

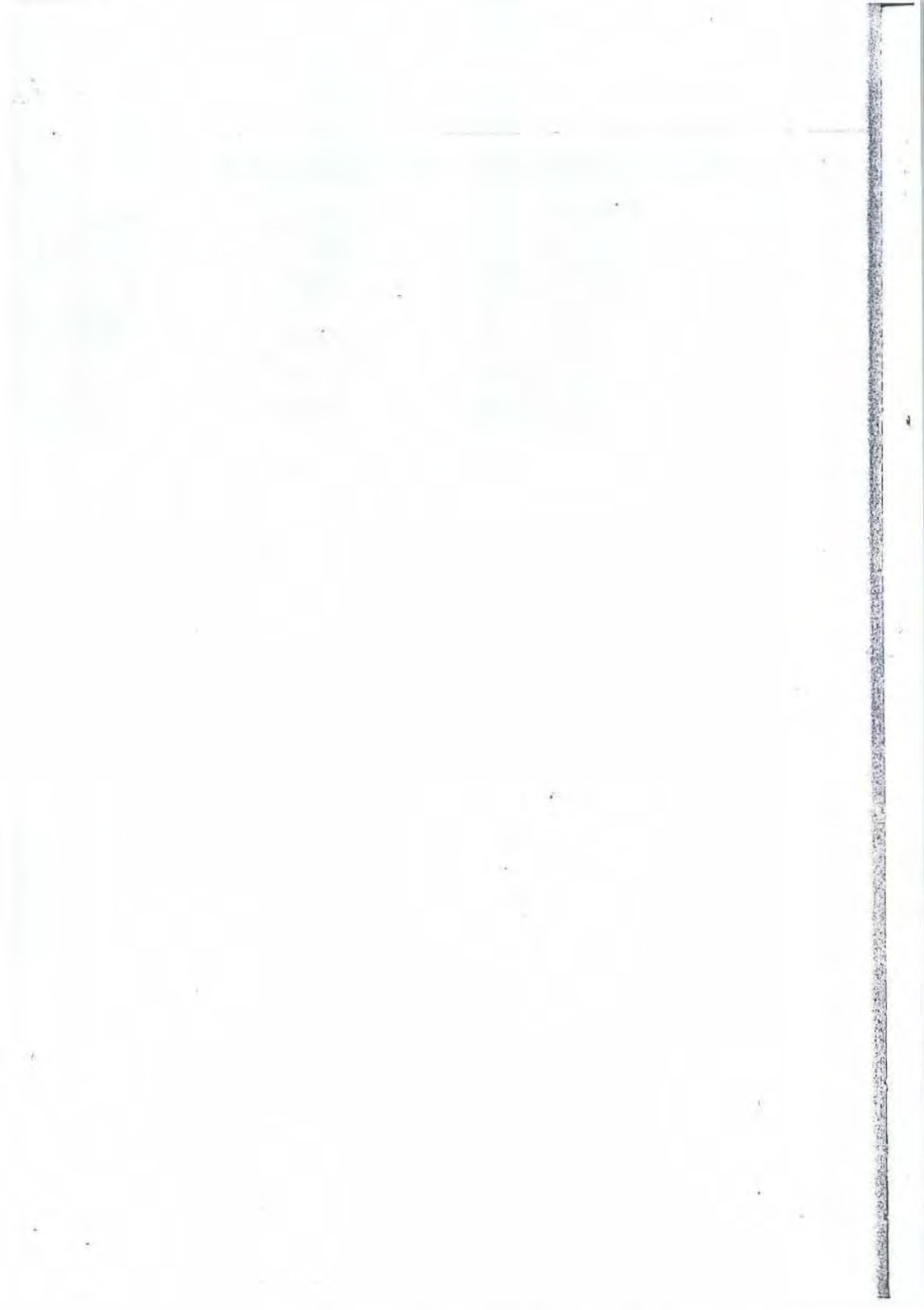


CHAIRMAN GONZALO

**ON THE BOURGEOIS-  
DEMOCRATIC STATE**



PROLETARIANS OF ALL COUNTRIES, UNITE!





