

## **Chapter 10 The state as a legal entity**

### **10.1 Preliminary remarks**

In the previous chapter, the first step in the process of “coming down to earth” in our considerations was taken. This step consisted in abrogating the assumption that the only subject of rights and obligations is a human being and considering the consequences of a solution that is applied in the real world. This solution is the granting of legal personality to collective entities such as capital companies. The analysis shows that the mere fact of allowing legal persons to be owners of an enterprise is sufficient for the described negative phenomena and processes to occur. Their source is the fact of granting the right to incur obligations to an entity from which they cannot be effectively enforced because it exists only as a legal fiction. This is shown both on the model of the economy of a “stateless state” with a credit money system, and on facts from different parts of the world. The question of which particular state we are dealing with is of no relevance to the substance of the matter.

Having known the social and economic effects of the existence of legal persons in the corporate sphere, let us now look at the effects of the existence and operation of another, more important legal person that is a subject of both national and international law, namely, the effects of the existence of the state. These effects will be discussed in confrontation with the goals that have been posed in previous chapters for the model of the “stateless state” and the tools that have served this purpose.

Let us recall that the sole purpose of the system of law called the “stateless state” was to protect the natural fundamental rights of every human being, namely the right to life, the consequent right of ownership of the results of one's own efforts, and the right to freely shape the quality of one's own life in a way that does not harm the quality of life of others.

It is worth stressing here that judges - the human element of this model of the “stateless state” - have no sovereign powers over the other members of the community there except those derived from the authority to enforce the law on behalf of that community. Nor do they have any privileges by virtue of their positions. No model judge, therefore, can impose obligations on members of that community other than those that arise from the sanctions provided by law for breaking the law. Nor can he decide any matters that are beyond the scope of his judicial function. In the face of the law, judges in this model are equal to all other members of this community.

It is also worth emphasizing that the purpose of lawmaking in the model of the “stateless state” is not to subordinate the individual to any authority, i.e., to limit his freedom, but only to prevent behavior that harms the freedom of others and to punish those who violate the law. The sanctions imposed in such a case are therefore always the result of the violation of someone's right to freely shape the quality of his or her life by the intentional or unintentional actions of that person. And just as the violation of the

law of gravity by a deliberate leap or an unintentional fall from the tenth floor results in death or, at best, severe disability, so too the violation of another's freedom, even unintentionally, results in sanction provided in that model by law.<sup>1</sup>

If a person breaks the law intentionally, he accepts the result by his own choice, because he consciously places himself beyond the law. If, on the other hand, he does so unintentionally, he experiences the consequences in the same way as someone who has inadvertently fallen from the tenth floor. There is only one difference between the laws of nature and the laws made by human beings in our model; in the former case, intentions are irrelevant, in the latter case, they may be relevant to the consequences of breaking them.

The only economic effect of such a model of the “stateless state”, as shown in chapter 8, is to impose a head tax on all adults to cover the costs of operating the entire public sector. For understandable reasons, the amount of this tax is based on the necessary costs of operating that sector. But it has nothing to do with what people do to secure their desired quality of life, and especially nothing to do with their economic activities. All matters affecting quality of life are, in the model, the exclusive domain of each individual, and the legal system is only meant to protect that freedom to the extent possible.

One can, of course, question the possibility of effective protection of the above-mentioned rights, pointing out the difficult or impossible conditions for such effectiveness to be met in real life. As long as no formal defects in this model are demonstrated, however, the conclusion that follows from its analysis is fully legitimate: it is inconceivable that anyone could rule over other people, that is, impose his will on them under the threat of legal sanction. For in such a case sanctions would not be imposed for the objective fact of violation of another's freedom, but for behavior contrary to the will of the ruler for which there is no objective basis<sup>2</sup>.

