organized community.

For a confirmation of his thesis of the evangelical character of democracy Mari-

tain refers to the statement of the French philosopher Henri Bergson: "Democracy is by its very nature evangelical, its moving force is love."<sup>121</sup> If love, the love of Christ, were really the moving force of democracy, then and only then could it be maintained that democracy is essentially connected with Christianity. But it is evident that this is not and cannot be the case. Bergson's statement is but a hyperbolic expression of the fact to which I have referred in the first part of this essay, that the democratic form of government corresponds rather to the peace-loving than to the aggressive type of character. But the love of peace within a political society is something quite different from the evangelical love, and the fact that democracy is congenial to the peace-loving type of man does not mean that the principle of democracy can be deduced from love of peace and certainly not that it can be realized only on the basis of the love of God taught by Christ.

#### DEMOCRACY AND THE GOSPEL

How does Maritain demonstrate that the democratic ideal has its origin in the teaching of the Gospel, that it has been formed in the profane conscience by the action of the evangelical ferment, that it is a temporal manifestation of the evangelical inspiration? He says that through the mysterious force of evangelical inspiration the profane conscience has comprehended that the authority of the government "can be exercised only with the consent of the governed,"<sup>122</sup> that the government acts only as "delegate or representative" of the people.<sup>123</sup> This is indeed the most important principle of democracy. But it is hardly possible to derive it from the Gospel. The teaching of Christ did not refer to any form of government. From what He said we can only infer that He was in favor of no govern-

ment whatsoever, that He was far from justifying any government. If we accept the traditional interpretation of His saying, "render to God what belongs to God, and to Caesar what belongs to Caesar," He did not directly deny the right of an absolute monarch to be exercised in this aeon, that is to say, prior to the coming of the Kingdom of God. His concern was this Kingdom of God, which He considered as imminent and of which He believed that it would bring to an end all earthly governments. Consequently the question as to the just form of earthly government did not exist for Him at all. St. Paul, on the other hand, was very much concerned with the relationship of the followers of Christ to the earthly government. And his teaching is in direct opposition to that which Maritain presents as the result of evangelic inspiration. St. Paul did not teach that the authority of the government can be exercised only with the consent of the governed, which implies that an autocratic government has no authority to be respected by a Christian, that such a government is unjust or unlawful. Instead he admonished the followers of Christ to consider the authority of any established government, including governments exercised without the consent of the governed, as ordained by God; and thus he justified any form of an established government.

In complete conformity with the teaching of St. Paul, the Christian church—Catholic as well as Protestant—has supported the authority of every established government, autocratic or democratic. To be sure, the Catholic as well as the Protestant churches were, for obvious reasons, more in favor of an autocratic than a democratic government. They furnished absolute monarchy with its most effective ideology: the doctrine that

the monarch has his authority by the grace of God, that he is in temporal matters the delegate or representative of God, not of the people. But when a democratic government was firmly established, the Catholic as well as the Protestant churches were willing to support such a government too. It is true that they gave their approval only on the condition that the government did not prevent or restrict the practice of the Christian religion. This, however, did not mean that the church required religious tolerance. The Catholic church had nothing against the suppression by the government of the Protestant, and the Protestant church nothing against the suppression of the Catholic religion. The Crusades against the Moslems, the believers in the faith established by Mohammed, who were significantly called the infidels, were initiated by the Christian church, and could much more easily be based on evangelical inspiration than on the democratic principles of political self-determination and tolerance of any religious or political creed.

Maritain ascribes the democratic principle of equality to evangelical inspiration by referring to the teaching of the Gospel that all men are the children of God and created in His image.<sup>124</sup> But the idea that men are equal before God applies much better to autocracy than to democracy. For it is based on the absolute inequality which exists in the relation between the ruler and the ruled. Men are equal before God, although God has created them as different personalities, because all their differences are irrelevant in view of the fundamental difference which exists in the relation between men and God.<sup>125</sup> Democratic equality, on the other hand, implies the equality that is supposed to exist in the relation between those who exercise the gov-

ernment and those who are subject to that government, because the governed participate in the government, because democracy as political self-determination means identity of the ruled with the rulers. Hence there is an essential difference between the democratic and the evangelic equality.

Maritain considers dignity<sup>126</sup> of the human personality as a democratic principle and assumes that it is also an element of the teaching of the Gospel. That is true. But it is not specifically evangelical, since it is advocated also by philosophies and religions which are independent of the Gospel. There is no sufficient reason to attribute this ideal to evangelical inspiration. It is even doubtful whether the dignity of the human personality is not seriously impaired by the Christian obligation of unconditional obedience to the will of God, by the absoluteness of the divine government to which man is subject. As a matter of fact, it is precisely an antireligious rationalistic philosophy which emphasizes the value of the individual in opposition to a superindividual authority, be it state or God. There can be no doubt that the dignity of the human personality is respected within a social order which guarantees to this personality political autonomy to a much higher degree than within a religious order which is based on the principle of heteronomy, that is to say, on the principle that a religious man is subject to a divine law in the establishment of which he has no share at all. In order to neutralize that principle and to save the dignity of the human personality, Christian theology has introduced the doctrine of the freedom of will. But this doctrine cannot be supported by the teaching of the Gospel and is hardly compatible with the assumption of an omnipotent, all-determining will of God, the

consequence of which is the belief in predestination.

Maritain says: "It is in its radical opposition to the philosophy of slavery (*philosophie esclavagiste*) that we can see most clearly the essential characteristics of the democratic philosophy of man and society."<sup>127</sup> This is not quite correct, since slavery was a legal institution of the antique democracy, and the American democracy abolished slavery long after the Declaration of Independence. It is, however, true that a state which does not recognize slavery, if it is a government by the people, is in a higher degree democratic than a government by the people under which slavery is permitted. Just as the exclusion of women from political rights is not democratic, and, nevertheless, we will not deny that Switzerland is a democracy although women there have no right to vote. However that may be, the condemnation of slavery is certainly not due to evangelical inspiration. Christ

did not reject it, and St. Paul decidedly recognized it:

Slaves, be obedient to those who are your earthly masters, with fear and trembling, in singleness of heart, as to Christ; not in the way of eye service as men—pleasers, but as servants of Christ, doing the will of God from the heart, rendering service with a good will as to the Lord and not to men, knowing that whatever good any one does, he will receive the same again from the Lord, whether he is a slave or free.<sup>128</sup>

Let all who are under the yoke of slavery regard their masters as worthy of all honor, so that the name of God and the teaching may not be defamed. Those who have believing masters must not be disrespectful on the ground that they are brethren; rather they must serve all the better since those who benefit by their service are believers and beloved.<sup>129</sup>

To serve as a slave means to fulfil the will of God; evangelical brotherhood is perfectly compatible with slavery. This, and not opposition to slavery, is evangelical inspiration.

### III. DEMOCRACY AND ECONOMICS

#### CAPITALISM AND SOCIALISM IN RELATIONSHIP TO DEMOCRACY

THE problem of democracy and economics is, in the main, the question as to whether there exists an essential relationship between the political system we call democracy and one of the two economic systems which compete with each other in modern civilization: capitalism and socialism. Since these terms are used with different meanings, it is advisable to say clearly what is meant by them in the following analysis. By capitalism we understand an economic system characterized by private property in the means of production, free enterprise, and competition; hence an economic system presupposing economic freedom, that is to say, no direct governmental interference in economic life. By socialism we understand an economic system characterized by nationalization and public control of the means and processes of production and distribution; hence an economic system which implies economic constraint, positive regulation of economic life.

Regarding this problem, two contradictory doctrines are advocated in our time. According to the one, democracy is possible only together with capitalism. It is the specific form of government congenial to this economic system, and incompatible with socialism, which by its very nature requires an autocratic regime. According to the other doctrine, democracy, that is to say, true democracy, is possible only within the economic system of socialism, whereas under capitalism only a "formal" or sham democracy can exist.

The following analysis tends to show that neither capitalism nor socialism is

essentially, that is to say, by their very nature, connected with a definite political system. Each of them can be established under a democratic as well as an autocratic regime. Since a political system, as the form of government, is in the first place a procedure or method for the creation and application of a social order, whereas economic systems form the content of the social order, there is no necessary relationship between a definite political and a definite economic system. The democratic or autocratic method by which a social order is created and applied does not preclude any economic content of this order. Neither capitalism nor socialism implies a definite political procedure, and hence both are—in principle—compatible with democracy as well as with autocracy. Another question is whether a definite economic system can be operated more efficiently under the one rather than under the other political regime. It might be that democracy is more favorable to capitalism than to socialism, and autocracy more favorable to socialism than to capitalism. This question can be answered only on the basis of historical experience, and our actual experience is, in my opinion, not sufficient to give a scientifically founded answer. All the attempts made until now to cope with the issue are consciously or unconsciously biased by political preference.

#### THE MARXIAN DOCTRINE THAT DEMOCRACY IS POSSIBLE ONLY UNDER A SOCIALIST ECONOMIC SYSTEM

The thesis that democracy is possible only within an economic system of socialism is an essential element of Marxian ideology and plays an important part in

anticapitalistic propaganda. It implies the perversion of the concept of democracy characterized by the tendency to shift in the usual definition of democracy as a government by the people and for the people the accent from the first to the second qualification. It presupposes the dogmatic belief that socialism offers the only possibility of realizing the "true" interest and hence the "real" will of the people. But under such presupposition the assertion that democracy is possible only under socialism is an empty tautology.

The Marxian thesis that democracy, as the best form of government, is possible only under socialism, as the best economic system, is an application of the economic interpretation of society, according to which political phenomena, such as state and law, are only an ideological superstructure set up above the economic reality constituted by the relationships of production—the principle of the primacy of economics over politics. Since in a capitalist society a minority, the bourgeoisie, is in possession of the means of production and as such is the economically ruling group, this minority also becomes, consequently, the politically ruling group; this is incompatible with the idea of democracy as a government of the majority for the majority. Only if the majority becomes the economically ruling group, which, according to the fundamental presupposition of this ideology, is possible only through nationalization of the means of production, can the majority also become the politically ruling group, and only then is democracy established. However, in the decisive situation, in the transition from a capitalist to a socialist regime, the economic interpretation of society with its principle of the primacy of economics over politics openly collapses. In order to become the

economically ruling group, that is to say, to establish a socialist system of economy, the proletariat must first become the politically ruling group, and this can be achieved only by political means: either peacefully, by obtaining a majority in the representative body, or by force. In the historically most important case, namely in Russia, a true socialist system has been established by a political revolution, quite in conformity with the Marxian doctrine. The doctrine emphasizes that the only way to realize socialism is by the revolutionary establishment of the dictatorship of the proletariat, which is certainly political action. But it is not only in order to become the economically ruling group that the proletariat or the political party representing it must have recourse to a specifically political means; it is also in order to maintain its position as the economically ruling group that it must apply highly political measures: a coercive machinery of public and secret police as well as a military organization. There can be not the slightest doubt about the primacy of politics over economics in the process by which socialism is to be established and maintained. Hence the economic interpretation of society from which Marxian socialism derives its claim to a monopoly of democracy cannot form the basis of this claim. Besides, its final goal is not to build up, but to get rid of, democracy. When socialism reaches its stage of perfection called communism, the state, and with it the form of the state, democracy, withers away. "In the arguments, usually advanced about the state," says Lenin, "the mistake is constantly made, against which Engels uttered his warning, namely, it is constantly forgotten that the abolition of the state means also the abolition of democracy; that the withering away of the state means the

withering away of democracy.”<sup>1</sup> Marxian socialism is, politically, anarchism, not democracy. At the end of its utopian dream, it goes back to its origin, the radical liberalism of the nineteenth century, with its ideal of an apolitical, stateless society.<sup>2</sup> If we did accept the Marxian doctrine—which we do not—we could say that if there is an economic system with which democracy in the last analysis is incompatible, it is socialism.

#### CAPITALISM AND POLITICAL IDEOLOGY

The doctrine that a socialist government—at least during the period of transition from socialism to perfect communism—is by its very nature a “truly” democratic government because it is a government in the economic interest of the people and that since the true will of the people is directed at the realization of its economic interest, only a socialist government represents the people is also from a psychological point of view highly problematical. It presupposes that the satisfaction of economic needs is man’s predominant concern. But experience shows that when a minimum of economic needs is satisfied, other than economic interests may prevail. It is an undeniable fact that policies for the realization of religious or nationalistic ideals have obtained the enthusiastic, even fanatic, support of the great masses regardless of the most severe restrictions of their economic welfare imposed upon them by these policies. Whether the socialist system is a better guaranty for the economic welfare of the masses than the capitalist system is still an open question. The experience of the Soviet Union does not yet furnish a convincing proof. But even if it could be proved that socialism is much more in the interest of the overwhelming majority of the people than capitalism, it could not be main-

tained that where a capitalist system exists under a government established by free elections on the basis of universal, equal, and secret suffrage, that is to say, under a system of “formal” democracy, the capitalist system exists without or even against the will of the people, and that for this reason the government cannot be considered a “true” democracy. The arguments set forth by Marxists to defend this view are evidently wrong. It is simply not true that the owners of the means of production, the capitalists, because they control the economic process, also control the political ideology. That all the means of propaganda, especially the press, are much more at their disposal than at the disposal of the adversaries of capitalism cannot be denied. But neither can it be denied that, as long as the political system maintains its character as a “formal” democracy, no monopoly of pro-capitalist propaganda can be established; and the greater economic power behind a propaganda machinery is not a guaranty of its greater effect. It is a well-known fact that during the 1936 presidential campaign the anti-Roosevelt press had a much wider circulation than the pro-Roosevelt press, and nevertheless Roosevelt won.<sup>3</sup> To maintain that whoever controls the satisfaction of man’s economic needs controls also man’s mind and especially his political opinions is an absurd exaggeration. There exists, of course, a certain relationship between economic reality and political ideology. But the fact that socialist parties could most successfully develop within capitalist democracies proves that it is just the “formal” democracy which prevents economic power from completely controlling political movements.

