

*THE BIRTH OF THE MODERN STATE AND ITS FUNCTION CHANGES*

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This paper discusses the problems surrounding the birth and functional changes of the modern European state. It aims in the first place to picture how the modern state concept emerged and the different paths of its development. The paper interprets the notion of modern state as the antithesis of the medieval state. It discusses in detail the controversies of the birth of the modern state concept, the theory of the four-phased development of the modern state as well as the criticism thereof. The connections between the issues of state and sovereignty and state and individuals are touched upon. A brief presentation is provided on the theories describing the formation of a state and the modern age tendencies in the changes of the notion “state”.

*Keywords:* modern state, medieval state, the birth of modern state, the double root of modern state, the state-aims, the crisis of the modern state, cryzeology, the theory of three-phased development, Machtstaat (power state), Handelsstaat (commercial state), Rechtsstaat (state based on law), national state, links between the state and individuals, sovereignty, welfare state.

*The birth of modern European state and the changes of its functions*

*The concept “modern European state” as a theoretical challenge*

*Difficulties of the concept’s definition*

*Modern state and ancient state*

*Circumstances of coming to being*

*Variations of modern state according to O. Hintze*

*Changes in the 20th century*

*Emptying of the concept “modern state”*

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Writing about the notion “modern state” is one of the biggest challenges nowadays that our thinking of state theory can face. My paper might be shocking; its end conclusion is that the category of ‘modern state’ is, from a theoretical point of view, empty. It is not suitable to adequately describe most phenomena of the life of the countries that surround us. The new theoretical terminology – if such exists at all- can only come into being through critically reconstructing the content of our theoretical tradition, in this case that of the modern state. Namely, this term frequently used even nowadays, most times inconsiderately, has a significant historical past.

Hegel says that the cultivated European mind is in doors in Greece. Although this spirit got his religion from farther, from the Eastern provinces of the Roman Empire. Everything that makes its sciences, arts more beautiful has its origins in the ancient Greece, through the Romans or round about.<sup>1</sup>

The situation is different when we talk about the concept “state”. The notion of Greek *polis*, as I have already referred to it, was interlinked *per definitionem* with sacrality<sup>2</sup>. On the other hand, profanity is one of the conditions<sup>3</sup> of a professionally functioning state in the modern state notion. This difference, and of course, the problem of nation-state that is a characteristic of the modern state development being absent in the antiquity, makes it impossible at first sight that we trace back the origins of modern state to the concept of the Greek *polis* in a historical sense.

But we cannot settle the question by this explanation. Namely we have to face a prolific paradox. The fact that antinomic relation to the antiquity, leastways in one part of the social science, doesn’t make impossible

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<sup>1</sup> G.W.F. Hegel, *Vorlesungen über die Geschichte der Philosophie*. Bd. I, Stuttgart, 1959,187.

<sup>2</sup> Pethő Sándor, *Arcana imperii. A sacrum és politicum kapcsolatának történetéhez*. Budapest, 2003

<sup>3</sup> A. Giddens, *Sociology*. Oxford, 1993. III.10.

the attempts tending to describe the ancient city-state with a terminology which is typical for the modern state. This way Karl Büchner<sup>4</sup>, Werner Sombarton<sup>5</sup> and Max Weber<sup>6</sup> will describe the ancient *polis* as a private, closed consumption city. Then again this way Weber's ancient consumption and medieval producer city changes to a paradigm<sup>7</sup> of disputes about the ancient city-state. In case of the state theory we are in a more difficult situation. We only have to look at in any Greek historian's study and we can see that our modern nations are totally inadequate to describe the phenomena we are talking about.

Of a methodological point of view we can deduct two conclusions of this. The first one relates to the ancient *polis*, the second one to the modern state. In the first case it's worth considering if we use properly the notion of the state to describe such a political system that didn't know at all, or used the concept of the state in another manner as we do<sup>8</sup>. The conclusion which can be deducted from the point of view of the modern state is more disheartening. At first sight the concept of the 'modern state' seems to be meaningless from the point of view of the content. It doesn't serve anything but to differentiate the modern state from the ancient and medieval state. In another way this means only one line segment of the abstract state notion, projected to a certain chronological scale, but tells nothing about its content.

In this comprehension the concept of the 'modern state' is nothing more than a certain type ideal whose meaning is evidently different from that of the ideal type of the ancient city-state. We can give an overpointing content to it by giving a more direct /accurate definition about what we understand on modernity from the point of view of the state theory. However the another way is to describe it after its characteristic functions and historical types.