The above statement does not negate the fact that there are situations in which a person knows better than others what should be done to solve a problem, and suggests such a solution. In such a case, however, even when others agree without objection to the suggested solution, it does not mean that the originator of the suggestion governs them, that is, imposes his will on them under the threat of some legal sanction. The reason for the behavior in accordance with the suggestion is then the voluntary recognition of the point of the person who proposes the solution. On the other hand, the rejection of such a solution, which is of course also possible, does not cause any sanctions of a legal nature. Possible negative consequences suffered because of the rejection of the advice do not

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<sup>1</sup> In particular, the perpetrator of a criminal act may avoid a criminal sanction precisely because of the intentions that guided him and that were taken into account when judging that act.

<sup>2</sup> It is worth noting that the basis for the initiation of legal proceedings is, in the model, the demand for legal protection by a person who subjectively recognizes that his or her rights have been violated, but a possible sanction appears only when the fact of violation is confirmed and properly judged in the course of proceedings, that is, when it acquires an objective character.

have in such a case the character of a punishment, but are at most the result of objective events that could have been avoided by following the advice given. Usually, if such negative experiences occur, they also contribute to the authority of the person whose advice was rejected. This, in turn, can lead under certain conditions to the recognition of such a person as a leader. However, as long as opposition to the will of the leader does not give rise to any sanctions beyond possible exclusion from the group headed by that leader, it has nothing to do with governing. For all the time, the relationship between the leader and the members of the group he leads is based on the principle of freedom and equality of each member of such a group.

Governing, on the other hand, always means the end of relations based on equality and freedom of the members of a given community and the beginning of a hegemony based first on physical coercion, which is soon legitimized by laws enacted by the hegemon.

## **10.2 The false premise of Rousseau and its consequences**

The correctness of the conclusions drawn above cannot be undermined by philosophers' attempts to design such a system of state power which would ensure social peace and justice, while preserving full freedom and autonomy of the individual and thus excluding any form of coercion. The most far-reaching approach was that proposed in the 18th century by J.J. Rousseau in his work<sup>3</sup> "The Social Contract or Principles of Political Right". In the very first sentence of this work he writes (Rousseau Book 1, p. 7): "I mean to inquire if, in the civil order, there can be any sure and legitimate rule of administration, men being taken as they are and laws as they might be".

It might seem that Rousseau was concerned with answering the question of whether it is at all possible to find any justification for ruling people as they are. However, this impression passes immediately when one turns to the first paragraph of the first chapter of his work, where one can read: (ibid.): "Man is born free; and everywhere he is in chains. One things himself the master of others, and still remains a greater slave than they. How did this change come about? I do not know. What can make it legitimate? That question I think I can answer."

Rousseau then had no doubt that there could be no society without some form of government. The problem for him was only how to make it legitimate. However, unlike Grotius or Hobbes, for whom the social contract was a form of surrendering or even giving up part of his rights to the ruler, for Rousseau (p. 14): "The problem is to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain as free as before. This is the fundamental problem of which the Social Contract provides the solution."

The essence of this social contract is captured in the following passus (p. 15): "The clauses [of such a social contract], properly understood, may be reduced to one – the

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<sup>3</sup> Translated with Introduction by G.D.H. Cole, No. 660 of Everyman's Library. London: J.M. Dent & Sons Ltd.

total alienation of each associate, together with all his rights, to the whole community; for, in the first place, as each gives himself absolutely, the conditions are the same for all; and, this being so, no one has any interest in making them burdensome to others. Moreover, the alienation being without reserve, the union is as perfect as it can be, and no associate has anything more to demand: for, if the individuals retained certain rights, as there would be no common superior to decide between them and the public, each, being on one point his own judge, would ask to be so on all; the state of nature would thus continue, and the association would necessarily become inoperative or tyrannical. Finally, each man, in giving himself to all, gives himself to nobody; and as there is no associate over whom he does not acquire the same right as he yields others over himself, he gains an equivalent for everything he loses, and an increase of force for the preservation of what he has.” (ibid. p. 15)

And further (p. 15-16): “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. At once, in place of the individual personality of each contracting party, this act of association creates a moral and collective body, composed of as many members as the assembly contains votes, and receiving from this act its unity, its common identity, its life and its will. This public person, so formed by the union of all other persons, formerly took the name of city, and now takes that of Republic or body politic; it is called by its members State when passive, Sovereign when active, and Power when compared with others like itself. Those who are associated in it take collectively the name of people, and severally are called citizens, as sharing in the sovereign power, and subjects, as being under the laws of the State. But these terms are often confused and taken one for another: it is enough to know how to distinguish them when they are being used with precision.”