This fact shows, indeed, an important difference between democracy and autocracy regarding their relation to capital-

ism and socialism. If one of the two economic systems is actually prevailing under an autocratic regime, the coming into existence of the other may be suppressed. Such suppression is excluded under a democratic regime, where a peaceful and, in particular, a gradual change cannot be prevented. This does not mean, of course, that a democratic government has not the right to suppress by force an attempt to replace by force the prevailing economic system by another one. But if such an attempt succeeds, if a minority by revolution overthrows the democratic government in order to establish a socialist instead of a capitalist, or a capitalist instead of a socialist, economic system, such political action implies necessarily the establishment of an autocratic political regime, just as a democratic regime is about to turn into an autocratic one if it suppresses the peaceful attempts to establish another than the prevailing economic system.

#### A "REDEFINITION" OF DEMOCRACY

Not only orthodox Marxists but also socialists who believe in a peaceful evolution of capitalism to socialism rather than in a revolutionary substitution of one economic system by the other advocate the view that democracy, in the traditional sense of the term, is not compatible with capitalism. They do not deny that during the nineteenth century capitalist states had a democratic character. But they assert that the economic evolution of the past fifty years has rendered it more and more difficult and finally impossible to maintain democracy under a capitalist system, that this evolution has resulted in a "crisis of democracy." This crisis, they maintain, consists in the fact that "democratic forms and political rights have been gradually

emptied of their significance, even in some of the most advanced democratic countries, by the overriding force of economic power," that the democratic process no longer automatically confers "the reality of power." "When organized economic power became triumphant, the foundation of nineteenth century liberal democracy crumbled. Political rights have come to seem irrelevant insofar as they no longer confer control over those factors which determine the decisive issues of national life."<sup>4</sup> The crucial situation can be handled satisfactorily by building up a "new democracy." The new democracy must "achieve a reinterpretation, in predominantly economic terms, of the democratic ideas of 'equality' and 'liberty'"; it must "make political rights effective over economic power" and must develop among its members a sense "of common responsibility to make democracy work."<sup>5</sup>

This argumentation is based on the idea of a possible antagonism between economic power and political rights. It is just this antagonism which, according to this view, constitutes the crisis of contemporary democracy. It is, however, very doubtful whether there exists in the political reality of the Western democracies such an antagonism, or—more exactly formulated—whether the antagonism, which certainly exists, is correctly described in this way.

Power is the capacity of influencing others. A person has power over others if he can induce them to behave in conformity with his will. Hence, power is in itself neither political nor economic; the means by which the intended behavior is achieved is political or economic. The specific means by which that power is exercised which is called economic is the process of economic production and distribution of the products. So-called eco-



conomic power is in the hands of those who control this process. They control this process when they have at their disposal the means of production. Within a political organization constituted by a legal order, that is to say, within a state, the disposition of the means of production must assume a legal form, the form of property. The means of production may be the property of private persons—which is the essential element of the capitalist system and results in a situation characterized by the fact that the means of production are concentrated in the hands of a relatively small group, a minority of the population. In this case the distribution of the economic products assumes the legal form of contract. Or the means of production may be owned by the government, that is to say, they may be nationalized—which is the essential element of the socialist economic system. In this case the distribution of the products assumes the legal form of direct or indirect assignment by the government to the subjects. In both cases the economic life is regulated by the law-making and the law-applying process. In the case of socialism, it is positively organized by provisions reserving the disposition of the means of production to the government and directing the process of economic production and distribution in an authoritative way by establishing a planned economy. In the case of capitalism, economic life is not outside the realm of law; it is regulated by legal provisions leaving acquisition of property, in general, and of property in the means of production and the products, in particular, to contract, which is the essence of a free economy. But this freedom of economy is a legal freedom, a freedom guaranteed by the law. The private owners of the means of production cannot exercise their economic power if the principles of

private property and contract are not firmly established by the law-making process and if their property is not effectively protected by the law-applying process. This is particularly manifest in modern states where strong socialist movements in favor of nationalization of the means of production exist. Only through the law-making and law-applying process can the economic power of the private owners of the means of production be maintained against the forces directed at the abolition of this economic system.

Political rights are the rights which give their possessor influence on the government, and that means control of the law-making and law-applying process. Since economic power is guaranteed by this process, there can be no antagonism between economic power and political rights. The exercise of economic power depends in the last analysis on those who have political rights and hence the power to maintain or to abolish the economic system constituting a specific economic power.

The socialist argument against this view as a merely “formalistic” interpretation of social reality, is as follows: that within a capitalist economic system the government may be—and in the capitalist states of the twentieth century actually is—under the decisive influence of the private owners of the means of production, that the government only apparently directs the law-making and law-applying process, which in reality is under the control of the economic power exercised by a small minority in their own interests. If, as in a modern democracy, those who possess the economic power are not identical with those who possess the political rights, these rights are meaningless. They are meaningless because the government, under the influ-

ence of the capitalists, exercises its political power, not in conformity with the will, and hence not in the interest, of the possessors of the political rights, but in conformity with the will and the interests of the private owners of the means of production. The political rights can become meaningful only if the economic power, that is, the ownership of the means of production, is conferred on the government, so that it can be exercised in conformity with the will of the majority of the possessors of the political rights in their interest, and that means in the interest of the whole people.

This argumentation stands and falls with the assertions that the minority of the private owners of the means of production exercises decisive influence on the government elected by the majority of the people, and that the majority of the people are against the capitalist system maintained by the government and for a socialist system. But these assertions can hardly be proved.

The only way to ascertain the will of the people is the democratic process, that is to say, elections on the basis of universal, equal, free, and secret suffrage. Without excessive exaggeration of the effect of certain abuses which may occur everywhere, it cannot be denied that in the Western democracies the elections of the parliament and the chief executives comply with these requirements. If a government elected in this way maintains a capitalist economic system, there is no sufficient reason to assert that this system is against the will of the people or—more exactly formulated—against the intentions of the majority of the electorate more or less organized in political parties. And as long as only a minority or only a transitory, not permanent, majority of the electorate is for a socialist economic system, there is no sufficient rea-

son to assert that the political rights have become meaningless because the socialist system is not established.

As to the influence of the owners of the means of production on the government, this influence can be exercised only through the channel of the electorate. If the socialist party does not obtain a permanent majority of the electorate, it is impossible to prove that this failure is due to the fact that there exists private property in the means of production. If, in a society complying with the just-mentioned requirements of democracy, the fact that the means of production are in the hands of a minority of private owners cannot prevent the coming into existence of a strong socialist party, it is more than unlikely that the same fact can prevent the socialist party from getting the majority necessary to control the government and to establish a socialistic economic system. It may be that it is not his own independent judgment about what is politically in his interest which determines a person to exercise his political rights for a definite political party; it may be that it is political propaganda which has this effect; and it may be justified to consider a vote cast under the influence of political propaganda not to be the expression of the true or real will of the voter. But there is no reason to assume that among the socialist voters the proportion between those who vote following only their own judgment and those who vote under the influence of political propaganda is different from that among the antisocialist voters, that the former express more than the latter the true or real will of the people. That the antisocialist propaganda, because of the stronger economic means at its disposal, does not necessarily have greater effect than the socialist propaganda has already been mentioned.<sup>6</sup> It may very well

be that a poor man does not vote for a socialist party because he believes in God and hence has more confidence in the minister of his church who advises him not to do so than in the political agitator of an antireligious party, or because he has—for some reason or another—strong nationalistic emotions and hence prefers a political party which is rather for armament than for social reform. But to assume that the existence of religion or nationalism is to be explained only by the influence of capitalism would be absurd, since both exist within the socialist state of the Soviet Union, the one in spite of a strong antireligious propaganda, the other used by the socialist government itself as an effective instrument for the realization of its policy.

Hence it is simply not true that within a democratic state economic power can ever override political power, that the democratic process can ever fail to establish the reality of power, that political rights become irrelevant because they do not “confer control over those factors which determine the decisive issue of national life.” The political situation which is described in this misleading way as the crisis of modern democracy consists, in truth, in the fact that within a democracy, by virtue of the political principles which constitute its very essence, a political party has come into being and accumulated considerable strength which wants to substitute socialism for existent capitalism but does not dispose of a majority of the voters necessary to exercise a permanent control of the government through the democratic process. Hence the ideologists of socialism declare this process as irrelevant, as merely “formal.” They speak of a “crisis” of democracy and demand the establishment of a “new” or “real” democracy, either by force or—if they are not followers of the

Marxian revolutionary doctrine—by a reinterpretation of the democratic principles of freedom and equality in economic terms, that is to say, by a new definition in which the accent is shifted from the government by the people to the government for the people.

There is indeed a crisis, but it is not a crisis of democracy; it is a crisis of the prevailing economic system of capitalism. And a reform or revolution may be necessary or inevitable. This reform or revolution does not imply a change in the essence of democracy but the abolishment of the prevailing economic system. The establishment of a socialist system of economy, the nationalization of the means and the process of production, may have the effect of improving the average economic standard of the mass of the people. But it will not “revive” democracy. It will be quite enough if it will not destroy democracy; and it will certainly not have the effect that “political rights will once more become important.”<sup>7</sup> It is, on the contrary, quite possible that, if there exists an economic system which guarantees to everybody the satisfaction of his most important economic needs, the interest in politics will considerably decrease, especially if a socialist economic system is combined with a foreign policy which succeeds in the establishment of an international organization guaranteeing effective collective security. If man is freed from the fear of the two greatest evils, hunger and war, the activity of the government may lose a great part of its importance for the individual, whose interest in participating in it may become less intense than it actually is when the decisions of the government in the fields of economic and foreign affairs affect his very life. The ideologists of non-Marxian socialism demand a redefinition of democracy as a

system of government based on political rights valid against economic power.<sup>8</sup> This means: democracy must be combined with socialism. I personally am not against this political program. And I believe that democracy is compatible with socialism. But I decidedly deny that in order to realize this program a redefinition of the concept of democracy is necessary. To replace the capitalist by a socialist democracy is possible without changing the meaning of democracy as defined in this essay and actually established already in the existing capitalist democracies. A redefinition of democracy—as the Soviet theory shows—is a dangerous enterprise, because it may—and when it, as in the Soviet theory, is achieved, actually does—furnish an ideological instrument for a political movement that is directed against democracy.

THE ALLEGED INCOMPATIBILITY OF  
DEMOCRACY WITH SOCIALISM  
(PLANNED ECONOMY)

From the foregoing analysis follows that the Marxian doctrine, that democracy can be realized only within a socialist economic system, is evidently wrong. But it does not follow that democracy cannot be realized within such a system, that socialism and democracy are incompatible with each other because—according to a widespread capitalist doctrine—socialism necessarily means the suppression of all freedom, in a positive as well as in a negative sense, political freedom in the sense of participation of the governed in the government as well as economic and intellectual freedom in the sense of freedom from government; and that consequently democracy is possible only within a capitalist economic system.

That democracy, as defined in this essay, is possible within a capitalist society is an evident fact which does not need

particular demonstration. It is not even denied by socialists, who only refuse to recognize capitalist democracy as “true” democracy. Hence we are concerned with the question as to whether democracy is possible *only* within a capitalist economy because incompatible with socialism.

The question is usually discussed in connection with the problem of planned economy which is the core of socialism. The adversaries of this economic system maintain that the highly complex system of economic activities cannot be directed in a democratic way, that is to say, by majority decisions of a many-headed body of individuals elected for a short term by political parties of opposite interests, but only by a staff of experts under the leadership of a dictator endowed with practically unlimited powers.<sup>9</sup> Planned economy requires suppression of freedom<sup>10</sup> essential to democracy. By democratic freedom, as pointed out, two different principles are meant: the positive or political freedom of self-determination, the participation of the governed in the government, that is to say, in the creation and application of the coercive order; and the negative or intellectual freedom, the freedom from government or coercion, guaranteed by constitutional human rights. Regarding the suppression of political freedom as a consequence of planned economy, and this means the incompatibility of socialism with democratic procedure, we must take into consideration the fact that even in capitalist states, the democratic character of which is generally recognized, the democratic principle is realized within the legislative, administrative, and judicial branches of government in different degrees. It is almost always realized in the law-creating, i.e., the legislative, function of the state in a much higher degree than in the law-applying, i.e., ad-

ministrative and especially the judicial, function. It would be a mistake to assume that the democratization of the law-applying function must necessarily be in harmony with the democratization of the law-creating function. If the territorial extension of the state makes a division into districts and the establishment of local administrative organs necessary, these organs represent the highest degree of democracy if they are collegiate bodies the members of which are elected by the inhabitants of the district concerned. But the political structure of these local administrative bodies may differ from the political structure of the central legislative body. A political party which as a minority is in opposition to the majority represented in the central body may have the majority in the local body and hence not be willing to apply conscientiously the laws adopted by the central parliament, that is to say—to use a figure of speech—to execute the will of the whole people. The democracy of the part may impair the democracy of the whole. A much more effective guaranty of the execution of the so-called will of the people, expressed in the laws adopted by the central parliament, than the perfectly democratic organization of the local administration in collegiate bodies is a less democratic governor appointed by the elected chief executive and responsible to the executive for the legality of his administration. The democratic organization of the supreme, the law-creating, function is of much greater importance for the democratic character of the whole body politic than the democratic organization of the law-applying, i.e., the administrative and judicial, function.