The determination of the 'modern state' is not a simple historical-chronological question. From a historiographical aspect as likely as not we proceed carefully if we take each realm for modern state which effects the current state system, its institutions or functioning. In this regard we can consider as 'modern' those states who do not exist in a strict historical manner. Raising this problem in this way doesn't make senseless the question aiming to the formation of the modern state.

Then again define modernity is not easy neither from a philosophical, nor from a state theoretically point of view. The rough reconstruction of the notion's history suggests that it's even impossible. Regarding the state theory every definition can only be temporary. Its validity does not pass the boundaries of the given study. From the first moment the definition's difficulty is obvious. The most outstanding problem resides in the concept itself. The notion of modernity can raise more different meanings, also in the common and in the scientific language. Depending on the context it can be the synonym of modernity, superficial or even that of the depravity – think of the notorious *Entartung* of Max Nordau. A further difficulty is that a notion which allows us various using methods is generally defined as the negative of *antiquitas*. Hence, depending on the notions' actual valid meaning, the thesis-antithesis ancient/modern can mean old/new, valuable/valueless.

The possibility of clarification is created by the philology and by the comparative state theory. According to the latter the essential differences between ancient and modern state are visible at first sight<sup>9</sup>. The ancient state did not approved the universality of the personal folkrights. The late antiquity, probably the latest stoicists, and the early Christians raised this question with theoretic needs regarding to slaves and women, but it didn't turn to be a judge-made for a long time. The ancient state clasped its citizens' life in a complex way including authority practice, religion and different domains of culture. Besides many things we limit the power of the state to protect the citizens' private sphere. The antique state's citizen's political identity is given by its citizenship itself. From a law history point of view it can be seen that in the ancient Greece the private and common rights are not sharply distinguished. The Roman law processes this division but the development of personal rights are closely linked to the common rights. The personal right rules are the expression of the will of the commons and that of the state<sup>10</sup>.

The ancient state force has a hierarchical absolute nature<sup>11</sup>, if we talk about ancient democracy, even Roman empery, which can affect the collision of jurisdictions among posts<sup>12</sup>. The modern state power is

<sup>4</sup> K. Büchner, Zur griechischen Wirtschaftsgeschichte. In: *Beiträge zur Wirtschaftsgeschichte*. Tübingen, 1922, 1-97.

<sup>5</sup> W. Sombart, *Der moderne Kapitalismus*. Leipzig, 1902, 198-205.

<sup>6</sup> M. Weber, Die Stadt. In: *Archiv für Sozialwissenschaft und Sozialpolitik*. Bd. 47. (1920-21), 621-772.

<sup>7</sup> See M. I. Finley, *Ancient History. Evidence and Models*. London, 1985.

<sup>8</sup> See H. Quaritsch, *Staat und Souveränität*. Bd. I. Grundlagen. Frankfurt am Main, 1970, 20-38.

<sup>9</sup> J.C. Bluntschli, *Allgemeine Staatslehre*. Bd. I, Stuttgart, 1875, 63 sk

<sup>10</sup> M. Kaser, *Das römische Privatrecht*. Erster Abschnitt. München, 1971, 24.

<sup>11</sup> Compare to W. Kunkel, *Stattordnung und Staatspraxis in der römischen Republik*. München, 1955, 38 sk.

limited by constitutional boundaries. There is a significant difference regarding the practice of power. The functionaries of the ancient state practiced the common power directly. Its filling was linked to different conditions<sup>13</sup>. But the modern state is functioning in virtue of proportionalism. The ancient states, the most evident example for this is Greece; had different political systems but they were closed political communities, i.e. city-states<sup>14</sup>. In the modern state the city is at the best one of the local spots of administration and politics, but in no way the exclusive centre of power. The practice of different police power's functions were not divided sharply. Different tasks were processed by the same communities or magistrates. The common practice of power served the restraint of the personal<sup>15</sup>. In case of the modern state the tasks of power practicing are separated consciously. In front of the ancient state's external ambitions there were no international rules, based on standard principles which relate to all of them equally. The nearest solution for this appeared in the Roman Empire, although the extension of the domination was based on emphasising the Roman power privilege and not on the standard international agreements. On the other hand there were existing international judicial limits in front of the modern states' external ambitions, although they were not functioning effectively always.

The differences deducted from the comparative state theory between the ancient and modern state refer clearly to the fact that the relationship between the concept of *modernitas* and *antiquitas* cannot be approached by clichés in the domain of state theory. For deeper analysis the philology can provide us more help.