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DEMOCRATIC STATE**

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Chairman Gonzalo

**On the Bourgeois-Democratic State**

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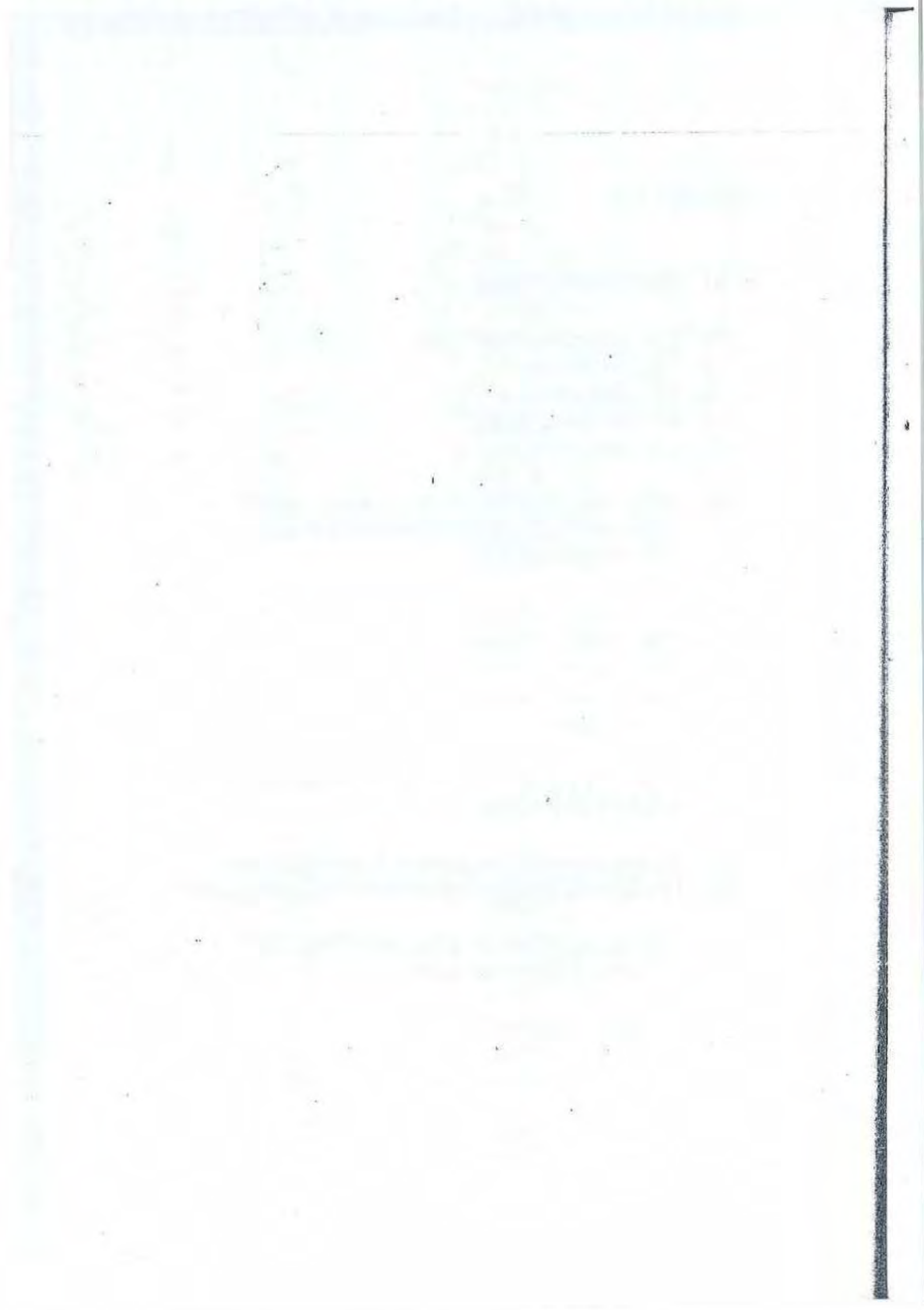


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## INTRODUCTION

Although the term State is a modern creation, corresponding to the precise idea that emerged from the social formations of the Renaissance and its embodiment is attributable, in fairness, to Machiavelli, we use it to refer to earlier state varieties, for the simple reason that it is the most felicitous term, in use, to allude to the total formation of politically organized society.

By outlining the evolution of the State, we seek to set the scene, to present a background to our work, so that the bourgeois democratic State stands out and takes on clearer contours, gaining, therefore, its structure in relief and precision.