It is not only the requirement of the legality of the law-applying function which in the interest of the democracy of the whole may lead to a restriction of the

democratic principle in the organization of the administration and judiciary. The requirement of an efficient administration may have the same tendency. If an inefficient administration may endanger the very existence of a democratic state, and if a lower degree of democratization guarantees a more efficient administration, the less democratic type of administrative organization may be chosen in order to maintain the democracy of the whole. This is certainly the reason why in all modern democracies the method by which the chief executive is appointed is by far less democratic than the method by which the parliament is elected. The President of the United States, elected indirectly by the people and not responsible to the parliament, is a less democratic organ than the House of Representatives. The appointment of judges by the chief executive is certainly less democratic than their election by the people; and the rule that only trained lawyers may be appointed and, above all, the principles that a judge has to be independent of those who have him appointed or elected and that he is irremovable are anything but democratic. Nevertheless, we do not hesitate to consider a state as a democracy, the constitution of which provides for independent, irremovable judges to be appointed by the chief executive, because we believe that this type of judicial administration is better for a democratic state than the other type. It is a fact that in capitalist states which are models of democracy, the chief executive has rather far-extending discretionary powers in the field of military and foreign administration and that, as far as purely technical problems are involved, for instance in the field of health administration, experts participate in the activity of the government to a considerable extent. The more techni-

cal an administration is, that is to say, the more the means for the realization of its ends are determined by scientific experience, the less political it is, the less its subjection to the democratic process is essential to the democratic character of the whole body politic. This is the reason why the steadily increasing bureaucratization of the government, a characteristic feature of the modern state, is no serious danger to its democratic character as long as it is restricted to technical administration.

If a socialist economic system is in principle adopted and maintained by the majority of a parliament elected on the basis of universal, equal, free, and secret suffrage, the administration of this system may have to a great extent a merely technical character; and hence a more or less undemocratic organization of this administration may as little impair the democratic character of the socialist state as the discretionary powers of the chief executive, and the influence of bureaucracy and experts has annulled the claim of the capitalist states of the Western civilization to be democracies. It may be that the administration of a planned economy, in order to work satisfactorily, requires discretionary power and hence restriction of the legislative power to a much greater extent than is compatible with a democratic character of the supreme organ of the state. But the answer to this question can be given only on the basis of a social experience which is not yet at our disposal. The assertion that socialism inevitably leads to dictatorship is certainly not founded on such an experience. The Russian experiment, restricted to one great power and a few small satellites and to one generation, proves nothing. Besides, it is not the question to what extent socialism can be successfully realized under a democratic

government which is our concern; it is the question whether socialism is in principle compatible with democracy; and this, at least for the time being, cannot be denied.

#### THE "RULE OF LAW"

The incompatibility of socialism with democracy, on the one hand, and the necessary connection between democracy and capitalism, on the other hand, is sometimes substantiated by the argument that the so-called "rule of law" cannot be maintained within a socialist, but only within a capitalist, economic system, and the rule of law is essential to democracy because it guarantees freedom.<sup>11</sup>

By the rule of law the principle is understood that the administrative and judicial functions of the state should be determined so far as possible by pre-established general norms of law, so that as little as possible discretionary power is left to the administrative and judicial organs; freedom is thus guaranteed because arbitrary government is avoided. Since a system of planned economy, it is argued, does not allow determination of the administration by pre-established general norms, arbitrary government is inevitable, and hence freedom is lost. This argument, however, is not quite correct. The principle called the "rule of law" does not restrict the legislative power, that is, the power of enacting general legal norms, and hence does not limit the degree to which human behavior may be regulated by such norms. Consequently, the rule of law principle does not guarantee the freedom of the individual but only the possibility of the individual to foresee, to a certain extent, the activity of the law-applying, that is, the administrative and judicial, organs, and hence to adapt his behavior to these ac-

tivities. The rule of law principle may prevail although the whole life of the individual is regulated by general legal norms prescribing in detail his behavior in relation to others, and thus restricting to a great extent his freedom of action. The rule of law principle does not guarantee the freedom of the individuals subject to the government because it does not refer to the relation between the government and the governed but to a relation within the government, the relation between the law-creating and the law-applying function; its purpose is the conformity of the latter to the former. The effect of the rule of law is the rationalization of the activity of the government, that is, the processes of creation and application of the law. Its aim is not freedom but security, security in the field of law, *Rechtssicherheit*, as it is called in German jurisprudence. If the problem of democracy and economics is approached from the point of view of rationalization and security, it must be admitted that it is just the rationalization of the economic process and economic security at which socialism, with its planned economy, is driving, in opposition to capitalism which, with its anarchy of production, is far from guaranteeing economic security. This effect of a capitalist economy cannot be prevented by the rule of law prevailing within a capitalist democracy because the economic life is not directly regulated by the law; and rationalization of the economic process together with economic security will be achieved within a socialist democracy even if the rule of law principle does not apply to the legal regulation of the economic life.

As far as the arbitrariness of government is concerned, which the "rule of law" is supposed to prevent, two factors must not be ignored which seriously impair this effect. First of all, the possibility of determining the freedom of action of a

law-applying organ by general norms is limited by the very nature of the relationship which exists between the law-creating and the law-applying function. It is the relationship between a general and an individual norm. The administrative as well as the judicial act, issued by the competent organ in a concrete case where the general norm is applied to a definite individual, constitutes an individual norm. The administrative authority as well as the judge orders the individual to do or to refrain from doing something, and the meaning of this order is a norm prescribing a concrete behavior of a definite subject. The tendency of the principle called the "rule of law" is to determine by a general norm as far as possible the content of the individual norms to be issued by the administrative and judicial organs. But the content of the individual norm can never be determined completely by a general norm. If this were possible, the issuing of individual norms would be superfluous. There is always a certain degree of discretionary power left to the organ bound to apply the general norm. The general norm is only a framework within which the individual norm is to be created; and the individual norm always contains something new, not yet contained in the general norm. Hence a certain degree of arbitrariness is inevitably involved in the application of the law which is necessarily also a creation of law. For the individual norm issued by the administrative or judicial organ is as legal as the general norm issued by the legislative organ. On the other hand, the discretionary power or "arbitrariness" of the legislative organ is practically unlimited. The parliament is sovereign; and the sovereignty of the parliament is the sovereignty of the people within a representative democracy.

There is still another aspect of the

problem of the arbitrariness of government which should be noted: to the extent to which the administration has a technical character, that is to say, to the extent to which the means by which the ends of the administration are determined by scientific experience and hence experts participate directly or indirectly in the administration, to this extent the fact that the content of the individual norms is not determined by pre-established general legal norms does not necessarily mean that the administration has an arbitrary character. If a government, authorized by the law adopted by a democratically elected parliament—as for instance in Switzerland—operates a railway, it would be foolish to prescribe by general legal norms how a locomotive has to be built or tracks are to be laid out; it stands to reason that the decisions concerned are left to the experts of the administration. Nobody would consider the government for this reason as arbitrary. As pointed out, the economic administration within a system of planned economy may have to a great extent a technical character. The fact that the technical decisions are left to the discretion of experts is no sufficient reason to consider it as “arbitrary.”

The second factor which may impair the rule of law principle is even more serious. The application of the law always implies an interpretation of the law. No application without such interpretation is possible. Since the general norms to be applied by the administrative and judicial organs are necessarily expressed in human language and since human language is always more or less ambiguous, almost always different and sometimes contradictory interpretations of a general norm are possible. Hence the degree to which the decision of the administrative and judicial organs, even if determined as far as possible by pre-established gen-

eral norms, can be foreseen by the subjects concerned is not so great as those who rely on the rule of law suppose. Absolute legal security is an illusion, and it is just to maintain this illusion in the opinion of the law-seeking public that traditional jurisprudence denies the possibility of different interpretations, which are from a legal point of view equally correct, and insists on the dogma that there is always only one correct interpretation ascertainable by legal science.

The possibility of different interpretations of a general legal norm is particularly great in the case of customary law, where there is no written formulation of the general legal norms. It is quite significant that in the doctrine of common law, which is essentially customary law, the importance of the general norms is so little recognized that a leading American jurist, John Chapman Gray<sup>12</sup> of Harvard Law School, could advocate the thesis that all law is judge-made law, which implies the complete rejection of the rule of law principle within a democratic state.

The fact that the general norm to be applied by the administrative and judicial organs may be interpreted in different ways by these organs is one of the reasons for the hierarchical structure of the administrative and judicial process, within which the subjects have the possibility of appealing from a lower to a higher administrative or judicial authority if they consider the decision of the lower authority to be not in conformity with the general norm to be applied. But since this appeal must come to an end, the decision of the supreme authority must be endowed with the force of law, whether it does or does not conform with the general norm to be applied by the authority. There is practically no possibility of limiting the discretionary power of a supreme administrative or judicial organ, the decisions of which have the



force of law. This institution, generally accepted by all legal systems, including those of the most radical democracies, may seriously impair the rule of law principle where—as in a democracy—the supreme administrative and judicial organ is not identical with the supreme legislative organ, i.e., where the principle of separation of power prevails.

The rule of law principle, as far as it is realizable, is certainly an appurtenance of democracy; but, as pointed out, in a capitalist democracy it is not applied in the field of economics since this field is exempt from direct legal regulation. On the other hand, the fact that the principle in question cannot, or at least not very effectively, be applied to the economic administration within a system of planned economy does not mean that it is necessarily excluded from other fields of the application of the law of a socialist state, which may have in this respect a perfectly democratic character.

The ideal type of autocracy, to be sure, certainly does not favor the rule of law principle because there is no interest in a rationalization of governmental activities. Nevertheless, in political reality the principle may be adopted to a certain extent also by an autocratic government for the simple reason that the autocrat is not able to issue personally all the necessary administrative and judicial decisions and consequently must appoint deputies and subordinate auxiliary organs. If he wants to have his will or intentions realized as far as possible by the administrative and judicial apparatus which he is forced to build up or to take over from his predecessor, he must try to determine the decisions of the administrative and judicial organs, which act in his name, by general norms which he is able to formulate or to have formulated by experts under his control in his capacity as the supreme

legislator. But even then there remains an important difference between a democratic and an autocratic regime. The change of the general rules of law issued by the legislative organ and, above all, the establishment of exemptions from these rules in concrete cases are incomparably more difficult in a democracy, where they are to be achieved in a complicated parliamentary process, than in an autocracy, where they are within the discretion of one individual, the autocrat, whose will is the law.<sup>13</sup> There is, however, no reason to assume that in this respect there must be an essential difference between a capitalist and a socialist state, that the relationship between the law-creating and the law-applying function in a state with planned economy must have an autocratic character in the sense that the supreme executive organ must have unlimited power to grant exceptions from the general rules determining the administration.

#### DEMOCRACY AND ECONOMIC FREEDOM

The result of the foregoing analysis is that as far as positive or political freedom is concerned, the freedom which consists in the participation of the governed in the government—democracy—is compatible with a socialist as well as a capitalist system of economy. But what about the negative freedom, which does not consist in the participation of those subject to the coercive order of the state in its creation and application but in the freedom from coercion, guaranteed by a specific restriction of this order by the constitutional establishment of certain human rights? That capitalism, as economic liberalism, requires such freedom is self-evident and a historical fact. That socialism, as a system of planned economy in direct opposition to economic liberalism, is incompatible with economic

freedom, because by its very nature an extension of the coercive order of the state to economic relations, is likewise self-evident. But economic freedom is not the decisive issue as far as the question is concerned whether the freedom essential to democracy is compatible with socialism. First of all, it should be kept in mind that even the classical liberalism of the nineteenth century did not mean complete economic freedom; it never required that the coercive order of the state should not interfere at all in economic matters. Private property and free contract, the very basis of liberal capitalism, are, after all, legal institutions; and to protect private property and to enforce the fulfilment of contracts is one of the main functions of capitalist civil law; punishment attached to theft, fraud, embezzlement, as specifically economic crimes, is an essential function of capitalist criminal law. The development of the modern state is characterized by a steadily increasing tendency toward a legal regimentation of economic matters; labor and antitrust legislation are indispensable elements of domestic policy and certainly constitute a remarkable restriction of economic freedom. It is generally recognized that this development did not deprive the Great Powers of Western civilization of their democratic character. If we are not to admit that democracy has disappeared in the modern world, we cannot include in the definition of democracy the principle of economic freedom. It is not the economic, it is the intellectual freedom—the freedom of religion, of science, of the press—that is essential to democracy. Hence the cardinal question is whether within a political system which abolishes economic freedom through planned economy, intellectual freedom can be maintained. This has been formulated as the question

whether the collectivization of the economic sector of life necessarily leads to the collectivization of all the other sectors. And this question has been answered by some outstanding economists in the affirmative. They assert that collectivization cannot be limited to economic matters, that if economic freedom is suppressed, intellectual freedom can no longer be maintained, that collectivism which controls the economic life of man must inevitably control also his intellectual life. This is the most important argument set forth in the defense of capitalism against socialism. But, as paradoxical as it may seem, this argument is, if not identical with, very similar to the Marxian doctrine, which states that the economic reality determines its ideological, that is, its intellectual, especially its legal and political, superstructure. To explain political totalitarianism as the consequence of a specific economic system is to apply an economic interpretation of society.