From philological point of view the dissimilitude between *modernitas/antiquitas* is the product of the 5th century according to Ernst Robert Curtius<sup>16</sup>. Its original aim was to differentiate the ancient pagan-Christian litterature from other authors<sup>17</sup>. In this context the expression *modernus* did not hold any evaluation. Its use referred to the fact that modern authors were closer *chronologically* to the user of the notion than the ancient ones. The definite antithesis of these 2 concepts was done later, in the 12th century<sup>18</sup>, in order to emphasize the historical discontinuity between the Christian Middle Age and the pagan antiquity. This intention, as J. C. Bluntschli has already noticed<sup>19</sup>, indeed wasn't that successful in the political thinking as to make us forget the memory of the ancient city-state forever. Late, during the Humanism, the pendulum swang in the opposite direction. The antiquity denied by the Middle Age seemed to be more modern for the humanist authors than the Middle Age falunting with its own modernity. This effected the political thinking. The nostalgia on the institutions of the ancient Roman Empire lead even twice to attempts to political restauration, aiming to settle the republic. In the 12th century Arnold of Brescia, and in the 14th century Cola di Rienzo were those who wanted to realise this ; the latter may be known from the opera of Wagner.

The concept of *modernitas* is linked to reconsideration of its relationship with *antiquitas* during the whole Humanism. This is the reason why many people put the birth of modern state to the second half of the 14th century. Their argument is based on the liberator effect of the Humanism. In most of the cases they do not take into consideration that the base of their research can be defined not only by the emancipation from the medieval fixities but by the processes ongoing within the Church. The most extreme consequences of this are conceived by the reformation of Luther. It's not a coincidence that there are some people who make relation between the birth of the modern state and the events of Wittenberg of 1517. It's likely that Luther himself never wanted to be his activity to be analysed, nor to be mentioned<sup>20</sup>. He didn't make any coherent state theory<sup>21</sup>, moreover, he missed to analyse the relation of the dominant and his subjects, which was a very important question of state theory in his times. It's not doubtful that his activities touched both the sacral and political sphere which makes worth considering its analysis from a state theoretic point of view. Despite of all these we can think about linking the birth of the modern state to his activity.

<sup>12</sup> W. Gunkel, Ibid 1896. sk.

<sup>13</sup> W. Gunkel, Ibid 53-54.

<sup>14</sup> G. Busolt, *Griechische Staatskunde*. Erste Hälfte. München, 1970, 220

<sup>15</sup> W. Kunkel, Ibid 8.

<sup>16</sup> E.R. Curtius, *Europäische Literatur und lateinisches Mittelalter*. Bern-München, 1948, 259.

<sup>17</sup> See S. Skalweit, *Der moderne Staat*. Ein historischer Begriff und seine Problematik. Opladen, 1975, 6.

<sup>18</sup> Compare to S. Skalweit, Ibid 6-7, and E. Gössmann, *Antiqui and Moderni im Mittelalter*. Eine geschichtliche Standortbestimmung. München-Paderborn-Wien 1974.

<sup>19</sup> J.C. Bluntschli, Ibid 45.

<sup>20</sup> Compare to E. Von Zippel, *Geschichte der Staatsphilosophie*. Bd. II., Meisenheim am Glan, 21.

<sup>21</sup> Karl Müller, *Luthers Äusserungen über das Recht der bewaffneten Widerstand gegen den Kaiser*. München, 1915, 82.

One of the aspects is that his reforms were more restauational than revolutionary in the strict sense of the word. It's an understood thing that he wanted the Catholic Church to return to its religious roots and not to found a new Church. The problem was personal to him because he was searching for his own redemption. Sometimes in between 1512 and 1515 the well-known *Turmerlebniss* (*tower experience*) convinced him that the only way to this is exclusively in the faith and not in the obligatory exercises ordered by the Church<sup>22</sup>. The intention is rarely same as the consequence. But the consequences lead to the image's change of the Church and of the European politics. We have to admit that this historical fact limits the utility of the above mentioned argument. We have to also take into consideration that Luther contentious on a strong and conservative basis afront the borning basic economic institutions of the capitalist order. Joining to ancestors like Plato<sup>23</sup>, Aristotle<sup>24</sup>, he refused pulling interest<sup>25</sup>, which is one of the basis of the new economic order, and he set the evangel against the mammonism<sup>26</sup>, leaning this on a strong theological argument system. He was against the ascetism and also the economic radicalism or the extreme communitarist ambitions. Regarding his judgement to the proprietary which was quite biblical, but also he appreciated the Roman law. From a social, political aspect he was rather conservative than reformer.