Leaving aside the question of the reality of the existence and action of this abstract entity that is the “body politic” and the characteristics attributed to it by Rousseau, let us deal with the formal side of his reasoning. He begins with the obviously true statement (p. 9) that “since no man has a natural authority over his fellow; and force creates no right, we must conclude that conventions form the basis of all legitimate authority among men.” Then he formulates an assumption (p. 14): “I suppose men to have reached the point at which the obstacles in the way of their preservation in the state of nature show their power of resistance to be greater than the resources at the disposal of each individual for his maintenance in that state. That primitive condition can then subsist no longer; and the human race would perish unless it changed its manner of existence.”

The first sentence of the above assumption refers to the unspecified obstacles that individuals may encounter while living in a state of nature. Of course, it is true that living in a state of nature can be difficult for individuals, and sometimes the obstacles encountered can even threaten their lives. However, the statement in the second sentence, namely, that in the face of these obstacles the human race would perish if it did not change its manner of life, cannot be taken as true.

For if we think more deeply, we must come to the conclusion that no kind of obstacles that can arise before human beings living in a state of nature except one can threaten the survival of the entire human race. That single factor which can lead to this is a cataclysmic event involving the entire planet Earth, which will kill all human beings without exception. However, it can hardly be denied that no form of human organization can either prevent such a catastrophe or save the human race from annihilation should it occur. So any attempt to construct any social contract to prevent it is completely meaningless. It is for this reason that Rousseau's suggestion contained in the quoted sentences that it is objective factors that are the cause of the emergence of the state as a political organism, for otherwise human race would perish, must be considered false.

And since it is a fact that since the dawn of history societies have been organized into states in which someone always exercises supreme authority, and since people submit to this authority, the reasons for people living according to such a "convention" must lie elsewhere than assumed by the author of the "Social Contract". And indeed, the true premise is the type of obstacles that Rousseau did not mention, namely, threats from other people. The point, however, is that in a state of nature they cannot affect the whole human race, but only individuals or smaller or larger groups forming loose local communities. The source of these obstacles is the people's propensity to evil. If we focus only on the material sphere of an individual's life, the mildest manifestation of this tendency is to deprive someone of the fruits of his efforts by deceit or force in order to satisfy a self need, that is, to steal, cheat, or rob. And the worst case of the manifestation of evil is killing someone personally or at another's hands. In my opinion, among people living in a state of nature, evil always begins with an attempt to take someone else's property, and all other actions that harm others are the aftermath of that first act. The order, however, is of little importance.

What matters is that every attempt to do evil to someone triggers a defensive reaction. So it is not difficult to imagine how, starting from the state of nature, a feedback loop begins to develop, with people on both the abused and the abusers' sides. The former try to unite forces and resources in order to defend themselves more effectively. The latter do the same in order to attack more effectively. This is how communities of people are formed, united by a common interest that is intrinsically opposed to the interests of other communities. It is worth emphasizing, however, that the primary reason why people living in a state of nature organize themselves into larger groups of people who are not necessarily related has always been the fact of experiencing evil from others. If there were no repeated assaults and robberies on the property of the natural community that is the family, there would be no need for communities based on ties other than kinship. Nor would there be any reason to create institutional and permanent forms of authority. The only form that would remain would be parental authority, which by its very nature is quite different from institutional authority. First of all, a parental authority is not aimed at the self-interest of the person exercising the authority, secondly, it only covers children, whether natural or adopted, and thirdly, it ceases when they become

independent. And any other possible form of association would be based on full respect for the individual's freedom to remain in or to withdraw from such a community and on possible leadership derived from the authority of the person in question. The only form of "convention" on which such a community would be based would be to do no evil to others. The attentive reader will note that this is precisely the principle on which the "stateless state" model described in Chapter 8 was based.