The argument rests on the assumption that socialism is collectivism, in contradistinction to the individualism of liberal capitalism, and on the identification of collectivism with totalitarianism.<sup>14</sup> This identification, however, is inadmissible, for collectivism exists in social reality in different degrees, and totalitarianism is only the highest possible degree of collectivism. Any normative order regulating the mutual behavior of individuals constitutes a collectivism, that is, a collective body, and hence represents some kind of collectivism. But the normative orders differ with respect to their material sphere of validity, that is, the extent to which they regulate human relations, and with respect to the degree of centralization. Even the most primitive social order which is completely decentralized and limited to the regulation of the

most vital human relations by prohibiting only murder and incest represents a certain degree of collectivization. The modern state, a centralized coercive order with a rather extensive material sphere of validity, exhibits a much higher degree of collectivization, without having necessarily a totalitarian character. To be sure, socialism is collectivism, because it means the collectivization of the economic life of man. But it is just the question whether this collectivization necessarily leads to the collectivization of human life in its totality. The train of thought on which an affirmative answer to this question is based runs about as follows.<sup>15</sup> It is not possible to separate the economic from other spheres of human life, for to realize other than economic ends, economic means are necessary, and the ultimate ends are never economic; economic ends are always means for further ends. If, for instance, a group of individuals who share the same religion want to perform the common worship prescribed by their belief, they need an appropriate building, that is to say, economic means in order to achieve their intellectual end. If—as in a socialist society—these economic means are under the control of a central authority, the realization of the end depends upon the decision of this authority which consequently controls also the noneconomic end. Hence the members are not free as far as the realization of these ends is concerned. This is true. But is the situation in a capitalist society essentially different? Is there freedom with respect to the satisfaction of noneconomic needs where there is no planned economy? If, in our example, the individuals concerned have not the money to buy or to erect the building which they need for their religious service, they may try to obtain credit for this purpose from a bank. But

if the bank has a more secure or more profitable use for its money, it will not grant the credit. Of course, insofar as in a capitalist society there also is free competition in the bank business, the people may try to get the credit from another bank. But this does not mean that they will succeed. They may not be able to find a bank willing to lend the necessary money and hence are, with respect to the realization of their religious needs by economic means in a capitalist society, as little free as in a socialist society, even if the capitalist society has a democratic constitution guaranteeing freedom of religion. In a capitalist society, says Hayek, “the obstacles in our path are not due to someone’s disapproving of our ends, but to the fact that the same means are also wanted elsewhere.”<sup>16</sup> But are we free to realize our noneconomic ends if the economic means for these ends are “wanted elsewhere”? From the point of view of the men who need a building for their religious service, it makes no difference whether the banks or a central authority refuses to provide them with the necessary economic means. It has been maintained that within a socialist economic system of planned economy there can be no freedom in choosing our work. This is true. But it cannot be denied that within a capitalist economic system this freedom too is a privilege of relatively few, even if the democratic constitution prohibits any legislative, administrative, or judicial restriction of this freedom.

If there is freedom in the satisfaction of noneconomic needs in a capitalist society, it is the freedom of the rich, not the freedom of the poor.<sup>17</sup> This is the socialist argument. There is certainly a lot of truth in it; as well as in the other argument that, if in a socialist economic system the satisfaction of the most fundamental economic needs of nourishment,

clothing, and housing are guaranteed, men will be freed from the coercion resulting from the necessity to care for the satisfaction of these needs, from the permanent pressure which actually limits the range of choice the average man has in a capitalist society. This is not economic freedom in the sense of liberalism, it is not freedom from government, that is to say, from the coercive order of the state. It is freedom from the compulsion resulting from the system of liberal economy. That this freedom, the freedom from compulsion resulting from the necessity to care for the satisfaction of economic needs, is to be achieved by the suppression of freedom in the satisfaction of these economic needs is not as paradoxical as it seems. For the freedom from compulsion is by its very nature a relative freedom. The freedom of one may be the bondage of the other, freedom in one respect may be guaranteed by the suppression of freedom in another, and vice versa.

As far as the freedom to realize our noneconomic ends by economic means is concerned, the question cannot be whether or not such freedom is possible under socialism or under capitalism, because there can be no doubt that it is possible to a certain extent—and only to a certain extent—under both regimes. The question can only be whether there is an essential difference as to the degree in which this freedom is possible within the two systems. And this question can be answered only on the basis of historical experience which is not yet at our disposal.

But even if the answer were decidedly in favor of one or the other economic system, it has no bearing on the question as to whether democracy is compatible with socialism or only with capitalism. For it is not the freedom to realize noneconomic

ends by economic means which is at issue. The negative freedom which is essential to modern democracy exists in the constitutional prohibition of any legislative, administrative, or judicial act restricting the exercise of religion, science, or art, the expression of opinion in the press or in any other form, the association for legal purposes, and the like. The human freedoms or rights, which a constitution must guarantee in order to be considered as democratic, are reflections of a certain limitation of the power of government. But, as it has been shown, the constitutional guaranty of these intellectual freedoms does not secure any freedom in the satisfaction of the intellectual needs concerned by the economic means required. It may be correct to emphasize that, for this reason, the human freedoms guaranteed by a democratic constitution are only "formal" or "legal" freedoms. But a capitalist democracy guarantees only such formal or legal freedoms. On the other hand, there is no reason, based on sufficient historical experience, to assume that the constitutional guaranty of such formal and legal freedoms is not possible within a socialist society, to assert that if the government controls directly the economic means and hence indirectly the noneconomic cultural ends to be realized by these means, its power cannot be restricted by the constitutional prohibition of legislative, administrative, and judicial acts characteristic of capitalist democracy. It is usual to argue that if the government controls the production and distribution of printing machines and paper, it will not permit the publication of periodicals or books directed against the policy of the government. This is possible, and in the Soviet Union it is indeed the case. But it is not necessary. The nationalization of the means of production does not by its

very nature exclude legal institutions guaranteeing the freedom of press, and these guaranties may be no less effective than analogous guaranties within a capitalist democracy.

#### DEMOCRACY AS GOVERNMENT ESTABLISHED BY COMPETITION

One of the most characteristic elements of a capitalistic system of economy is the principle of free competition, which is excluded by a socialist economic system. In order to show, not that democracy is incompatible with socialism, but that capitalism is by its very nature more akin to democracy than is socialism, the democratic procedure has been defined as "that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote."<sup>18</sup> This means that the definition of democracy as government by the people is replaced by the definition as government established by competition.

The competitive struggle for the people's vote is the consequence of free elections; it is not its purpose. In a direct democracy there are no elections at all. The primary criterion of democracy is that the power of government is with the people. If the people cannot or will not exercise this power directly, they may delegate it by free election to representatives and thus, instead of governing themselves, create a government. Hence free election and its consequence, the competitive struggle for the people's vote, is a secondary criterion. Only by reversing the relationship between the two criteria and making the creation of a government by free election the primary criterion can democracy be defined as government established by competition. Such reversion is not only inconsistent

with the essence of democracy but also in conflict with the fact that even where the governmental body is elected, the most democratic electoral system is the one which eliminates, or at least reduces to a minimum, the competitive struggle for the people's vote: the system of proportional representation. It is characterized by the fact that in the procedure of the election the majority-minority relation has no importance. In order to be represented, a political group does not need to comprise the majority of the voters; for every group is represented, even if it is not a majority group, according to its numerical strength. In order to be represented, a political group must have only a minimum number of members. The smaller this minimum number, the more members the representative body has. In the mathematical borderline case where the minimum is one, the number of delegates is equal to the number of voters—the representative body coincides with the electorate. This is the case of direct democracy. Such democracy is certainly to a much higher degree a government by the people than an indirect or representative democracy. The system of proportional representation shows a clear tendency in this direction.

It is frequently maintained that proportional representation does not guarantee an efficient government, that for this purpose majority representation is preferable. This may be true, although the disadvantage of proportional representation is very much exaggerated by the supporters of majority representation. However that may be, the insufficiency in question has nothing to do with the democratic character of proportional representation. Government in a direct democracy is certainly less efficient than government in an indirect democracy, but, nevertheless, the former

is more democratic than the latter. Our question is not the efficiency but the essence of democracy. And from this point of view there can be no doubt that a governmental body in which all political groups are represented is more likely to express the will of the people than a body in which only the majority group or the majority group and one minority group are represented. And one of the greatest advantages of the system of proportional representation is that no competition of candidates of different political parties is necessary. According to the system of majority representation, every delegate is elected with the votes of one group, the majority, against the votes of another group, the minority. According to the system of proportional representation, every delegate is elected only with the votes of his own group without being elected against the votes of another group. The system of proportional representation is the greatest possible approximation to the ideal of self-determination within a representative democracy and, hence, the most democratic type of electoral system, precisely because it does not require a competitive struggle for the people's vote.

#### CAPITALISM AND TOLERANCE

Another argument set forth in favor of the view that capitalism is an economic system more appropriate than socialism for democracy is the assertion that the principle of tolerance, essential to modern democracy, is better guaranteed by the former than by the latter.

It is easier for a class whose interests are best served by being left alone to practice democratic self-restraint than it is for a class that naturally tries to live on the state. The bourgeois who is primarily absorbed in his private concerns is in general—as long as these concerns are not seriously threatened—much more likely to display tolerance of political

differences and respect for opinions he does not share than any other type of human being. Moreover, so long as bourgeois standards are dominant in society, this attitude will tend to spread to other classes as well.<sup>19</sup>

If it is admitted that within a capitalist society tolerance is preserved as long as the private concerns of the bourgeois, and this means the fundamental principles of capitalism, private property and free enterprise, are not "seriously threatened," it can hardly be maintained that there exists an essential difference between the attitude of a capitalist and that of a socialist society in this respect. If a man's main concerns are secured, if there is no danger that others will prevent him from realizing what he considers as major values, he has no reason to prevent them in their attempt to realize what he considers as minor values. Hence there is no reason to assume that a socialist government will not display tolerance as long as the fundamental principles of the prevailing economic system are not seriously endangered. Recent experience shows clearly that in a capitalist democracy tolerance is the first principle to be abandoned when the prevailing economic system is endangered by anti-capitalistic forces from within or from without. The same would probably happen in a socialist democracy. It is a fact that democracy does not work when the antagonism between the majority and the minority is so strong that no compromise is possible and the rule of the political game, the submission of the minority to the will of the majority, is questioned, when the government, rightly or wrongly, is afraid of being overthrown by force. This applies to a capitalist as well as to a socialist democracy and has nothing to do with the peculiarity of their economic systems. It is, however, a peculiarity of the political system

of democracy, in contradistinction to that of autocracy, that in such a situation the former may lose one of its essential elements and thus break down, whereas the latter will remain intact because in suppressing by force any intellectual movement directed against the government, it has nothing to lose.

INDIVIDUAL PROPERTY AND FREEDOM  
IN THE NATURAL LAW DOCTRINE  
OF JOHN LOCKE

If individual freedom is the fundamental principle of democracy and individual property the basis of capitalism, an essential connection of democracy with capitalism could be maintained if it were possible to demonstrate that there exists an inseparable union of property with freedom. Such an attempt was first made in the natural law doctrine as developed by John Locke, who to a great extent has shaped the ideology of modern democracy; and later in the philosophy of Hegel, which still plays an important part in the political thinking of our time.

The supreme value presupposed as self-evident in Locke's moral-political reasoning is the idea of freedom. He distinguishes between "natural liberty" which he defines as "to be free from any superior power on earth," and "freedom of man under government," which is the "liberty to follow my own will in all things, where that rule [which is established by the legislative power and is common to everyone] prescribes not, and not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man."<sup>20</sup> In other words, that man is free means that man is "master of himself."<sup>21</sup>

The problem of property results from the fact that God, according to the Scriptures, "has given the earth . . . to mankind in common. But this being sup-

posed, it seems to some a very great difficulty how any one should ever come to have a property in anything."<sup>22</sup> Hence the problem of property is from the very beginning the problem of the justice of individual or private property; and the justice of this kind of property cannot be based on Scriptural revelation. Locke endeavors "to show how men might come to have a property in several parts of that which God gave to mankind in common, and that without any express compact of all the commoners."<sup>23</sup> Locke's self-imposed task is to deduce the justice of individual property from another source than Scriptural revelation. He tries to fulfil this task by referring to reason with which God has endowed man to make use of the common earth "to the best advantage of life and convenience." Hence, "there must of necessity be a means to appropriate" the fruits and beasts of the earth "some way or other before they can be of any use or at all beneficial to any particular man." They "must be his, and so his, i.e., a part of him, that another can no longer have any right to it, before it can do any good for the support of his life."<sup>24</sup> It stands to reason that this argument can prove the necessity of individual property only in articles of food which man immediately needs for his subsistence, for it is only with respect to these articles that exclusive disposition on the part of the individual is required. But since Locke wants to justify individual property in general, he does not continue to argue in this direction leading to an impasse. He emphasizes the specific means by which man appropriates the articles of food and by which he may appropriate also other things. And this means is man's labor:

Though the earth and all inferior creatures be common to all men, yet every man has a property in his own person; this nobody has

any right to but himself. The labour of his body and the work of his hands we may say are properly his. Whatsoever, then, he removes out of the state that nature hath provided and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature placed it in, it hath by this labour something annexed to it that excludes the common right of other men. For this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough and as good left in common for others.<sup>25</sup>

It is hardly possible to overestimate the influence which this argumentation exercised on the social theory of the eighteenth and nineteenth centuries. Hence a careful analysis seems not to be superfluous.