His conservatism is emphasized in his conception of the state. He approaches it as a theologic and not as a philosophic or politician. In general he denies the counterpace law of the subject to his dominant. It's true that he does so with a couple of thought-provoking restrictments. One of them is that the opposition to the laical power needs to be based on a positive law of opposition, i.e. on a constitutional authorizational law. The other is that this does not behoves the subjects in general but only those who has already some kind of partial power. Its moral basis is founded by the amenability to God. In another saying the opposition comes into question if they broke the order of God and they do so as to reconstruct this order<sup>27</sup>. All of these are connected to the hierarchy of the laical lordship (*Obrigkeit*). Luther thinks that the primary laical power goes to the parents and that of the instructors or the conformability to the state are secondary because they are the instruments of the education to amenability regarding the parents<sup>28</sup>. The contexture is obviously based on the exegezis of the 4th commandment and gives its very rigorous explanation. After the second World War there were some people who accused Luther that his studies made the germandom to yield to the Nazism but this was based on strong biblical basis and it's a state conception that speaks about the amenability to God<sup>29</sup>.

Everything what Luther says about the state, the relation of the state power and of the individual is strongly linked to his theological point of view and it's rather its consequence than an indepenedent theory. As far as we know in 1519 the conflict of theology as sacred study (*scientia sacra*) and the philosophy as an opposition to the sciences of the mind has already appeared him to be problematic<sup>30</sup>. According to him the theology deals with enunciation de but by means of words and concepts. But these do not mean the equivalency of the 2 aspects. On the basis of Jn1, exegezis 14 Luther argues that the thesis 'The verb became body' (*Verbum incarnatus est*) contains a contradiction in a philosophical manner. On the other hand for the theology it's the deepest truth of Christian faith. It can seem for the first sight that Luther is on the side of a double truth in an epistemological way. It's another question that considering the consequences of this philosophical point of view caould be able to found a pure nominalism that has never been represented through the Middle Age, according to É. Gilson<sup>31</sup>. We have to add that nor did Luther himself because in a theological aspect he was largely influenced by W. Occam<sup>32</sup>. In point of the opposition between state and dominant it's a kind of duality as we see it in his theology. The laical and religious power are different from each other but this difference is not the reason of an equivalency. First of all we own obedience to God but we can only confront the laical dominant if his order would insult the howly orders of God and as a reaction to this, we, the members of the worldly hierarchy, have authorization to do so. We should admit that these are not perturbator or revolutionary thoughts at all.

<sup>22</sup> Oxford Dictionary of Christian Church (ed. F.L. Cross), London, 1974, 847

<sup>23</sup> Comapre to Plato, *Nomoi*, V, 742.

<sup>24</sup> Eth. Nich. III,1121b.

<sup>25</sup> H. Barge, *Luther und der Frühkapitalismus*. Gütersloh, 1953, 13 skk.

<sup>26</sup> H. Barge, *Ibid* 33 skk.

<sup>27</sup> K.F. Stolzenau, *Die Frage des Widerstandes gegen die Obrigkeit bei Luther*, Münster, 1962.

<sup>28</sup> K. D. Schmidt, *Luthers Staatsauffassung*. In *Gesammelte Aufsätze*. (hrsg. Manfred Jakobs). Göttingen, 1967, 162.

<sup>29</sup> See more details in *Luther und die Obrogkeit* (hrsg). Gunther Wolf, Darmstadt, 1972.

<sup>30</sup> Compare to M. Luthrer, *An libri philosophorum sint utiles aut inutiles ad tehologiam*. 6,28 skk

<sup>31</sup> É. Gilson, *Études philosophiques médiéval*. Paris, 1921, 68.

<sup>32</sup> B. Häglund, *Theologie und Philosophie bei Luther und in der occamistischen Tradition*. Lundt, 1955, 87 skk.

It's not only the primary source, the examination of Luther's judgement, makes it dubious that we put the birth of the modern state during the restauration, but also the social effects of this education. It's enough to have a look at the era of protestantism, right after Luther, to see that the orthodoxy, who so far had misgivings in connection with every change, takes the lead in no time. This change is in perfect harmony with the ongoing events in the European politics. These events between the mid of the 16th century and the first half of the 17th refer rather to conservative rigidity than to the birth of modern state. In the catholic Church there is a new order, the society of Jesus who comes into being, as a movement of the counter-reformation, and whose aim is to maintain the purity of education and the medieval hierarchy. The royal absolutism clobbers over the nobility after a long combat. All over Europe, except for Britain, the absolute monarchy is set whose basis is the ancient, dynastic, theocratical values. The monumental movement of the baroque displaces the human brightness of the renaissance. The entirety of the period, as Liebnitz writes in the last third of the 17<sup>th</sup> century, gives the impression that the world has entered in her old age<sup>33</sup>.