### **a. The ancient eastern state.**

The ancient oriental organization, as well as the Greek and Roman, is based on slavery, but, nevertheless, it has peculiar characters that sharply separate the ancient oriental State from the Greek and Roman ones.

The ancient oriental state has been typified and typified since very far back as despotic and theocratic, taking into account the political organizations that existed among Egyptians, Jews, etc. This state form is described as despotic, because it was the closed predominance of a caste that oppressed and governed all the members of society;



concurrence of its members to the election... of the governmental organs, a possibility that did not exist in the ancient oriental states, which in Greek eyes made them despotic in the extreme and their citizens to be held in lesser esteem. Needless to say that the quality of citizen was enjoyed only by the members of the "polis", not by the foreigners (metics, these had some rights, especially commercial), nor by the natives (primitive pelasgians), much less by the slaves. The unitary and independent character of the Greek state is given on the basis of the "polis" (the city and its surroundings), which originates the Spartan, Athenian, etc. state. This unity implies an intimate link between the members of the collectivity because they come from common origins, which reveals the gentile character of these groupings rather than their reference to a territory (the full territorial element only appears in the Middle Ages); their unity indicates the indissoluble internal link, while their independence refers to their non-subjection to another State, to their capacity to regulate themselves according to their own designs. The ordering by laws brings us to one of the high conquests of evolution

The Hellenic people, as a protection of their equality and freedom, demanded and sustained their subjection and the regulation of their relations only by laws, laws that they themselves voted in a democratic exercise of the direct democracy that their small number allowed.

Finally, their statism and religiosity point, the former to the importance of the State, the collectivity, as opposed to the individual; it is beyond doubt that the Hellenic State had a great preeminence in relation to its components, as Ferbuson pointed out: "For the ancient Greeks or the Romans, the individual meant nothing and the public, everything", this without detriment to the individual rights that took off from the medieval wars, individual rights (not as we understand them), which clearly never reached to put the individual in opposition or even less above the public ones.



The second, the religiosity of the Greek State, highlights the work performed by religion within the State, as an element of cohesion and maintainer of rites and traditions<sup>2</sup>, which in no way contributes to the Greek religiosity, but to its character of political element, just remember that many of the trials for impiety had clear political motives, as the one against Aristotle shows; let us also say that religion never intended to compete, much less direct the State, but was simply an effective auxiliary of its purposes.

Having characterized the Greek State, let's deal with its two moments: The Doric and the Athenian. Of the first we have references through Plato and Aristotle (the Republic, the Laws and Politics), having to say that such versions are elaborated at a time when it is sought to save the traditional institutions, and by elements linked to them; this ancient form of the Greek State presents us as its paradigm the Spartan State, its characteristic note is the broad predominance over the individual whose personality disappears before the overwhelming importance and magnitude of the public. The individual is only such insofar as he is an element of the collectivity, and not insofar as he is an element of the public. The individual has more perspective than its submission to the state entity; the education is conceived, in this period, as the preparation in the virtue<sup>3</sup> and the duty of the citizen is the morality; virtue and morality, that one as preparation, training and this one as continent of the high aims of the collectivity<sup>4</sup>. The Doric form corresponds to the fundamentally agricultural organization of Greece at that time.

The new Greek state, the "Athenian" (Athens being its clearest exponent), arose with the triumph over the Persians. Greece began a period of expansion and

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<sup>2</sup> Cf. Morgan and Engels already cited.

<sup>3</sup> This term only alludes to virility, without any religious connotation.

<sup>4</sup> Cf. in Plutarch, Parallel Lives, Lycurgus.



advancement that culminated in the Golden Age; along with this came an exaltation of individuality that would take the form of sophistry, the Cynic school and Stoicism: individualism, cosmopolitanism and world kingdom, respectively. The citizen of the new State begins to demand and obtains a sphere of activity proper to the individual, the same that will be outside the State; he demands not only a participation in the election and management of the organizations of the polis, but also eagerly seeks his liberation and disposition of himself, to dedicate himself to enterprises that demand his participation; he wants to go beyond the limits of the agrarian economy and the narrow confines of his city. This current determines an extension of the private right recognized to the citizens, examples of this are: the testamentary right, that the limitations to the right of property are only police, that the taxes are considered as limiting the freedom and therefore they govern temporarily; in addition, the obligations can only be imposed to the citizen by the law. The satisfaction of the individualistic impulse was satisfied under the rule of Pericles.