The basic proposition from which the justice of individual property is inferred is the statement that man has property in his own person, which means that nobody has any right to his person but himself. Man's "property" in his person is his personal freedom, the fact that man, in a state of nature, is free from any superior power on earth and, in a state of government, not subject to the arbitrary will of another man. It is evident that this freedom, the right of the individual to dispose exclusively of himself, that is to say, of his person, is something different from the right of property, that is, the right to exclude others from the disposition of a thing. And insofar as the right of man to dispose exclusively of his person includes the right to use the labor of his body and the work of his hands according to his own will, freedom of man implies the freedom of his labor and work. But this does not mean that his labor is his property. It is the concept of freedom, not the concept of property, which applies in this respect. But since property can be justified within a moral-

political system, the supreme value of which is freedom, only by freedom, property must be brought in relationship to freedom. Hence the argument: freedom means property of man in himself, and since labor is a function of his personality, it also means property in his labor.

If man's property in his labor is freedom, any extension of this property to other things is the extension of freedom. If a man appropriates a thing by mixing his labor with it, such appropriation is justified as an exercise of his freedom. The justification of property through the ideal of freedom as man's self-determination becomes quite evident in Locke's statement: "From all which it is evident that, though the things of nature are given in common, yet man, by being master of himself and proprietor of his own person and the actions or labour of it, had still in himself the great foundation of property."<sup>26</sup> Freedom is the foundation of property. But, finally, the idea of freedom is put in the background and that of property prevails. "Man being born . . . with a title to perfect freedom, and an uncontrolled enjoyment of all the rights and privileges of the law of nature equally with any other man or number of men in the world, hath by nature a power not only to preserve his property—that is, his life, liberty, and estate—against the injuries and attempts of other men, but to judge of and punish the breaches of that law. . . ."<sup>27</sup> The concept of property includes that of liberty. Hence it is not astonishing that Locke considers the "preservation of property" the chief end of "civil society."<sup>28</sup> The "power of making laws" as well as "the power to punish any injury done unto any of its members by any one that is not of it, which is the power of war and peace," are conferred upon the commonwealth "for the preservation of the property of all the members



of that society as far as is possible."<sup>29</sup> If the end of government is the preservation of property, the right to property cannot be abolished by the government:

The supreme power cannot take from any man any part of his property without his own consent. For the preservation of property being the end of government, and that for which men enter into society, it necessarily supposes and requires that the people should have property, without which they must be supposed to lose that by entering into society, which was the end for which they entered into it, too gross an absurdity for any man to own. Men, therefore, in society having property, they have such a right to the goods which by the law of the community are theirs, that nobody hath a right to take them or any part of them from them, without their own consent; without this they have no property at all. For I have truly no property in that which another can by right take from me when he pleases, against my consent. Hence it is a mistake to think that the supreme or legislative power of any commonwealth can do what it will, and dispose of the estates of the subjects arbitrarily, or take any part of them at pleasure. . . . And to let us see that even absolute power, where it is necessary, is not arbitrary by being absolute, but is still limited by that reason, and confined to those ends which required it in some cases to be absolute, we need look no farther than the common practice of martial discipline. For the preservation of the army, and in it the whole commonwealth, requires an absolute obedience to the command of every superior officer, and it is justly death to disobey or dispute the most dangerous or unreasonable of them; but yet we see that neither the sergeant, that could command a soldier to march up to the mouth of a cannon, or stand in a breach, where he is almost sure to perish, can command that soldier to give him one penny of his money; nor the general, that can condemn him to death for deserting his post, or not obeying the most desperate orders, cannot yet, with all his absolute power of life and death, dispose of one farthing of that soldier's estate, or seize one jot of his goods, whom yet he can command anything, and hang for the least disobedience. Because such a blind obedience is necessary to that end for which the commander has his power, viz., the preservation of the rest; but the disposing of his goods has nothing to do with it.<sup>30</sup>

The individual has no absolute right to life, that is to say, no absolute right to exclude others from disposing of his life, but an absolute right to property, that is, the right to exclude others from disposing of things which he owns. Since man's power to dispose exclusively of his life is his freedom, the right of property is placed above the right to freedom. Thus the attempt to justify property by freedom leads to the abolishment of its very basis: the idea of freedom as the supreme value.

#### COLLECTIVE PROPERTY IN THE NATURAL LAW DOCTRINE

The essential connection which, according to Locke, exists between the man's right to freedom and his right to individual property is based on the law of nature from which both rights are deduced. Locke achieves his results by applying the specific method of the natural law doctrine, which during the last decades has again come to the front in political and legal thinking and is considered by some recognized authorities as a strong bastion in the defense of democracy against communist autocracy. But we can hardly rely upon it. For on the basis of the natural law doctrine and with its specific methods, it has also been proved that private property is against nature and the source of all social evils. To eradicate these evils nothing else is necessary but to abolish private property and to establish communism, the only economic system dictated by nature. This is the main thesis of a work which under the title *Code of Nature, or the True Spirit of Its Laws* was published anonymously in Paris in 1755.<sup>31</sup> Its author was a certain Morelly of whom we know very little. It is significant that the work was originally attributed to the famous encyclopedist Diderot. It be-

came the "great book of socialism of the eighteenth century,"<sup>32</sup> and Baboeuf, the leader of a communist movement within the French Revolution, frequently referred to the *Code of Nature*, which anticipated many ideas later developed by Fourier and other Communists.<sup>33</sup> The *Code of Nature*, as its title indicates, is a legitimate child of the natural law doctrine. It proceeds from the assumption that nature has definite intentions, that these intentions are intelligible and are directed at the happiness of mankind, and that justice can be established only by conforming our social institutions to the intentions of nature. Morelly maintains as an "incontestable principle" that "nature is one, constant, unchangeable"; that the laws of nature are implied in "the pacific inclinations by which nature animates its creatures"; and that "anything that deviates from these friendly affections is unnatural."<sup>34</sup> Hence Morelly—as many writers on natural law—believes that human nature is basically good. He assumes a "natural probity of creatures endowed with reason"<sup>35</sup> and proclaims as the "first law of nature" the law of "sociability." The positive legislators "have only to recognize and to put into force this law of nature."<sup>36</sup> The law of sociability is interpreted to mean

that nature has distributed the human faculties among the individuals in different proportions, but that nature has left the ownership in the means of production [*la propriété du champ producteur de ses dons*] indivisible to all, and to everybody the use of its liberality. The world is a table sufficiently provided for all guests, to whom all the dishes belong; and they belong to all guests because all are hungry; only to some of them when the others are satisfied. Hence nobody is the owner [*maître*] exclusively, nor has anybody the right to pretend to be so.<sup>37</sup>

Consequently individual property is against nature. The positive legislators, in establishing individual property, are guilty of a "monstrous division of the products of nature. They divide what according to nature ought to remain a whole or ought to be restored as a whole if by accident it has been divided. Thus they destroy all sociability";<sup>38</sup> in so doing they "work against the reason of nature."<sup>39</sup> By establishing individual property the legislators recognize the individual interest of man and thus create a social situation where avarice, the worst of all vices and the source of all the others, must prevail. "Could this universal pestilence, this slow fever, this consumption of the entire society, the individual interest, exist where it could find no nourishment or ferment? Hence it is evident that: Where there exists no property, there cannot exist any of its disastrous consequences."<sup>40</sup> If we want to realize the "wise intentions of nature" and create "a situation where man is as happy as he can be in this life,"<sup>41</sup> we must "dash to the ground that monster, the spirit of property"<sup>42</sup> and establish a social order under which nothing in society belongs as private property to the individuals, except the things they want for immediate use to satisfy their needs, their pleasure, or for their daily work; where each citizen is a public servant, employed and supported by society and obliged to contribute to the public welfare according to his forces, talents, and age.<sup>43</sup> This is the essence of communism and communism is natural law.

Since the main political problem is that of property, Morelly considers the form of government as a question of secondary importance, provided that private property is abolished and the principle of collective property, that is, communism, established. For, if the law of

nature is applied, the welfare of the people is guaranteed.<sup>44</sup> Then the government is necessarily a government for the people, whether it is a democracy, an aristocracy, or a monarchy:

If a people unanimously decides to obey only the laws of nature as defined by us [that is to say, the principle of communism], and consequently is living under the direction of the fathers of the families, the state is a democracy. If the people, in order to achieve religious observance of the sacred laws of nature, confers the government on some wise men, the state is an aristocracy. . . . If, in order to achieve still more exactness, justice and regularity of the movement of the body politic, only one person governs, the state is a monarchy, but can never degenerate as long as private property is not introduced.<sup>45</sup>

A monarchy, or to use the modern term, a dictatorship, may even be the best way to realize the law of nature, that is to say, communism, and consequently the welfare of the people. That is just what Lenin said.<sup>46</sup> The monarch or dictator has to be considered as the representative of the people. "A nation," says Morelly, "which places one of its citizens at the head, especially if it submits to the laws of simple nature, is it not entitled to say to this person: we charge you to make us obey the agreements we have concluded with you. . . . Reason has prescribed these laws [of nature] to us and we prescribe to you to recall them always to our mind; we confer upon you the power, the authority of these laws and of this reason over each of us, and thereby we make you the organ and herald of them."<sup>47</sup> Hence a communist dictatorship, as a government for the people, could be considered as government by the people. It is quite understandable that a Russian translation of Morelly's *Code de la nature* has recently been published in the Soviet Union.<sup>48</sup>

#### INDIVIDUAL PROPERTY AND FREEDOM IN THE PHILOSOPHY OF HEGEL

The tendency to bring property in an essential connection with freedom culminates in Hegel's philosophy of law, the center of which is the idea of freedom. "Law," Hegel says, "is by definition freedom as idea."<sup>49</sup> Freedom of will is an essential element of the human personality. But "the person must translate his freedom into an external sphere in order to exist as idea."<sup>50</sup> "If the free will is not to remain abstract, it must in the first place give itself an embodiment, and the material primarily available to sensation for such an embodiment is things, i.e., objects outside us. This primary mode of freedom is the one which we are to become acquainted with as property. . . . The freedom which we have here is what is called a person, i.e., the subject who is free, free indeed in his own eyes, and who gives himself an embodiment in things."<sup>51</sup> The "translation of freedom in an external sphere" or the "embodiment of the will in objects outside the will" is the decisive point in this identification of property with freedom. It is evident that Hegel's formulas are nothing but metaphorical descriptions of the fact that man, whether free or not, exercises his will by taking possession of things. In reality freedom cannot be translated to, the will cannot be embodied in, things. To take these metaphors for reality amounts to a type of thinking which is characteristic of primitive mentality: the substantialization or hypostatization of the abstract and immaterial, such as qualities, relationships, values, and the like. In order to assume that there exists an essential connection between property and freedom, which is Hegel's aim, the metaphorical statement that property is the embodiment of freedom must

be taken literally. But taken literally—and not as mere metaphor—it is a meaningless phrase. Between freedom and property there is no relation at all. The only relation that exists is the relation between a man, who may or may not be free, and a thing; and the relation consists in nothing but in the exclusion of others from the man's disposition of his thing. Without any sufficient foundation, Hegel asserts: "The person has the right of putting his will into everything and thereby making it his."<sup>52</sup> Just as Locke explains appropriation as an act by which the individual mixes his labor with a thing and thus joins to it something of his personality, Hegel interprets the process by which a thing becomes the property of a person as putting the person's free will into the thing, as the embodiment of man's freedom into an external sphere. "All things may become man's property because man is free will and consequently is absolute, while what stands over against him [i.e., the thing] lacks this quality." By appropriating a thing "I endow the thing with some purpose not directly its own. When the living thing becomes my property, I give to it a soul, other than the one it had before, I give to it my soul."<sup>53</sup> This is exactly the way in which property is conceived of by primitive people who believe that man by taking possession of a thing transfers some of the substance of his personality, and that means some of his "soul," to the thing and thus makes the thing a part of himself. Primitive man can imagine the relationship of property, that is, the relationship of a man and a thing, only by imagining the substance of the thing as part of the substance of the man. The consequence of substantializing a quality is the possibility of transferring it by contagion. Only by contagion can man embody his freedom, that is, the sub-

stance of his soul, in a thing and thus make the thing part of his personality, which Hegel identifies with freedom. "I as free will am an object to myself in what I possess and thereby also for the first time am an actual will. This is the aspect which constitutes the category of property, the true and right factor in possession."<sup>54</sup> Hegel expressly rejects the view that property is a means for the satisfaction of man's needs. "The true position is that, from the standpoint of freedom, property is the first embodiment of freedom and so is in itself a substantive end."<sup>55</sup> "The rationale of property is to be found not in the satisfaction of needs but in suppression of the pure subjectivity of personality. In his property a person exists for the first time as reason."<sup>56</sup> Thus property is justified as the realization of freedom and reason. Hegel goes as far as to assert: "A person by distinguishing himself from himself relates himself to another person, and it is only as owners that these two persons really exist for each other."<sup>57</sup>