What is written above are of course only unverifiable "what if" speculations. However, they make it possible to understand the reasons for what is a fact. And it is a fact that people have always done and continue to do evil to others. And it is a fact that as a result people have organized themselves into larger communities in order to achieve their own goals, which sooner or later transformed into states. It is also a fact that all known forms of state are based on coercion. And finally, it is a fact that every state always has interests that conflict with those of other states, resulting in constant wars. Thus, from the objective characteristic of human beings, which is the tendency to do evil to others, follows logically the objective characteristic of all states, which is the contradiction of their interests with those of other states.

This conclusion is the most important reason for regarding Rousseau's idea of the social contract not only as extremely utopian in its principles of realization, but above all as based on an irremediable contradiction. For even if it were to be assumed that, by some miracle, it would be possible to bring about a situation in which all the people living in a given territory, without exception, consciously and voluntarily renounce all those individual traits which in fact determine their humanity, including the tendency to do evil to others, and become an unconditionally indivisible part of this mythical "body politic" with "its own life and will", this entity would be one of many similar ones in the world. Then one must somehow deal with the following paradox: the only real reason for creating a state is the opposition of interests. But if the people who create a state while uniting themselves in a "body politic" give up all individual human characteristics, including the tendency to do evil to others, thus becoming angels, then there can be no opposing interests of states. And if this is so, then the reason for the creation of multiple states disappears. The reason for any form of government also disappears, ergo - the need for a social contract resulting in a "body politic" no longer exists.

Apart from formal reasons to reject the idea of Rousseau, it is also worth mentioning the tragic consequences of an attempt to put this idea into practice, where people are as they are. I mean the case of France at the end of the 18th century. It was then that the Jacobins, under Robespierre, began to transform the state into a new "body politic" that would provide citizens with "liberty, equality, and fraternity." The result was hundreds of thousands murdered who did not understand the enlightened idea and refused to submit to this variant of the "general will" that the revolutionaries represented. This was the first version of totalitarianism. Other mutations appeared somewhat later, when the Rousseau's idea, enriched by economic theories of Marx and Engels, was put into practice by such figures as Lenin, Stalin, Mao Zedong, Castro, Pol Pot, Bokassa, Kim Ir

Sen, and many other dictators stung by Communist ideology. Victims of such “bodies politic” can already be numbered in millions.

Finally, there is one more reason, perhaps an important one, to strongly reject the ideas contained in “The Social Contract”. It follows from Rousseau's considerations that waging wars is an obvious and justified way of resolving the conflicting interests of individual “bodies politic”, which justifies sending hundreds of thousands, or even millions of soldiers to their deaths, for they are not people but citizens. And, as Rousseau states (*ibidem*, chapter V. p. 30): “...the citizen is no longer the judge of the dangers to which the law desires him to expose himself; and when the prince says to him: is expedient for the State that you should die he ought to die, because it is only on that condition that he has been living in security up to the present, and because his life is no longer a mere bounty of nature, but a gift made conditionally by the State.”

Let us leave aside the semantic nuances between the terms “man” and “citizen” that allow Rousseau to make such judgments, and consider what follows from his treatment of war as an acceptable way for a state to resolve conflicts with other states. To this end, let us unreservedly accept that, in the face of certain obstacles, the further persistence of humans in a state of nature really could ultimately end in perishing of the human race. Let us further accept without reservation that people organize themselves into states precisely in order to avoid such a threat and, in accordance with the rules of the social contract, form separate “political bodies”. The result, of course, is many states with conflicting interests. At some point, some of them decide to resolve their growing conflicts with others by starting a war using the tools available to wage it. In Rousseau's time, this was not possible, but in the realities of the modern world, it is now possible that the resulting conflict will end in the annihilation of humanity. For science and technology have already placed in the hands of the executors of the “universal will” nuclear and biological weapons with enough power to destroy all life on earth many times over. In this way, the unification of people into states, which according to Rousseau was supposed to prevent the annihilation of the human race, may become precisely that which will lead to such annihilation. For the time being, fear of destroying each other among the hostile powers prevents them from using this weapon. But there is no guarantee that a madman will not be found who, like the Jacobins, will want to return to the idea of a “universal will” and introduce it throughout the world, using for this purpose the means already available.