Greece thus presents a unitary state, of organic and cultural unity, to whose government all citizens concur, in which its members are governed by the laws and the citizens enjoy a free sphere of action. Of course, we reiterate, all this applies only to the citizens, and foreigners, naturalized and slaves are excluded. They were the mainstay of Greek society, a democratic but slave-owning society.

To conclude, let us answer this question: is the sphere of free action enjoyed by Greek citizens the same as that of the rights of the modern State? No. The sphere of individual action among the Greeks was nothing more than a field within which the citizen could move freely, but the Greek political conception never came to conceive it as a set of primordial and inalienable rights of citizens, to whom it corresponds by their intrinsic nature as men; this way of



approaching the problem and its presentation is of bourgeois society, which naturally encloses and expresses a long and combative evolution.

### **c. The Roman State.**

What has been said to characterize the Hellenic State is applicable to the Roman State. This, too, is a unit of the highest development of the gentile plane, it did not develop on a complete territorial plane<sup>5</sup>; that is, the Roman State was not linked to a territorial thought as an integral part of its concept of State, the Roman citizens considered themselves as members of the

The "populus romanus", as the product of the development and growth of the Latin tribes, even in their territorial expansion, the rights over the subjugated peoples were held to be due to the Roman people, that is, to the citizenship of Rome.

The Roman State took to its highest level the relationship of the gentiles in the political organization; in it the polis is transformed into the "civitas", Rome. Likewise, in him will culminate the state unit with the capacity to dispose and regulate over its people; the "imperium" will appear, of which he invests his organs so that based on it they act in imperative authority; in Rome is where the concentration of powers in a single man exalted by the people, in whose name he exercises his functions, appears, then, the "princeps". The "imperium" and the "princeps" are the product of long political evolution and "wherever that States are created, the imperishable Roman idea of 'imperium' will be reborn to serve as a type of construction." (J. Jellinek, *ob. cit.* p. 257).

The strong figure of the "pater familias", with its wide

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<sup>5</sup> Greece and Rome initiate the territorial process of the State that will culminate in the Modern State.



powers in the Roman society, from the beginning made respect the authority of the individual in front of the state activity; this determined that in Rome a sharp differentiation between private and public law was operated. Roman private law, with its perfection and imposing nature, was the guardian of the sphere of action of the civil individuality of the citizen; such was the individualistic development of the Romans that it can be affirmed that in Rome the State was considered the protector and defender of the civil rights of its members, rather than the latter at the service of the former; and within this orientation it was held, long before the bourgeois ideologists, that the protection of property was the first mission of the State. But the

The establishment of this sphere of free civil citizen activity was also not reflected in the conception of an inalienable right connatural to human nature.

Citizenship, also as in Greece, was reduced to electing and being elected to the exercise of governmental functions; this concept was further concretized by conceiving the citizen as a subject of obligations and benefits vis-à-vis the State.

From what has been said, the Roman State presents itself with the same characteristics as the Greek State; and, besides being the generator of the "imperium" and the "princeps", it is the possessor of a wide and precisely delimited sphere of civil activity of its citizens; and as an organism subject, with greater rigor than the Greek, to the mandates of the law, supreme organizational instrument of the Roman society. This society, like the Greek, also had its foundation on slavery; but in the historical development of this great universal empire, oppressor and exploiter, slavery will show its expiration as an economic system of production; this, the violent intestine struggles and the pressure of the Germanic peoples will bring to the ground the decayed and creaking Roman Empire and with it the Ancient World.



## **ch. The Medieval State.**

The conformation of the medieval State is a process of slow shaping; produced the fall and dismemberment of the Roman Empire, the Germanic peoples begin the long structuring of their political organizations. The ancient world had as the center of its state organism, the city, which served as a cohesive nucleus and was the basis of the State; well, the victorious Germanic peoples lacked that element of grouping. This led to the strengthening of the Germanic kingship as a center of cohesion; without the establishment of this modality it would have been impossible to maintain the unity of the peoples, who were scattered across vast territories. The reinforced Germanic tradition thus gave rise to this sovereign kingship, which ruled over persons and estates; but these rights at birth were not unlimited in character, since alongside the royal power there was the people's court, and the supreme property residing in the king was opposed, in many circumstances, by intangible private property.