Hegel does not allow any doubt about the kind of property he has in mind when he identifies it with freedom and reason. "Since my will, as the will of a person, and so as a single will becomes objective to me in property, property acquires the character of private property."<sup>58</sup> Since property is the embodiment of individual freedom, the freedom of an individual transferred to a thing, it can be only individual, that is, private, property. "In property my will is the will of a person; but a person is a unit and so property becomes the personality of this unitary will." In order to emphasize the individual character of property, Hegel asserts that property is personality and thus obliterates the distinction between person and thing. "Since property is the means whereby I give my will an embodiment,

property must also have the character of being 'this' or 'mine' [i.e., the property of a definite individual]. This is the important doctrine of the necessity of private property."<sup>59</sup>

The ultimate goal at which this philosophy of property is driving becomes evident in the following statement:

The general principle that underlies Plato's ideal state [communism among the members of the ruling group] violates the right of personality by forbidding the holding of private property. The idea of a pious and even a compulsory brotherhood of men *holding their goods in common* and rejecting the principle of private property may readily present itself to the disposition which mistakes the true nature of the freedom of mind and right and fails to apprehend it in its determinate moments.<sup>60</sup>

It is for an unmistakable political purpose, namely, against communism, that property is interpreted by means of an absurd hypostatization as the embodiment of freedom. Consequently the principle of equality must be rejected. "In relation to external things, the rational aspect is that I possess property. . . . What and how much I possess, therefore, is a matter of indifference so far as right is concerned."<sup>61</sup> Of course men are equal, but only *qua* persons, that is, with respect only to the source from which possession springs. The inference from this is that everyone must have property. "Hence, if you wish to talk of equality, it is this equality which you must have in view. But this equality is something apart from the fixing of particular amounts, from the question how much I own. From this point of view, it is false to maintain that justice requires everyone's property to be equal, since it requires only that everyone shall own property. The truth is that particularity is just the sphere where there is room for inequality and where equality would be wrong."<sup>62</sup> It is quite significant that Hegel, when

he rejects the principle of equality, the postulate that everyone's property shall be equal, abandons his metaphor of property as embodiment of freedom with its identification of property with personality. For if men are, as persons, equal, and personality is freedom, men are equally free; and if property is the embodiment of this freedom, then property, which is personality, must be equal too. Hence, Hegel distinguishes carefully—and quite correctly—between the person as the source from which possession, that is, property, springs and the property itself. When equality of property is in question, the property loses the freedom or soul otherwise embodied in it, ceases to be personality, and remains just what it is: simply property.

#### INDIVIDUAL PROPERTY AND FREEDOM IN THE THEOLOGY OF EMIL BRUNNER

The view that property is an essential condition, even "the true basis of freedom,"<sup>63</sup> is advocated today by Catholic as well as Protestant theologians. Referring to the authority of the Reformers, especially Calvin, who recognized private property as in conformity with the will of God, Emil Brunner tries to justify this institution as established by the divine order of creation which confers upon man not only freedom but also property, since freedom is not possible without property.<sup>64</sup>

It was not only the power to dispose freely of his body and limbs, however, which was given to man by creation, but also "property." The man who has nothing at his disposal cannot act freely. He is dependent on the permission of others for every step he takes, and if they so wish, they can make it impossible for him to carry on any concrete activity. Without property there is no free personal life. Without property there is no power to act. The man who treads on strange ground, touches strange property at every movement he makes, is not a free

man. And the word "property" must be taken literally as ownership, or, as we say today, private property. Without private property there is no freedom.<sup>65</sup>

Collective property, the essence of communism, on the other hand, means serfdom and hence is incompatible with true democracy:

Collective ownership can never replace the value of private property in terms of freedom. Where I have no right of disposal, I have no free scope. For somebody who is not myself has the right of disposal over collective property, be it the corporate body, the union I belong to, or the State. The fraction of right in State property which I possess as a citizen of the State cannot outweigh the dependence to which I am bound by the general will of the State. It is just as easy to be a slave of the State as a slave of a single master. Where the State is sole owner, and I am not an owner at all, even though the State be a democracy in every other respect, I am a slave of the State, a slave of the general will which gives my own will no free scope.<sup>66</sup>

If, as in a socialist state, private property is abolished, "the individual has lost the true basis of his freedom; he is delivered, bound hand and foot, to the sole employer, the State. For all its ideology of freedom and equality derived from equalitarian individualism, there is no individual left. The *volonté générale* has absorbed him into the 'collective.' Freedom has become an illusion which may be sustained for a time by a pseudo-democratic State machinery, but sooner or later it is unmasked as an illusion, and then it is too late."<sup>67</sup> "The freedom of action," which is destroyed if private property is abolished and the principle of collective property established, follows, as Brunner expressly states, "in the order of creation" "from free will."<sup>68</sup>

If the freedom of action Brunner has in mind follows from the metaphysical freedom of will, its exemption from the law of causality, then it is necessarily independent of any economic system. If

man has a free will and hence his actions, motivated by his will not determined by a cause, are free too, this freedom of action exists whether the principle of private or that of collective property prevails. Consequently, the freedom which Brunner tries to base on private property can only mean the situation of a man whose choice of actions is not limited by the established economic system. The principle of private property necessarily implies the principle of free enterprise, the possibility of acquiring property by free contract. The inevitable consequence of this principle is the distribution of property characteristic of the capitalistic society with its division into a propertied and propertyless class. In order to support his thesis of private property as the basis of freedom, Brunner refers to the proletariat. "The lack of personal property is largely responsible for the reduction of the proletariat to an impersonal mass,"<sup>69</sup> a mass of men who—according to Brunner's theory of freedom—are not free. But the proletariat is not the consequence of collective property, and it is just for the purpose of abolishing the proletariat and making such a social status impossible that socialism is for the establishment of collective property. Brunner says:

All that collective property means is that in a certain domain—the domain of the collective property—certain incontestable rights are granted to each individual. But it gives him no actual right to dispose of that property. Yet without something over which he has the right of free disposal, man cannot be free. We shall at once realize this if we take as an example the most immediate kind of necessary private property—clothing and household goods. The man who can never put on his own clothes, sleep in his own bed and eat at his own table is not a free man.<sup>70</sup>

The "right of free disposal" of the articles which are necessary for the satis-

faction of man's most important needs may be guaranteed by an economic system based on the principle of collective property. In discussing the question of private and collective property, Brunner evidently tries to define the position of Christian theology in relation to the great problem of our time, the antagonism between capitalism and socialism. But this problem is not the conflict between an economic system within which only private, and another within which only collective, property is recognized. Just as capitalism does not completely exclude collective property, socialism does not completely exclude private property. The problem is the establishment of collective property in the means of production which socialism demands and capitalism rejects. There is—as

pointed out—only relative freedom of action within both systems, and the question as to which one guarantees this freedom to a greater extent than the other cannot yet be answered on the basis of sufficient experience.

The result of the foregoing analysis is that the attempts at showing an essential connection between freedom and property, as all other attempts to establish a closer relationship of democracy with capitalism rather than with socialism or even the exclusive compatibility of democracy with capitalism, have failed. Hence our thesis stands that democracy as a political system is not necessarily attached to a definite economic system.

UNIVERSITY OF CALIFORNIA  
BERKELEY, CALIFORNIA

## NOTES

### I. DEMOCRACY AND PHILOSOPHY

1. This paper was first presented as public lectures under the Charles R. Walgreen Foundation for the Study of American Institutions at the University of Chicago in April, 1954.

2. Cf. Ithiel de Sola Pool, *Symbols of Democracy* ("Hoover Institute Studies"; Stanford: Stanford University Press, 1952), p. 2.

3. Cf. my *General Theory of Law and State* (Cambridge: Harvard University Press, 1945), pp. 113 ff.

4. Joseph A. Schumpeter, *Capitalism, Socialism and Democracy* (New York and London: Harper & Bros., 1942), p. 242.

5. *Ibid.*, p. 271.

6. *Ibid.*, p. 243, note.

7. *Ibid.*, p. 243.

8. Cf. N. S. Timasheff, "The Soviet Concept of Democracy," *Review of Politics*, XII (1950), 506 ff.

9. Lenin, "State and Revolution," in *Selected Works*, ed. J. Fineburg (New York: International Publishers, 1935-38), VII, 80. Italics supplied.

10. Lenin, "Bourgeois Democracy and Proletarian Dictatorship," *ibid.*, p. 231.

11. Lenin, "Speech to the 9th Congress of CPSU" (March 31, 1920), *ibid.*, VIII, 222.

12. *Pravda*, August, 1945. Italics supplied.

13. Lenin, "State and Revolution," *op. cit.*, p. 91.

14. If one accepts the Marxian doctrine that the so-called dictatorship of the proletariat is true democracy, one may arrive at the concept of a "totalitarian democracy." J. L. Talmon, *The Rise of Totalitarian Democracy* (Boston: Beacon Press, 1952), tries to show "that concurrently with the liberal type of democracy there emerged from the same premises in the eighteenth century a trend towards what we propose to call the totalitarian type of democracy." "The tension between them has constituted an important chapter in modern history, and has now become the most vital issue of our time" (p. 1). Liberal democracy is, according to Talmon, characterized by the idea of freedom defined as "spontaneity and the absence of coercion," whereas totalitarian democracy is based on the belief that "freedom is to be realized only in the pursuit and attainment of an absolute collective purpose." The final aims of liberal democracy "are conceived in rather negative terms, and the use of force for their realization is considered as an evil." Totalitarian democracy "aims at the maximum of social justice and security," its "purpose" is thought "to constitute the fullest satisfaction of his [man's] true interest, and to be the guarantee of his freedom" (p. 2). "Modern totalitarian democracy is a dictatorship

resting on popular enthusiasm completely different from absolute power wielded by a divine king or by a usurping tyrant" (p. 6). If "popular enthusiasm" cannot manifest itself through an electoral system based on universal, equal, free, and secret suffrage, its existence is more than problematical. It is not an objectively ascertainable fact, but an unproved assumption which may be, and actually has been, used for the ideological justification of every—even the most tyrannical—government. The "divine-right kings" have always maintained that their government is based on the love of their people; and there is no essential difference between the "love" and the "enthusiasm" of the people. If popular enthusiasm is the criterion of democracy, then the dictatorship of the National Socialist party is just as much a democracy as the dictatorship of the Communist party. If democracy can be a dictatorship, then the concept of democracy has lost its specific meaning, and there is no difference between democracy and autocracy. The antagonism which Talmon describes as tension between liberal and totalitarian democracy is in truth the antagonism between liberalism and socialism and not between two types of democracy. There are, indeed, two types of democracy, a democracy with restricted, and a democracy with unrestricted, power of government; the latter is the older, the original, type, which, however, did not rise as late as in the eighteenth century but had already come into existence in antiquity. The common element of both, the criterion according to which the restricted, as well as the unrestricted, government is a democracy, is the fact that the government is exercised either directly by a popular assembly or by representatives elected on the basis of universal, equal, free, and secret suffrage. It is by ignoring this essential fact that Talmon—like the Soviet theory—can present a dictatorship as a democracy.

15. Eric Voegelin, *The New Science of Politics* (Chicago: University of Chicago Press, 1952), pp. 27 ff.

16. *Ibid.*, p. 32.

17. *Ibid.*, p. 49.

18. *Ibid.*, p. 32.

19. *Ibid.*, p. 31.

20. *Ibid.*, p. 33.

21. *Ibid.*, p. 35.

22. *Ibid.*, p. 33.

23. *Ibid.*, p. 35.

24. *Ibid.*, p. 32.

25. *Ibid.*, p. 35.