All of these facts refer to the fact we are at the moment of modern state's birth. Indeed : the *modernitas* does not have an ancient meaning, so it's not temporal but has a normative content in the 2<sup>nd</sup> half of the 17<sup>th</sup> century. One of the preconditions of its birth was the work of Christoph Cellarius, entitled *Historia universalis* which has been already almost forgotten, in which the author applies the antiquity – Middel Ages – Modern history triade as a general, historical explanatory principle<sup>34</sup>. This scheme gave birth to the need which wanted to oppose the ancient to the modern, this was the consequence of the growing secularisation. The ongoing process was facing some obstacles in the meantime. In this way in the French Encyclopedia of the 18<sup>th</sup> century modern architecture is the opposite of gothic, so the gage of modernity is given in accordance with the concept of ancient.<sup>35</sup>

The split from the ancient state ideal's normative force was more antinomic in the domain of the state theory. The first modern imperator was *Frederick the Great* (1712-1786) who was the example of the enlightened absolutist imperator. His thought was influenced by the materialist Lamettrie, author of *L'homme machine*. Frederick the Great implements the terminology of the French philosopher to the political language when he speaks about the actual state of European state body (*Staatkörper*). On the other hand he is influenced by the stoic philosophy, primary by Marcus Aurelius. This duality determines his regal faith. In his writing against Machiavelli, in accordance with the renaissance ancestor, he differentiates two types of imperators. The one is holding the states consigned to him on his shoulder as Atlas and who is responsible for the external and internal affairs, purposeful and has a strong will. The other is the primary slave of its state and subjects. His elemental aim is their prosperity. The imperator, connoisseur of the enlightened French authors, knows that these 2 ideals are not compatible, moreover, they exclude each other in the practical politics. For this reason as a political he realises the first and admits cordially that Machiavelli was right. And as a loyal student of the socists, he adds, unfortunatley.

The correspondence of Frederick the Great is interlaced by terminology based on the political re-explanation of French materialist anthropology. In his last will of 1752 he attempts the explain the politics as a system under the title 'Political dreamings' (*politische Träumereien*). Despite of this, in the theoretical meaning of the world, he does not reach the terminology of modern state. The consequence of this is a strange paradox : the modern state as a real embodiment came into being before the appellation 'modern state'. We cannot talk about the latter in case of German territories before the turning of the 18<sup>th</sup>-19<sup>th</sup> century. The theory was far away after the concept's creation. The reason of this in this case was not that the theory had to search for new terminology to describe the new phenomenon. Indeed, the process was adverse. The terminology of the second half of the 18<sup>th</sup> century is full of expressions which were more or less apt to describe this kind of new form of state which we can call modern. So the *corps politique* could compete with justice for primacy with *société civil* and *civil society*, and also with the *das gemeine Wesen*, which included the elements of *modernitas* and *civitas* in a modern way. In the European languages the concept of state (*Staat*) and all of its synonyms were used in the meaning of political order. Its primarity became evident against all the other concepts when the basis of research became the claim of the state's birth and not the description of the political system. In the history of political theories the most outstanding sign of this change was when the so called theories of contract disserting about the birth of the state became popular.

<sup>33</sup> Cited by J.C. Bluntschli, Ibid 55.

<sup>34</sup> J. Burckhardt, *Die Entstehung der modernen Jahrhundertrechnung*. Ursprung und Ausbildung einer historiografischen Technik von Flacius zu Ranke. Göttingen, 1971, 60 skk. See also S. Skalweit, Ibid 10.

<sup>35</sup> Compare to S. Skalweit, Ibid 11.

The slowness of the concept's creation can be explained by political factors. In the biggest part of the 18<sup>th</sup> century the political situation is predictable and stable. The royal monarchies by their simple being suggested some kind of dynastic continuity. The image of Europe was determined by this continuity and the dynamism, the latter required constant European foreign political agreement of interests, till the big French revolution. In a paradoxical way it the revolution did not make any changes in the terminology. The appellation modern state was not directly born from the revolutionists' expression. The radical change of social and constitutional order in the terminology appeared as an emphasise the discontinuity regarding the *ancien régime*. Everything destroyed by the revolution in a political and social point of view became the key term or trademark of *révolution*, in opposition with the *ancien régime*. After the revolution another decade had to pass that we could see appear the notion of modern state in the *Der geschlossene Handelstaat* (1800) of Fichte.