As times went by, feudalism and the growing cities operated as strongly disintegrating elements of the sovereign power of the monarch; the feudal lords ruled fully in their fiefs with independence from their lord the king, establishing their justice, their armed corps, their taxes and levies on their vassals, etc. The cities or burghs began, in turn, to buy privileges from their former lords by becoming independent, initiating communal government; this urban movement grew as commercial traffic expanded, increasing the wealth of its inhabitants. In these elements, the bourgeoisie, we find a body of society that will gain tremendous importance in history as it develops its forces, and in it we will have a revolutionary ferment that will insurgent vigorously in modern times. The feudal monarchy in this period is presented as a pyramidal organization: at



the top the king, below him the barons and supporting them his vassals.

From the 13th century onwards, what has come to be known as the Estates State became firmly structured. The ancient state showed a strongly connected unity, while the medieval state appeared to be

In the Middle Ages different hierarchies were structured: royalty, aristocracy or great nobility, clergy, small territorial nobility and bourgeoisie, in addition to the popular masses who bore the brunt of the prevailing economic system. This hierarchical distribution presents medieval society as a conglomerate of groups of excluding interests and deniers of a solid and necessary unity; this situation determines the formation of the estate State. The concentrations or arms of the estates were the meetings of the estates of the high nobility, low nobility, clergy and bourgeoisie of the cities; the peasants and people of the cities were marginalized from them, lacking in any political value. Such estates entered into sworn pacts among themselves, as well as with the princes, their lords or with foreign lords; their "pacts with the prince of the country affected the guarantee of privileges, limitations of the prince's power, and often even the right of armed resistance" (C. Schmitt, *Teoría de la Constitución*, Ed. Nacional, Mexico 1952, p. 51). An example of these covenants is the Magna Carta of 1215, or *Carta Baronum* or *Carta Libertatum*. The estates determined the opposition "Rex-regnum", replacing the previous king-people.

Another of the problems faced by the medieval State is its struggle with the Church; this one encouraging pretensions of universal lordship tries to submit the monarchies to its dictates and dreams of dominion, phenomenon intensified in centuries XI to XIII. The monarchies are forced to fight against the Church in defense of their privileges (think of the wars and struggles between the Pope and the Emperor); it is possible for the monarchy to



triumph over the Church when it has on its side the estates that support it in its struggle to impose civil government on the pontifical temporal claims. A practical lesson for the royalty in this struggle was its aspiration to unification as presented by the Church, because of the advantages that such unity implied; although, of course, the unity of the Papacy does not imply the non-existence of internal struggles<sup>6</sup>.

Only the Italian cities, those with flourishing commerce, did not suffer from medieval monarchism, they developed a government similar to that of the Greek polis, organization within the city and its surrounding territories; these cities will lay the foundations of the government of the modern state.

#### **d. The modern state.**

The medieval state was based on feudalism (the productive relationship between lord and serf); its economic foundation was agricultural labor and the incipient bourgeoisie based on trade and craft industry. The modern state will rise on the mercantile system, first, and then on industry, and will have as its main protagonist the bourgeoisie aided by the peasantry and the insurgent proletariat. The history of these times will be marked by bloody struggles: the peasant wars, the revolutions in England in the seventeenth century, and the great French Revolution, where the bourgeoisie culminates its task, the wars of independence, etc.; and finally, the appearance of workers' struggles, the "luddites" and the printing technicians, in England and France, respectively. Modern times will thus be periods of great struggles and upheavals that will set new directions for humanity.

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<sup>6</sup> Franciscans, Cathars, etc.; Cf. Max Beer, General History of Socialism and Social Struggles; 2nd part chaps. III, IV and V.



The modern State can be characterized as the constitutional organization of the State, recognizing rights to individuals and limiting the activity of the State. Within this framework we can establish three stages: The absolute state, the bourgeois democratic state and the rule of law. The first as an absolute will that recognizes no limits above it; it is the stage of unification, of the struggle waged by the monarchy, aided and supported by the bourgeoisie, against the feudal lords that will culminate with their defeat. The bourgeoisie supported the king because it needed the centralization of power to overthrow the feudal obstacles that made it impossible or extremely difficult for it to obtain the transit it required (tolls, tolls, dams, internal tariffs, etc.); this was the period when the great monarchical houses appeared: Bourbons, Hapsburgs, etc. The unification of this period determines the regularization of the justice system, the appearance of the

The battle of the kings against the great lords, on the other hand, produced a tendency towards equality. At the same time, the battle between king and estates was waged at this time, especially in England, which would eventually result in the latter becoming part of the modern state.