26. *Loc. cit.*



27. *Ibid.*, p. 36.
28. *Loc. cit.*
29. *Ibid.*, pp. 36, 37.
30. *Ibid.*, p. 37.
31. *Ibid.*, p. 38.
32. *Loc. cit.*
33. *Ibid.*, p. 36.
34. *Ibid.*, p. 49.
35. Cf. my *Vom Wesen und Wert der Demokratie* (2d ed.; Tübingen: J. C. B. Mohr [P. Siebeck], 1929) and *Staatsform und Weltanschauung* (Tübingen: J. C. B. Mohr [P. Siebeck], 1933).
36. Cf. my "Causality and Imputation," *Ethics*, LXI (1950), 1-11.
37. Rousseau, *The Social Contract*, Bk. I, chap. vi.
38. *Ibid.*, Bk. III, chap. xv.
39. *Ibid.*, Bk. I, chap. vii.
40. *Loc. cit.*
41. *Ibid.*, chap. viii.
42. *Ibid.*, Bk. IV, chap. ii.
43. *Loc. cit.*
44. *Loc. cit.*
45. *Ibid.*, Bk. I, chap. vii.
46. John H. Hallowell, *The Moral Foundation of Democracy* (Chicago: University of Chicago Press, 1954), p. 120, says: "What is demanded by the democratic form of government is not submission to the will of the majority because that will is numerically superior but rather submission to the reasoned judgment of the majority." According to this author, the principle of majority rule does not demand "that we abandon all qualitative judgments in favor of a quantitative method." If this is true the question arises as to who is competent to decide whether the judgment of the majority is or is not "reasoned." The decision could be made only by the individual obligated to submit to the decision of the majority. Then submission to the decision of the majority depends in the last analysis on the discretion of the individual, which means anarchy, not democracy.
47. Lenin, *State and Revolution*, *op. cit.*, pp. 81, 246.
48. The relativistic philosophy of values makes compromise possible, but compromise is not the essence or the "animating principle" of democracy. (Cf. Hallowell, *op. cit.*, pp. 27 f.) The essence or the animating principle of democracy is freedom combined with equality.
49. A typical representative of this doctrine is the one expounded by Carl Schmitt, who enjoyed temporary success as ideologist for National Socialism. In his *Verfassungslehre* (Munich and Leipzig: Duncker & Humblot, 1928), he tried to obliterate the difference between democracy and dictatorship. He admitted that the rule of the Soviets in Russia and of the Fascists in Italy were dictatorships (pp. 81 f.). And dictatorship, he said, is characterized by the fact "that the competence of the dictator is not precisely determined by general norms but that the extent and content of his authorization depends on his own discretion" (p. 237). He further maintained that the principle of majority-vote decision was not specifically democratic but liberal (p. 82). The "will of the people" may be expressed in "irresistible acclamations and an uncontested public opinion" which "have nothing to do with the procedure of secret voting and statistical ascertainment of majority. In such a case it is even not certain that a subsequent secret voting will confirm the spontaneous eruption and expression of the will of the people. For the public opinion, as a rule, is produced only by an active politically interested minority of the people, whereas the overwhelming majority of the enfranchised citizens are not necessarily politically interested. Hence it is not at all democratic, and would be a strange political principle, that those who have no political will should have the power to decide against the others who have such a will" (p. 279). Consequently, Schmitt declares, "dictatorship is possible only on a democratic basis" (p. 237).
50. Benito Mussolini, "La Dottrina de Fascismo," *Enciclopedia Italiana*, XIV (1932), 847-51.
51. Thucydides *History of the Peloponnesian War* ii. 35 ff.
52. Plato *Republic* viii. 557.
53. *Ibid.* 557 ff.
54. *Ibid.* 561.
55. *Ibid.* 564.
56. Cf. my "The Platonic Justice," *Ethics*, XLVII (1938), 367 ff.
57. *Republic* vi. 494, 495.
58. *Ibid.* v. 474.
59. *Ibid.* vii. 540.
60. *Ibid.* vi. 501.
61. *Ibid.* 500.
62. *Ibid.* ix. 576.
63. Aristotle *Metaphysics* iv. 8. 1012.
64. *Ibid.* xii. 6. 1072.
65. *Ibid.* 10. 1076.
66. Aristotle *Politics* iii. 8. 1279.
67. Aristotle's political theory is not consistent. He recognizes also a moderate democracy, where the middle class is stronger than both the other classes, i.e., the rich and the poor, and where the right of property is protected against confiscation, as the best government for most states (*Politics* iv. 11. 1295; v. 8. 1309; vi. 5. 1320). Cf. my "The Philosophy of Aristotle and the Hellenic-Macedonian Policy," *Ethics*, XLVIII (1937), 1 ff., where I tried to explain this discrepancy.
68. Thomas Aquinas *De Regimine Principum* i. 2.
69. Thomas Aquinas *Summa Theologica* i. 103. 3. In this work there is a quite interesting statement about tolerance: "Human government derives from divine government and should imitate it. Now God, in His omnipotence and sovereign goodness, sometimes permits evil to be done in the world, though He could prevent it; lest, by so doing, a greater good be destroyed or even greater evils might follow. So

also in human government those who are in power rightly permit certain evils lest some good be brought to nothing or perhaps even greater evils take their place. . . . So, therefore, though infidels may sin by their rites, they are to be tolerated either because of some good they may draw from them or because of some evil which is thus avoided. Thus, from the fact that the Jews observe their rites, in which the true faith, which we hold, was foreshadowed of old, there derives this benefit that we obtain testimony to our faith from our enemies, and a symbolic representation of our beliefs: so they are tolerated in their rites. But the rites of other infidels, which have nothing of truth or usefulness in them, are to be in no-wise tolerated; unless perhaps to avoid some evil, such as the avoidance of scandal or the discord which might arise from their suppression; or the obstacle which would thus be put in the way of the salvation of those who might, on account of such tolerance, end by being converted to the faith. For this reason the Church has sometimes tolerated the rites even of heretics and pagans, when the infidels were great in number" (*ibid.* ii/ii. 10. 11).

Voegelin (*op. cit.*, pp. 6 ff.) suggests not to rely on "destructive" positivism and its value-free description of social reality but rather on the methods of "metaphysical speculation," such as applied by Plato and Aristotle, and "theological symbolization," such as presented by Thomas Aquinas. This suggestion should not be accepted without taking into consideration the results of the political philosophies of these authorities.

70. It is a gross misinterpretation of the relativistic value theory of positivism to assume—as does, e.g., John H. Hallowell—that it implies the view that there are no values at all, that "there is no moral law or moral order" (*op. cit.*, p. 76), that democracy is a mere "fiction" and that consequently the struggle against autocracy (or tyranny) "is both meaningless and futile," and that "we had best now surrender to the inevitable" (p. 21). Positivist relativism means only that value judgments in general—without which human actions are not possible—and in particular the judgment that democracy is a good or the best form of government, cannot be proved by means of rational, scientific cognition to be absolute, that is to say, excluding the possibility of a contrary value judgment. Democracy, if actually established, is also from the point of view of a relativistic value theory the realization of a value and in this sense, though the value is only a relative one, a reality and not a mere fiction. If somebody prefers democracy to autocracy because freedom is to him the highest value, nothing can be more meaningful to him than to struggle for democracy and against autocracy, and that means to create for him and those who share his political ideal the social conditions which they consider to be the best. If those who prefer democracy are numerous enough, their struggle is

not futile at all but may be highly successful. Hence they have not the slightest reason to accept autocracy as inevitable. The only consequence of a relativistic theory of values is: not to force democracy upon those who prefer another form of government, to remain aware in the struggle for one's own political ideal that the opponents, too, may be fighting for an ideal, and that this fight should be conducted in the spirit of tolerance.

A relativistic value theory does not deny the existence of a moral order and, therefore, is not—as it is sometimes maintained—incompatible with moral or legal responsibility. It denies that there exists only one such order that alone may claim to be recognized as valid and, hence, as universally applicable. It asserts that there are several moral orders quite different from one another, and that consequently a choice must be made among them. Thus relativism imposes upon the individual the difficult task of deciding for himself what is right and what is wrong. This, of course, implies a very serious responsibility, the most serious moral responsibility a man can assume. Positivist relativism means: moral autonomy.

The assumption that there exist absolute values and that these values can be deduced from reality by means of rational cognition presupposes the view that value is immanent in reality. Hallowell formulates this assumption as a principle of what he calls "classical realism," "that being and goodness belong together. Through knowledge of what we are, we obtain knowledge of what we ought to do. To know what man is, is to know what he should be and do" (p. 25). This principle is based on a logical fallacy. It is the typical fallacy of the natural law doctrine. There is no rational possibility of inferring from that what is that what ought to be or to be done. As goodness is not thinkable without badness, not only being and goodness but also being and badness belong together. Since being in itself does not contain a criterion to distinguish the good from the bad—the good is not more or less "being" than the bad—it is not possible to obtain knowledge of what we ought to do through knowledge of what we are; we "are" good as well as bad. From the fact that men are and always have been waging war, thus demonstrating that war cannot be incompatible with human nature, it does not follow either that war ought to be or that war ought not to be. Hence it is not possible to deduce from our knowledge of what is in general and what we are in particular "universally applicable principles in terms of which we can guide our individual and social life toward the perfection of that which is distinctively human" (pp. 25–26), meaning moral principles constituting absolute social values. As a matter of fact, the most contradictory principles have been presented as being obtained through knowledge of "what we are" or, what amounts to the same thing, as deduced from human nature.

The principle "that being and goodness belong

together" and that through knowledge of what is we obtain knowledge of what ought to be done can be maintained only on a religious basis, that is, on the basis of the belief that the existing world is created by God and thus is the realization of His absolutely good will; that man is formed in the image of God and hence human reason is somehow connected with divine reason. It is just this belief to which Hallowell, quite consistently, appeals. "We must recover," he emphasizes, "the belief in man as a unique being whose reason is a reflection of the image of God" and must recover "the theological foundations upon which the belief in natural law rests" (p. 83). If, abandoning the realm of science, we recover this belief and the theological foundations of natural law, a moral—and that means under these conditions a religious—foundation of democracy becomes more than problematical. It was precisely on the basis of a theological natural law doctrine that Robert Filmer rejected democracy as contrary to human nature and thus not in conformity with the will of God. As to the relationship between democracy and religion, I refer to the second part of this study.

71. J. L. Stocks, *Reason and Intuition* (London and New York: Oxford University Press, 1939), p. 143, says: "There is a close natural connection between the prevalence of democratic ideals in politics and the practice of methodical empiricism in science and other fields of thought... it is striking to observe that those countries in which the empirical tendency in thought has been most persistent are also those countries in which democracy has struck deepest root. It is surely no accident that among the Great Powers of Europe, France and England are at once the most democratic and the most empirical in their outlook on the world, while Germany which is the least democratic, is the most friendly to ambitious metaphysical systems." Sidney Hook in an article "The Philosophical Presuppositions of Democracy," *Ethics*, LII (1942), 275-96, maintains "that there is no necessary logical connection between a theory of being or becoming and any particular theory of ethics or politics. Stated

more accurately, it seems to me demonstrable that no system of metaphysics univocally determines a system of ethics or politics" (p. 284). However, he admits: "The evidence seems to me to be overwhelming that there is a definite historical connection between the social movement of a period and its metaphysical teachings; further, I am prepared to defend as a historically true proposition that systems of idealistic metaphysics, because of the semi-official roles they have played in their respective cultures, have been more generally employed to bolster antidemocratic social movements than systems of empirical or materialistic metaphysics" (pp. 283-84). He also states: "If empiricism be a generic term for the philosophic attitude which submits *all* claims of fact and value to test by experience, then empiricism as a philosophy is more congenial to a democratic than to an antidemocratic community, for it brings into open light of criticism the interests in which moral values and social institutions are rooted" (p. 280). Hook distinguishes two kinds of metaphysics as theory of being and becoming, an "idealistic" and an "empirical or materialistic" metaphysics, and he assumes, it seems, that the idealistic metaphysics goes hand in hand with belief in supernatural religious truths (cf. p. 280). I am using the term metaphysics only in the latter sense. I, too, do not maintain that there exists a "necessary logical" connection between democracy and empirical relativism, on the one hand, and autocracy and metaphysical absolutism, on the other. The relationship which I assume to exist between the two political and the corresponding philosophical systems may very well be characterized as "congeniality." But Hook does not take into consideration the relationship between philosophical absolutism, essentially connected with "idealistic" metaphysics, and political absolutism, i.e., autocracy, on the one hand, and philosophical relativism, essentially connected with empiricism, and democracy, on the other. It is just this relationship which seems to me to be of the greatest importance.

## II. DEMOCRACY AND RELIGION

1. Emil Brunner, *Gerechtigkeit: Eine Lehre von den Grundgesetzen der Gesellschaftsordnung* (Zürich: Zwingli Verlag, 1943). English translation: *Justice and the Social Order*, trans. Mary Hottinger (London and Redhill: Lutterworth Press; New York: Harper & Bros., 1945). Quotations used by permission of Harper & Bros.

2. Reinhold Niebuhr, *The Children of Light and the Children of Darkness: A Vindication of Democracy and a Critique of Its Traditional Defense* (New York: Charles Scribner's Sons, 1950). Copyrighted by Charles Scribner's Sons. Reprinted by permission of the publisher.

3. Jacques Maritain, *Christianisme et démocratie*

(Paris: P. Hartmann, 1943).

4. Brunner, *op. cit.*, p. 13.

5. *Ibid.*, p. 14.

6. *Ibid.*, p. 15.

7. *Loc. cit.*

8. *Ibid.*, pp. 15 f.

9. *Ibid.*, p. 17.

10. *Ibid.*, p. 16.

11. *Ibid.*, p. 17.

12. *Ibid.*, pp. 27 f.

13. *Ibid.*, p. 17.

14. *Ibid.*, p. 57.

15. *Ibid.*, p. 235.

16. *Ibid.*, p. 20.