This chronological deviation between the birth of the revolution's notion and that of the modern state can be explained in more ways. The most evident is that the theory needed some time after the shock of the revolution to recover a bit and to have a chronological perspective to be able to break away from the medieval or antique notion of the state which was linked to sacrality. This explanation grabs only one aspect of the complicated birth of this expression. It's doubtless that *one* of the conditions of the modern state's birth was that the state concept became laical. But this process was realised in smaller parts. The possibility of reformule the antique republic state model failed in the 14<sup>th</sup> century at latest. The royal monarchies which determined the image of Europe in the 18th century used the sacrality as a principle of legitimation. The tendencies of the secularisation of this era gave birth to their counter-reformation. The political ideologies, think of Rousseau to Marx, to compensate the abdication of metaphysic transcendence, established a so called immanent, saving doctrine whose goal was to redempt the humans in this life. From this point of view the birth of the modern state's terminology didn't happen in a desacralised atmosphere but in a spirit of reexplaining the sacrality. The problem of sacrality is constant in the 18<sup>th</sup> century. It has a symbolical meaning that even the Jacobin dictature could not break away from the sacrality which gave them a certain type of security. They had to pay for denying the traditional god concept by inaugurating the notion of Être Suprême.

The tardivness of the terminology's birth is not due simply to this fact. The other part of the response is given by the *Handelstaat* of Fichte. For him the birth of modern state is evidently linked to the disintegration of the big state corps. As a consequence of this process certain states of Christian Europe are the more or less independent, rootless rests of the former unit<sup>36</sup>. In another words the birth of modern state is a desintegrational process in all. This process is passing in a spiritual-political medium where nobody thinks that the aim of the state is make its citizens happier, wealthier and more moral, this is clearly written in the very first chapter of the study. According to Fichte the birth of modern state is a consequence of decadence. We cannot clearly decide whether the hypothetic zero point was either the medieval empery, either the Roman Empire itself. It's evident that the decadence and its consequence, the thoughts of a needed renaissance are present before the appearance of his *Handelstaat*. The proof of this are his notes, taken in Rammenau in July 1788, whose title is *Zufällige Gedanken eines schlaflosen Nacht*. The young man's thought were determined mainly by Pestalozzi but they became more radical fast. After a couple fo years, in 1796, he develops a new, more radical concept of state in his *Grundlage des Nurrechts nach Prinzipien des Wissenschaftslehre*. After this important turning point he links the national and power principle in his *Machiavelli*. The *Handelstaat*, which is hardly cited when they talk about the birth of modern state, gives the descriptional part of the theory. This is completed by the *Staatslehre* in which he gives the normative, so ideal image of the state<sup>37</sup>. The description and the state utopia is strongly connected to the situation after the Great French Revolution.

We can tell the same if we talk about the early studies of Hegel which are more frequently mentioned. Probably he is the first in the history of political thinking who lives in the era of these important changes of state's notion. In opposition to Fichte Hegel is not emphasising the disintegration which lead to the modern state but the neutralisation of the state. In his explanation the state, either that of during the French revolution, either after, or even that of Prussia, is an existant which lost its philosophical essence and its original tasks are reduced simply to administration. As its central power is strong, it needs to apply the principle of representation. When he talks about this Hegel thinks to the representation of order than rather to

<sup>36</sup> J.G. Fichte, *Der geschlossenen Handelsstatt*. In *Sämtliche Werke* (hrsg. J.H. Fichte), Bd. III, Leipzig, nd. 451 sk.

<sup>37</sup> J.G. Fichte, *Staatslehre*. (hrsg. F. Medicus), Leipzig, 1912, 47.

the actual French practice. In a historio-philosophical point of view this principle of representation is the 3<sup>rd</sup> form of the world spirit (*Weltgeist*) with the oriental despotism and the system of the Roman Empire<sup>38</sup>.

We can see when Hegel thinks of modern states he means by this the leading states of Europe in the 17<sup>th</sup>-18<sup>th</sup> century. It's obvious that he talks about modern *states* and not about modern state in its abstract meaning. The concept used in singular form represent the political code-word of the early German constitutional movements, in the form of *modern constitutional state*. As a consequence of this the stationary modernity was directly linked to the concept of constitutional. The modern state distinguished itself from the other countries in this way. So the modern state as constitutional appeared as an individual type of state in the political publicist terminology. The use of the notion gained territory in the domain of the theory. Robert von Mohl developed with intensity the theory saying modern state = constitutional state. J. C. Bluntschli and also G. von Jelli in the beginning of the 20<sup>th</sup> century use this term in this restricted meaning.