Philosophers do not murder anyone. Their works are at most only lofty ideas. And that they can be misunderstood and misused by those, to whom they were addressed? Well, *c'est la vie*.

I have little basis for judging how sincere was Rousseau's statement that he does not know how it came about that “Man is born free; and everywhere he is in chains” (Rousseau, Book 1, p.7). It is difficult, however, not to allow oneself to be surprised that the fact that these chains are not put on slaves by themselves, and that no people goes out to conquer other people unless they are ordered to do so by their current ruler, who,

in addition, often speaks a foreign language, did not make him reflect on the reasons for these facts, but seek to justify them. Nevertheless, what I am criticizing here is not so much the final result of his efforts to find formal legitimacy for the exercise of state power and for the laws made by such power, as the foundation on which he based his construction of the social contract and the resulting exercise of power by the "political body" thus created. This assessment is negative both for the formal reasons demonstrated above and for - let us call it - human reasons.

The latter are connected with my objection to all ideas which design social systems presupposing the deprivation of man of those qualities which make everyone unique in the whole universe. No system is capable of depriving man of his absolute positive freedom, that is, the freedom to set arbitrary goals for himself and to strive to achieve them, including, of course, assaults on the quality of other people's lives, and thus to do evil to others. It is therefore impossible to have a social system in which anyone can be effectively guaranteed that no one will violate his fundamental natural rights. The only way to deal with this fact is to create a system of law that, on the one hand, deters ex ante from undesirable actions and, on the other hand, punishes ex post for actions that harm others.

Such conditions are met only by the system of law described in the previous chapters as the "stateless state". Its emergence obviously implies the end of the state of nature for individuals and the transition to a social state. Nevertheless, it does not actually require a change in the essential conditions of their existence from those typical of the state of nature. In particular, it does not require giving up any personal rights to any other person or institution. And it does not presume that people will become perfect or be changed into such, but takes them as they are. The only change from the situation in the state of nature is that violation of the natural rights of others, which include the right to life, the consequent right of ownership of the results of one's own efforts, and the right to shape the quality of one's life according to one's own criteria, may be met with adequate punishment imposed by a legitimate person or body. This is the only instance in this system of outside interference in an individual's life that is justified by the legitimate protection of the rights of others. No kind of "body politic" is needed. What people need is only a law that helps them exercising their natural freedom in the way that does no harm the freedom of others.

### **10.3 The true nature of the state, its source and purpose**

It was mentioned above that in the real world, power in every country is based on coercion, regardless of the political system. In what they only differ is the degree of oppression of a particular political system and the actual interference of the authorities in the life of an individual. In so-called democratic countries, this degree is smaller, while in totalitarian ones it is much greater. In both of them, however, the vast majority of people obey the law, thus legitimating the current "convention".



When considering the reasons for reconciling the citizens to live and act under conditions imposed on them by the authorities, I would like to put forward a thesis that stems from one of the conclusions concerning the choice in the context of human freedom, which is described in point 3.4. In fact, such a “convention” is based only on the tacit acceptance of the conditions for the survival of people in a given state according to the principle of reciprocity: “we accept your power in exchange for our life and relative peace and prosperity.” Apart from the reference to the principle of reciprocity, there is nothing new in this statement of mine. For as early as the 17th century, both Grotius and Hobbes denied that all human power is established in favor of the governed. Rousseau strongly criticized this, writing sarcastically<sup>4</sup>: (Rousseau, p. 7): “It is then, according to Grotius, doubtful whether the human race belongs to a hundred men, or that hundred men to the human race: and, throughout his book, he seems to incline to the former alternative, which is also the view of Hobbes. On this showing, the human species is divided into so many herds of cattle, each with its ruler, who keeps guard over them for the purpose of devouring them.” But it was they who were right.

We will also find confirmation of such an assessment here, as soon as we override another assumption of our model and instead of the utopian to some extent model of the “stateless state” we will look at the real world, where there are many states, and each of them is a legal person, and thus a subject of international law. In such a case, a question arises immediately about the way and purpose of their creation, as well as the way each of them operates.