17. *Ibid.*, pp. 16 f.
18. *Ibid.*, p. 47.
19. *Ibid.*, pp. 48 f.
20. *Ibid.*, pp. 80 ff.
21. *Ibid.*, p. 84.
22. *Ibid.*, p. 35. By "eternal" the German term "überzeitlich," meaning "beyond time," is not quite correctly translated.
23. Cf. my "Die Idee der Gerechtigkeit nach den Lehren der christlichen Theologie," *Studia Philosophica: Jahrbuch der Schweizerischen Philosophischen Gesellschaft*, XIII (1953), 157 ff.
24. Brunner, *op. cit.*, p. 90.
25. *Loc. cit.*
26. *Ibid.*, p. 93.
27. *Ibid.*, pp. 93 f.
28. *Ibid.*, p. 17.
29. *Ibid.*, p. 87.
30. *Ibid.*, pp. 57 ff.
31. Cf. my "Die Idee der Gerechtigkeit nach den Lehren der christlichen Theologie," *op. cit.*, pp. 180 ff.
32. Brunner, *op. cit.*, p. 48.
33. Sidney Hook, "The Philosophical Presuppositions of Democracy," *Ethics*, LII (1942), p. 281, says with respect to the relationship between democracy and religion: "Does democracy as a way of life rest upon belief in supranatural religious truths in the sense that, if the latter are denied, the former must necessarily be denied? It is becoming increasingly fashionable to maintain this. Were historical considerations relevant here, I think it could be conclusively established that the great institutional religions, with the possible exception of some forms of Protestantism, have tended in fact to suppose theocratic forms of government. Nor is it surprising if the Kingdom of Heaven be taken as a model of inspiration for the Kingdom of Earth. Whoever heard of a democratically organized Paradise? Walt Whitman in heaven would meet with the same fate as Lucifer, but for different reasons. Not only is the notion of a democratically organized heaven blasphemous, but the proposal to reform along democratic lines a hierarchically organized church would lead to excommunication. If we examine the actual behavior which has been sanctified by the maxim: 'Render unto Caesar what is Caesar's and to God what is God's,' we shall discover that historically institutional religion has always been able to adapt itself to any form of government or society which will tolerate its existence. . . . Does belief in democracy logically rest upon any theological propositions in the sense that the denial of the second entails the denial of the first? And for this discussion I shall take as illustrative of theological propositions the two cardinal propositions of natural theology, viz., 'God exists' and 'Man has an immortal soul.' To assert that whoever has no grounds for affirming the existence of God and immortality has no grounds for affirming the validity of democracy is to claim that the former are at least necessary conditions of the latter. I shall argue that they constitute neither necessary nor sufficient conditions."
34. Brunner, *op. cit.*, p. 92.
35. *Ibid.*, p. 55.
36. *Ibid.*, p. 29.
37. *Ibid.*, p. 37.
38. *Ibid.*, p. 30.
39. *Ibid.*, p. 36.
40. *Ibid.*, pp. 35 f.
41. *Ibid.*, p. 40.
42. *Ibid.*, p. 35.
43. *Ibid.*, p. 39.
44. *Ibid.*, p. 41.
45. *Loc. cit.*
46. *Ibid.*, p. 42.
47. *Ibid.*, p. 43.
48. *Loc. cit.*
49. *Ibid.*, p. 44.
50. *Ibid.*, pp. 44 f.
51. *Ibid.*, p. 45.
52. *Loc. cit.*
53. *Ibid.*, p. 46.
54. *Ibid.*, p. 55.
55. *Loc. cit.*
56. *Ibid.*, p. 56.
57. *Ibid.*, p. 49.
58. Cf. *supra*, p. 47.
59. Brunner, *op. cit.*, p. 60.
60. *Loc. cit.*
61. *Ibid.*, p. 177.
62. *Ibid.*, pp. 77, 126, 133.
63. *Ibid.*, p. 177.
64. *Loc. cit.*
65. *Ibid.*, pp. 190 f.
66. *Ibid.*, p. 191.
67. Niebuhr, *op. cit.*, p. 126.
68. *Ibid.*, p. 133.
69. *Ibid.*, p. 134.
70. *Ibid.*, pp. x f.
71. *Ibid.*, p. 82.
72. *Ibid.*, pp. 86 ff.
73. *Ibid.*, p. 82.
74. *Ibid.*, p. 125.
75. *Ibid.*, p. xi.
76. *Ibid.*, p. x.
77. *Ibid.*, p. 189.
78. *Ibid.*, p. x.
79. *Ibid.*, p. 39.
80. Wilhelm von Humboldt, "Ideen zu einem Versuch die Grenzen der Wirksamkeit des Staats zu bestimmen," *Gesammelte Werke*, Bd. VII (Berlin: Georg Reimer, 1852).
81. Niebuhr, *op. cit.*, p. 28.
82. *Ibid.*, p. 39.
83. *Ibid.*, pp. 39 f.
84. *Ibid.*, p. xiii.
85. *Ibid.*, p. xii.
86. *Loc. cit.*
87. *Ibid.*, pp. 67 f.
88. *Ibid.*, p. 68.
89. *Ibid.*, p. 71.
90. *Ibid.*, pp. 70 f.
91. *Ibid.*, p. 71.

92. *Ibid.*, p. 72.
93. *Ibid.*, p. 73.
94. *Ibid.*, p. 74.
95. *Loc. cit.*
96. *Ibid.*, p. 75.
97. *Ibid.*, pp. 74 f.
98. *Ibid.*, pp. 151 f.
99. *Ibid.*, p. 151.
100. *Ibid.*, pp. 134 f.
101. *Ibid.*, p. 135.
102. *Loc. cit.*
103. *Ibid.*, p. 125.
104. *Ibid.*, p. 135.
105. *Ibid.*, p. 151.
106. *Ibid.*, p. 135.
107. *Ibid.*, p. 130.
108. *Ibid.*, p. 126.
109. *Ibid.*, p. 133.
110. Jacques Maritain, *op. cit.*, p. 33.
111. *Ibid.*, p. 65.
112. *Ibid.*, pp. 31 ff., 36.
113. *Ibid.*, pp. 42 ff.
114. *Ibid.*, p. 33.
115. *Ibid.*, p. 44.
116. *Ibid.*, p. 47.
117. *Ibid.*, pp. 43 f.
118. *Ibid.*, p. 49.
119. *Ibid.*, p. 35.
120. He says that "political life shall conform to natural law and, according to the conditions of its temporal object, to the evangelical law itself" (*ibid.*, p. 60).
121. Henri Bergson, *Les deux sources de la morale et de la religion* (Paris: F. Alcan, 1932), p. 304; Maritain, *op. cit.*, p. 78.
122. Maritain, *op. cit.*, p. 57.
123. *Ibid.*, p. 58.
124. *Ibid.*, p. 51.
125. Cf. *supra*, p. 18.
126. Maritain, *op. cit.*, p. 54.
127. *Ibid.*, p. 76.
128. Eph. 6:5-8.
129. Tim. 6:1-2.

### III. DEMOCRACY AND ECONOMICS

1. Lenin, "State and Revolution," in *Selected Works*, ed. J. Fineburg (New York: International Publishers, 1935-38), VII, 75.

2. Cf. my *Sozialismus und Staat* (2d ed.: Leipzig: C. L. Hirschfeld, 1923), pp. 50 ff.

3. Cf. Alf Ross, *Why Democracy?* (Cambridge: Harvard University Press, 1952), p. 172.

4. Edward Hallett Carr, *Conditions of Peace* (New York: Macmillan Co., 1942), p. 28.

5. *Ibid.*, p. 30.

6. Cf. *supra*, p. 70.

7. Carr, *op. cit.*, p. 34.

8. *Loc. cit.*

9. Cf. Friedrich A. Hayek, *The Road to Serfdom* (Chicago: University of Chicago Press, 1944), pp. 88 ff.

10. *Ibid.*, p. 70.

11. Cf. *ibid.*, pp. 72 ff. He says: "Nothing distinguishes more clearly conditions in a free country from those in a country under arbitrary government than the observance in the former of the general principle known as the 'Rule of Law.'" That this principle cannot be observed within a system of planned economy is one of the main arguments of his thesis that socialism means serfdom.

12. John Chapman Gray, *The Nature and Sources of the Law* (2d ed.; New York: Macmillan Co., 1927), pp. 121 ff.

13. Cf. *supra*, p. 29. The term "rule of law" seems to imply the idea that where the principle designated by this term does not prevail, no "law" exists. However, the unlimited power of the autocrat to grant exemptions from the general norms, the arbitrariness of the autocratic—or, as it is sometimes called, despotic—government is not sufficient reason for denying the legal character of a social

order which, politically, has an autocratic character. Law may be created in very different ways; the democratic way is one of them, not the only possible one; and law is created not only in general norms, i.e., by legislation, but also in the individual norms enacted by judicial and administrative organs and hence also by the autocrat, who is the supreme legislative, judicial, and administrative organ of the state. To identify law with democratic law is the typical fallacy of a natural law doctrine, the method of which does not exclude an opposite conception—the identification of law with autocratic law. It even cannot be denied that the possibility of adapting the law to the particular circumstances of a concrete case has some advantage, the so-called flexibility of the legal system. This flexibility is achieved by conferring upon the law-applying organ the power to set aside the pre-established general norm to be applied, according to its meaning, in a concrete case where its application is considered by this organ as not appropriate, and to create—by way of an exception to the general norm—new law for that case. Flexibility is especially appreciated in Anglo-Saxon jurisprudence.

This view, which is only the consequence of a positivistic theory of law, was expounded in my *Allgemeine Staatslehre* (1925), pp. 335 f. Leo Strauss, *Natural Right and History* (1953), p. 4, says that he cannot imagine why I have omitted the "instructive passage" expressing this view "from the English translation," i.e., my *General Theory of Law and State* (1949). The answer is that my *General Theory of Law and State* is not a translation of my *Allgemeine Staatslehre*, and that consequently there can be no question of an "omission." If Strauss thought that I considered it, for some reason or

another, no longer advisable to maintain in my *General Theory* the opinion I advocated in my *Allgemeine Staatslehre*, he can see now that he was wrong. Besides, the general principle, of which the statements referred to by Strauss as so "instructive" are only a particular application, is clearly expressed in the way in which I present, in my *General Theory of Law and State*, democracy and autocracy as two equally legitimate forms of state, and the state, whether democratic or autocratic, as a *legal order*.

14. Thus, for instance, Hayek, *op. cit.*, p. 56, writes under the heading "Planning and Democracy": "The various kinds of collectivism, communism, fascism, etc., differ among themselves in the nature of the goal toward which they want to direct the efforts of society. But they all differ from liberalism and individualism in wanting to organize the whole of society and all its resources for this unitary end and in refusing to recognize autonomous spheres in which the ends of the individuals are supreme. In short, they are totalitarian in the true sense of this new word which we have adopted to describe the unexpected but nevertheless inseparable manifestations of what in theory we call collectivism."

15. *Ibid.*, pp. 88 ff.

16. *Ibid.*, pp. 93 f.

17. Hayek, *ibid.*, p. 89, says in defense of capitalist society: "Money is one of the greatest instruments of freedom ever invented by man. It is money which in existing society opens an astonishing range of choice to the poor man—a range greater than that which not many generations ago was open to the wealthy." That is true—provided the poor man has the money, which seems to be rather a contradiction in terms.

18. Joseph A. Schumpeter, *Capitalism, Socialism and Democracy* (New York and London: Harper & Bros., 1942), p. 269. Cf. also F. A. Hermens, *Demokratie und Kapitalismus* (Munich and Leipzig: Duncker & Humblot, 1931). Hermens tries to show that "any form of government other than democracy, is incompatible with fully developed capitalism (p. iii), but he expressly rejects the definition of democracy as government by the people. "Democracy is not government by the people (*Volksherrschaft*) in the old sense of the term, but that form of government by which the integration [of the mass of the people into a whole for the purpose of action] is the work of political leadership" (p. 21). "The concept of leadership developed by democratic practice contains the element of free competition" (p. 10).

19. *Ibid.*, pp. 297 f.

20. John Locke, *Second Essay on Civil Government*, chap. iv, sec. 22.

21. *Ibid.*, chap. v, sec. 44.

22. *Ibid.*, sec. 25.

23. *Loc. cit.*

24. *Ibid.*, sec. 26.

25. *Ibid.*, sec. 27.

26. *Ibid.*, sec. 44.

27. *Ibid.*, chap. vii, sec. 87.

28. *Ibid.*, sec. 85.

29. *Ibid.*, sec. 88.

30. *Ibid.*, chap. xi, secs. 138–39.

31. *Code de la nature ou le véritable esprit de ses lois*. Republished in *Collection des économistes et des réformateurs sociaux de la France*, ed. E. Dolléans (Paris: P. Guethner, 1910).

32. A. Lichtenberger, *Le Socialisme au XVIII<sup>e</sup> siècle* (Paris: F. Alcan, 1895), p. 114.

33. Cf. Dolléans, *op. cit.*, pp. 5 ff., and Kingsley Martin, *French Liberal Thought in the Eighteenth Century* (London: E. Benn, 1929), p. 243.

34. *Code de la nature, op. cit.*, p. 23.

35. *Ibid.*, p. 17.

36. *Ibid.*, p. 36.

37. *Ibid.*, p. 13.

38. *Ibid.*, p. 37.

39. *Ibid.*, p. 39.

40. *Ibid.*, p. 16.

41. *Ibid.*, p. 84.

42. *Loc. cit.*

43. *Ibid.*, pp. 85 ff.

44. *Ibid.*, pp. 51 f.

45. *Ibid.*, p. 51.

46. Cf. *supra*, p. 6.

47. *Code de la nature, op. cit.*, p. 54.

48. Moscow, 1947.

49. Hegel, "Grundlinien der Philosophie des Rechts," *Sämliche Werke*, Herausgegeben von Georg Larson (Leipzig: Verlag von Felix Meiner, 1911), Bd. VI, Par. 29. English translation by T. M. Knox, *Hegel's Philosophy of Right* (Oxford: Oxford University Press, 1942). When the German term "Recht" as in the title of Hegel's work means a social order and not particularly a subjective capacity of man, it should be translated into English as "law" and not as "right."

50. *Ibid.*, sec. 41.

51. *Ibid.*, addition to sec. 53.

52. *Ibid.*, sec. 44.

53. *Ibid.*, addition to sec. 44.

54. *Ibid.*, sec. 45.

55. *Loc. cit.*

56. *Ibid.*, addition to sec. 41.

57. *Ibid.*, sec. 40.

58. *Ibid.*, sec. 46.

59. *Ibid.*, addition to sec. 46.

60. *Ibid.*, sec. 46.

61. *Ibid.*, sec. 49.

62. *Ibid.*, addition to sec. 49.

63. Emil Brunner, *Justice and the Social Order*, trans. Mary Hottinger (London and Redhill: Lutterworth Press, 1945), p. 77.

64. *Ibid.*, pp. 58, 236.

65. *Ibid.*, p. 58.

66. *Loc. cit.*

67. *Ibid.*, p. 77.

68. *Ibid.*, p. 58.

69. *Ibid.*, p. 59.

70. *Loc. cit.*