The modern state as constitutional state taken as a notion of political sciences appeared to be needed clearly defined in a historical meaning. In this historiographical meaning we can define modern state the states created between the Middle Ages and Modern History. This seemingly simple recognition got a popular meaning relatively difficult. The reason for this was that the concept linked to the name of Leopold Ranke was strongly alive in Germany. This concept says that the modern state is a historical individuality. The epithet modern did not mean and could not mean more than a chronological definition. Modern is what is from this era. In the historical science of the 19<sup>th</sup> century Jakob Burckhardt was the first to use this term consciously to states of Modern history. This attempt has to be treated by precaution. The exploration of modern state is though the oeuvre of Burckhardt, but his explanations does not always constitute a coherent system. We have to treat his conception with restriction which is hardly mentioned in the domain of state theory but whose meaning is determining he considers the Italian city-states of the renaissance as an artifact (*Kunstwerk*)<sup>39</sup>. The renaissance city-state as an artifact is the method of realisation of the modern state for Burckhardt, although he sees that it's not the most successful form of it. The latter is the big state (*Grossstadt*) which was spread as a consequence of the political movements for the unification. The 'big state' does not differ simply by its dimensions from the city-state. Above all there are 2 tendencies: the first is about to maximalise the power, the second is the original uniformity.

The relation of modern, contemporary states and the states before the civil wars is observed by him coldly and without illusion. As for him the modern states suffer from a unique paradox which didn't exist before: from their birth they carry in themselves the heritage of the duality of revolution and dictatorship. This dual charge is the reason why Burckhardt talks about the permanent crisis of modern state and its concept from the mid of the 19<sup>th</sup> century. This statement was emphasized against the dominating contemporary scientific and political tendencies. The concept of modern state entered into a new era when the uniform nation state ideologies gathered round. The catalogue of the modern states' characteristics was fixed in a couple of decades. The most important of these is the notion of sovereignty. We can consider a conceptual characteristic of modern state the organised administration aiming to execute a stationary interests, the special qualified layer of experts and the legislation which cannot be controlled in its content. If somebody recognizes the ideal type if Max Weber in all of these, is not far from the truth<sup>40</sup>.

The crisis which has been mentioned by Burckhardt became evident during the 1<sup>st</sup> World War. Because of the enormous conflict, which has never been seen, the world started to fall fast into political units which had nothing in common with the image showing the national modern state. Neither the practical politics, nor the theory disposed the instruments able to solve this situation. The winner countries developed the ideal of the modern state, not by minor sacrifice. In spite of this in middle Europe, for example in Germany or in Austria-Hungary, the war buried the monarchies. In this situation the passing from the constitutional monarchy to the parliamentary monarchy was a very important point. It was not simply a temporary political transition but it was a question about how to treat the modernity of the state and the conditions of this modernity. In the domain of the theory Alfred Weber<sup>41</sup> and then Otto Hintze<sup>42</sup> diagnosed the crisis of the

<sup>38</sup> G.W.Fr. Hegel, *Die Verfassung Deutschlands*. In G.W.Fr. Hegel, *Werke in 20 Bänden*. Bd. I (Frühe Schriften). Frankfurt am Main, 1971, 533.

<sup>39</sup> J. Burckhardt, *Die Kultur der Renaissance in Italien*. Leipzig, 1929, 65.

<sup>40</sup> M. Weber, *Wirtschaft und Gesellschaft*. Tübingen, 1956, 501 sk.

<sup>41</sup> A. Weber, *Die Krise des modernen Staatsgedankens*. München, 1926.

<sup>42</sup> O. Hintze, *Wesen und Wandlung des modernen Staates*. In: *Staat und Verfassung*. Gesammelte Abhandlungen zur Allgemeinen Verfassungsgeschichte. (hrsg. G. Oesterreich), Göttingen, 1962, 470-496.

modern state. He created a scale of 3 sections, this model is the most popular method of describing the evolution of modern state.