Regardless of how long it took for social structures to form, from which ultimately the political organisms known as the state emerged, it is hard to deny that each of its varieties is an abstract collective entity that is a human creation. Each state is created as a result of the realized will of one or more people living in a territory to which they eventually subordinated themselves for some reason. Each shall remain in the territory until the same or another community is altered by a coup d'état, revolution, conquest and annexation, secession or unification treaty. Therefore, as a human creature, by its very nature the state cannot act otherwise than through people, nor can it make

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<sup>4</sup> Rousseau's primary objection to the positions of Grotius and Hobbes was that they rely on historical facts in their deliberations, thereby taking effect for cause. Submission to the law of the stronger is for Rousseau an act of necessity arising from prudence, not an act of will. Instead, he seeks a system in which each person feels of his own free will obliged to obey the law, rather than compelled to do so by force. Such obedience is an act of the citizen's rational will. He writes: "Let us then admit that force does not create right, and that we are obliged to obey only legitimate powers. In that case, my original question recurs. ["I mean to inquire if, in the civil order, there can be any sure and legitimate rule of administration, men being taken as they are and laws as they might be"]. The charge of taking the effect, which according to Rousseau is obedience to the law, as the cause for recognizing authority as legitimate is misplaced, since one cannot recognize authority as legitimate except by submitting to the law it establishes. In contrast, the order suggested by Rousseau, that is, first the creation of legitimate authority, which is his "body politic" (the cause) and then submission to its law (the effect) leads to the appearance of the so-called vicious circle. A “body politic” cannot become a legitimate authority until it exists, and it cannot exist until the individuals who make up that political body completely submit to the rules of its operation, that is, to the established law.

decisions that are not decisions of people. The size and political system of the state, or any other features that may be attributed to it, have no significance in this respect.

This means that no state can be a sovereign entity, since the law that determines its existence is always an emanation of the will of those in power. At best, as in the case of so-called direct democracy, the absolute majority of the state's citizens have a decisive voice in all matters that concern it. In such a case, however, it is this majority that becomes the quasi-sovereign who creates the law and imposes it on the others on behalf of the state, an abstract quasi-collective entity that is the formal sovereign. Those in power are a quasi-sovereign, because they are themselves subject to the law they have made<sup>5</sup>. The state, on the other hand, is a quasi-sovereign, because its existence and shape depends exclusively on the will of people; both those who govern supposedly in the name of the rest and those who are governed.

It is worth adding, however, that the existence of this quasi-sovereign depends also on the will of people who are not its citizens. What we are talking here is those who govern other countries, and who have some interest in tolerating its existence in a given place, time and shape. If they change their minds, any state can become the target of their attack and can be truncated or destroyed. Evidence does not have to be sought only in the distant past, for the present also provides it in abundance.

When establishing a state, its creators must have a goal they want to achieve with it. In the model of the "stateless state" described earlier, the sole purpose of this system was to protect the individual natural rights of every human being and the liberties arising from them<sup>6</sup>. Consequently, the law intervenes there (in theory, of course) only at the request of the person whose rights have been violated, and coercion is used only against those who have been validly convicted of violating these rights and liberties.

Such a system of law does not guarantee anything, because it cannot effectively guarantee anything, and the only way to influence it is to deter people by threatening them with penalties in case of behavior that harms others. Both the law and the procedures for its application apply equally to all members of the community, including the judges who create the law. In this system no one is above the law; there is no place for the sovereign in it.

The unquestionable principle of living in such a model community is that every human being, regardless of whether and what tools he or she uses to do so, lives on his own account. Everyone, of course, can take advantage of the opportunities offered by the market exchange system, if he or she considers it expedient. But the system precludes

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<sup>5</sup> An exception is absolute monarchy and its various mutations, in which the ruler places himself above the law. However, even this case of sovereignty is illusory, for, as history proves, even such rulers were misled about their divinity by those who wanted to take their place.