This model wants to describe the development of modern state by analysing the state types relating to the era in question. His zero point is the late Middle Ages. The first section of modern state goes from this point to the mid of the 17<sup>th</sup> century and its name is the sovereign power state (*der souverän Machstaat*). The internal politics is described by the societies, the foreign politics by the confessional alliances. The 2<sup>nd</sup> section is the relatively closed commercial state (*relativ geschlossene Handelstaat*) whose basis is the civil-capitalist social and economical form. In this state of the evolution the modern state is defined by the economics. Its early era is the mercantile economic politics; its glorious era is the 19<sup>th</sup> century. Because of this the 2<sup>nd</sup> era is touching the 3<sup>rd</sup>, the liberal law the constitutional state (*der liberale Rechts-und Verfassungsstaat*). The 4<sup>th</sup> era is the national state (*der nationale Staat*) growing from the liberal government of laws which differs from the previous by its social structure and not by the privileges given to the individuals.

As we can see in the 2<sup>nd</sup> and 3<sup>rd</sup> evolutionary sections the change between the periods cannot be determined precisely. The different type of states touch each other, their functions are growing up from the previous'. For example the main characteristic of the 4<sup>th</sup> era, according to Hintze, is the conflict of their coexistence. Its main parameter is the coexistence of civil social order and national constitution<sup>43</sup>. When evaluating this concept we have to take into consideration the historical circumstances of the formation. His conference of 1913 searches for the resolution in the world of the Republic of Weimar, which was already politically incoherent and struggling issues regarding the national basic functions. If we adopt this point of view his observations are as precise as depressive. His model of 4 steps describing the evolution of modern state is a document pay-off against an illusion. Hintze sees clearly that the former main characteristics of the modern state faded or disappeared. The good example for this is the crisis of sovereignty in the Republic of Weimar after the sign of the peace-treaty, closing the world war of sovereignty. We can consider a special method of representation, unique for Weimar, when the parties among constitutional boundaries want to disable each other and in this way they do not let take important political decisions.

This made changes in the whole method of politics. The parties after the 1<sup>st</sup> World War cannot be considered the members of one national spirit. The direction of their actions is given by their opinion privileging a certain social layer so it's not about an entire nation's will. Because of this there are 2 parallel processes which complete each other. The first is the dissuasion of the traditional civil, individualist values. The second is the creation of groups of interest whose aim differ from each other's. The first does not let even conceptually that in the society a process of collectivism can be born, following the common interests. The second, because emphasising the different interests, goes against this collectivism.

It's easy to see that all this suggests the upgiving of the modern state's concept. This part of Hintze's conclusion is still valid despite of the long period of time which passed since. Moreover we see it more clearly than he could during the republic of Weimar that the 20<sup>th</sup> century's state concept turned from the ideal of the 'modern state'. In the 2<sup>nd</sup> half of the 20<sup>th</sup> century the modernity of a state depends on practical issues that did not exist in the time of Hintze when he described the types of modern state. This is the practical part of the problem. The situation is the same concerning the theory. It's well-known that the state theory approaches the forms of state by a reduction for 3 parts from Aristotle, Herodotus till Plato. The most well-known description of Aristotle differentiates 3 'good' types : *aristocracy, monarchy and politeia*. All of them has a corrupted version. This model could have been used in the antiquity to trace back the variegation of state types. In the 19<sup>th</sup> century this tripartite model was changed to a two-parted, based on the dichotomy of monarchy-non-monarchy.

The 20<sup>th</sup> century rewrote this model from the basics. After the 2<sup>nd</sup> World War its main principle of grouping became the difference between democracy and dictatorship. From a theoretical point of view this model is less homogeneous than the others. For its functioning we have to accept one tacit preconception. The democracy, as one possible type of power practicing, can only be a form of state if there is an equivalency between this and the constitutional monarchy. This theoretical preconception makes possible to differentiate more subdivisions in this category of democracy (parliamental democracy, presidential democracy,...). If we do so, there are some countries in the world that cannot be categorized following these

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<sup>43</sup> O. Hintze, Ibid 488 sk

conditions. For example the former Soviet Union (but the actual Russia is not a minor problem) should be considered, as its selfdefinition, a socialist democracy, which is dictatorial, moreover oligarchal.

On the other side of the scale, if we talk about constitutional monarchy, the definition needs to be clarified in this case also. The resolution if we consider the authoritic states as the opposite of the democratic gives just a partially response because it's obvious that we cannot consider as the same type of state that of Hitler, Stalin, or the Middle Ages, South-America. It seems that the variety of state types, that came into being after the 2<sup>nd</sup> World War, is resisting every attempt of categorization. We cannot fill with theoretical content the notion of 'modern state'. If we are not able to do this, we have another possibility. We can keep it as a nice, less useful and shabby ancientry of the occidental theory. But its consequence is that there are significant differences between our ideal of 'modern state' and the real life, experienced each day. It might be that we are diverging a notion, aforesaid considered as immortal?

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