<sup>6</sup> Let us recall that the fundamental rights are the right to life and the right of ownership of the results of one's own efforts. In turn, from these rights derive all those liberties which allow one to shape the quality of one's life according to one's own criteria, provided that the analogous rights of others are not violated.

the possibility that any person could live at the expense of others without their consent. If the idea of the auxiliary state were invoked, such a legal system would fully satisfy its conditions.

Note, however, that what we are talking about here is the system of law, not an entity such as the state. In the model of the "stateless state", the system of public law in fact plays a servile role in relation to the entities that constitute it, i.e. in relation to people. It regulates relations between them in such a way that each person can fully exercise all the rights described above to which he is entitled as a human being. It therefore serves exclusively for their good. When, on the other hand, we look at a legal entity such as the state, we must accept the fact that this "person" is certainly not a living being. Consequently, the fundamental right of the human person, which is the right to life, does not apply to it. For the same reason, it does not have the right of ownership of the results of its own efforts, nor the right to shape the quality of its life according to its own criteria. In short, none of the natural rights apply to it.

From this comes the obvious conclusion that since every state, regardless of its political system, is an entity brought into being by people, then its only end may be the same as in case of any other tools made by people; namely, it is meant to make it easier for the creators of this tool to meet their own needs. To make easier, can only mean here; to enable the achievement of their own goals at the expense of others. There is no other possibility.

#### **10.4 The conditions and effects of the existence of the State as legislator**

For the state to be able to serve such a purpose as outlined above, a law is needed that is based not on the prohibition of violating someone else's freedom, as is the case of law of the "stateless state", but on orders. The most important of the orders is the obligation to recognize the state as the sovereign, whose interest takes precedence over that of the citizens. This injunction gives rise to all other obligations and restrictions imposed in the real world on the citizens of each state by specific legal acts. The manner in which they are established and implemented is irrelevant in this case; it is only a derivative of the prevailing political system.

It is worth emphasizing that the primacy of the state interest over the interest of the individual is usually explained by concern for the so-called common good. But until proof to the contrary, this term should be considered an empty name, since there are no goods which serve everyone without exception, the creation of which has not been paid for with some damage to at least one person who has been forced or whose rights have been restricted for this purpose. In practice, there is always more than one such person. The good created in such circumstances cannot therefore be a common good; at best, it is a good that serves the majority and was created to the detriment of a minority.

The thesis that each type of state is a tool for achieving the goals of a certain group of people at the expense of others remains valid. Neither the type of objective nor the degree of restriction of the freedoms ruled by those in power by means of state law

changes this truth. The essence of any real state is unchangeable. What changes in time and space are the proportions between the rulers and the ruled, the length of time the former remain in power, and the instruments of coercion they employ, as well as their social and economic consequences.

The most important factor limiting individual freedom by any type of state is the principle that everything belongs to the state except what the current state authority deems to be private property. Consequently, with the creation of the state as an entity, free access to natural resources and the right to use them for one's own needs, as in the theoretical system of the stateless state, ends. Consequently, natural resources in the real world divided among different states cease to belong to the world of things with equal access to them for each person, and become state goods, access to which is rationed by authority. In any real state, private property can only exist when consent is given by the state authority in a manner appropriate to the circumstances<sup>7</sup>. Otherwise it becomes a crime prosecutable by law. In turn, the government grants property rights to certain people at its own discretion, usually in exchange for some merit or other benefit for itself, such as a certain share of the revenue. There is nothing, therefore, to prevent the state from restricting private property to any degree or from abolishing it altogether. Countless historical facts support this thesis.

A special case of property rights conferred in the real world by state power is land ownership. In the model of the “stateless state”, land is excluded from appropriation because the object of property can only be that which has been acquired by a person's own efforts. The only exceptions to this rule may be the ownership of plots of land developed for residential and commercial purposes and family farms created by one's own efforts or inherited from one's ancestors or acquired in an equitable manner from persons who took possession of them by developing land that did not belong to anyone.<sup>8</sup> By contrast, when ownership of large areas of land is granted by the authorities without such a connection, its acquisition violates the principle of equal access, because it always occurs at the expense of those who are excluded from it. This is particularly the case when the right of ownership of a certain area of land granted by the authorities includes the right to impose certain burdens on the people living on that territory<sup>9</sup>. This means not only the exclusion of the latter from the right to use the fruits of their labor on the land where they live to satisfy their own needs, but also the imposition of a legal obligation to give part of these fruits to the owner of the land. However, even when no

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<sup>7</sup> Recall that in the model of the “stateless state”, it is sufficient for the emergence of a legitimate property right to transform things into goods by one's own efforts.

<sup>8</sup> Taking such exceptions into account and recognizing them here as valid acquisitions of property should not be seen as settling the issue of ownership of land for these purposes. I do not rule out the wrongness of my position on this matter, however the arguments for such an approach would be defensible under certain conditions in the light of what has been written about property in section 4.1.

<sup>9</sup> We are talking about the so-called royal endowments, when the monarch, being the owner of the whole country (*bona regalia*) gave a part of his property to certain people in return for their merits or for a share in the future income from such property.

one lives on such an area, the fact that it is appropriated solely by the will of the ruler violates the principle of equal access to natural resources, that is, to the world of things.

A common way of limiting the right to property by the state authorities of all the countries of the modern world are taxes. Regardless of the type of tax and the formal subject and object of the tax, all taxes are exclusively levied on people's income, i.e. what they obtain as a result of selling goods or services belonging to them. This is because income is the only source of financing of all expenses, and thus also taxes. The part of taxpayers' income that is taken over by them is allocated by those in power to the implementation of their political programs. Some of them serve to cover the costs of the functioning of the entire state apparatus, while others are used to redistribute income among the beneficiaries of the state.

In this context, the fact, demonstrated in section 8.3, that all costs of running the state are borne exclusively by those in the private goods sector becomes particularly important. This is true in the model of the “stateless state”, but it is exactly the same in the real world. Consequently, the larger the overall state apparatus and the greater the extent of budgetary redistribution, the greater the burden on the incomes of these individuals. All the rest are beneficiaries of the public sector, that is, beneficiaries of the state, which takes income from the private market goods sector and distributes it among the rest either by buying public goods and services from them or by giving them so-called transfers under various legal titles. Whether or not public sector providers and beneficiaries pay taxes is irrelevant here. If they do, it is just an idle flow of resources that neither adds anything to the public sector nor reduces the real tax burden on people in the private sector of market goods.

An inherent characteristic of the state as a subject of law, which results from historical conditions, is its territoriality. The recognition of a particular territory as belonging to a particular state has never been permanent, but has always resulted from the balance of powers between competing states, which has found expression in treaties and alliances. This stems from the very nature of the state, which - let us repeat - is an organization serving those people who are in power to achieve some of their own goals at the expense of other people. Therefore, if opportunities arise to expand their power into additional territories and reap the benefits of this, they generally take advantage of these opportunities. Then, too, they either provoke open war, or they make annexation by treaty, or, finally, they make use of the old Roman principle of *divide et impera*, by antagonizing and quarreling the various contenders for power in the country they intend to subdue, and then subjugate it to themselves by making peace on terms they have determined. It also works the other way round; then we have separatist movements whose aim is to gain power in a territory carved out of an existing state, that is, to tear that territory from its previous power and establish their own there.

Universal history provides countless examples of such processes. Each of these examples proves the point already made concerning the nature of the State. In every case, the acquisition or maintenance of power by a person or a group of persons is

carried out at the expense of those who are subjected to that power. Whether this is a one-man ruler (king, emperor, dictator) or power is exercised by a group of people chosen in democratic elections (parliament and government) does not change anything in this matter. Neither do the slogans under which such processes take place, nor the scale of acceptance of such a state of affairs by the governed change this matter.

The above described features of the state as a subject and their conclusions result from considerations based on the axiom that the only real and autonomous subject of social life is the human person. Therefore, as long as this axiom is not falsified, the above conclusions have the value of universality, they are simply consistent with the facts. Therefore, they can be used to evaluate what is happening in modern states in various spheres of social and economic life.