The bourgeois democratic state is the process corresponding to the triumphant bourgeoisie, in which the bourgeois no longer only support the monarch, but feel strong enough to capture the state (revolutions in England and France); armed with natural law and having developed the theory of the sovereignty of the people and the rights of man, they begin the assault on the absolutist state, overthrowing it and behind it a large part of the feudal system. This stage is that of the recognition of man as the subject of primordial rights and of the limitation of the State. We will deal with it in parts I and II.

Finally, the rule of law is the stage of the threatened bourgeoisie; the proletariat emerges as a new pugnacious force and the bourgeois state begins to crack. The



individual, the vital fulcrum of the modern state, seeks refuge in the rule of law<sup>7</sup>; this can be understood, following its evolution, as follows: as the maintenance of objective law and the recognition of existing subjective rights, that is, the maintenance of the "status quo"; then, as the rule of the established legal order, this being understood as respect for freedom and bourgeois property; later we speak of the "organic criteria", that is, the pursuit of and respect for the established channels, by their hierarchical order, for the solution of social problems; and finally, we arrive at the State of Justice, that is, the enthronement of justice as the weighting and cure of conflicts, in this last instance the Judiciary becomes highly relevant and socially important.

The above is sufficient for this introductory sketch of our subject.

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<sup>7</sup> Cf. C. Schmitt, *ob. cit.*, Sec II, para. 12.



## I. HISTORICAL-SOCIOLOGICAL EVOLUTION OF THE BOURGEOIS-DEMOCRATIC STATES

This second part will discuss the historical-sociological evolution of our subject, for this purpose we will make an economic outline of the XV to XVIII centuries, as well as the most notable revolutionary movements that culminated with the triumph of the principles of the bourgeoisie.

### **a. Economic scheme of the XV to XVIII centuries.**

1. Trade. Commerce, during the Middle Ages had been developing and growing to the impulse of the increase of the production and interchange between the different peoples, reaches in the modern Europe great volume and will be the source of great fortunes and interstate fights. Foreign trade, which had taken off in the spice trade of the East Indies, will increase even more with the discovery and conquest of the West Indies. The nations initiated a maritime policy, England (Act of Navigation, 1651) and France dictated dispositions tending to favor the navy: imported products would only be carried by national ships or by those of the exporting country, premiums per ton of each ship built in the country or acquired, orphans were destined to cabin boys, and charts were drawn up. With these measures the merchant fleets are strengthened and they



will travel the seas loaded with silks, fabrics, grains, cereals, leather, coffee, tobacco, sugar, in addition to great quantities of precious metals; the ports (London, Bristol, Marseilles, Seville, etc.) will become populous and opulent cities. It is clear that this great navigation will cause the resurgence of maritime plundering: pirates, filibusters, corsairs who above all plunder Spain; but against this evil will arise the convoys guarded by warships. Parallel to the great foreign trade, the navy of war will increase, as protection of the colonial empires. The colonies conquered in tenacious fight will be the deposits of raw materials and precious metals for the traffic, at the same time as markets for the sale of the manufactures.

Of importance for foreign trade, especially for the trade and exploitation of the colonies, are the "Companies", the East and West Indies, the Northern, Levantine, etc., which are created by nations, companies that enjoy privileges and monopolies, and which will play an important role in history.

Internal commerce also became more vigorous. Waterways were opened, roads were maintained and new ones were built, communication channels were constructed, etc., all aimed at facilitating internal traffic between the different cities of the same or different States. The feudal rights of toll, pontazgo, internal customs barriers, etc., are liquidated, leading to the establishment of free transit within the States. In the internal trade it is interesting to note the decline of the hawkers and the fairs, emerging the traveler who only carries samples of his products and carries out his transactions based on them, entrusting the merchandise to a transport agent.

Other measures beneficial to trade were post offices, the unification of weights and measures, and exchange houses such as the Stock Exchange, established by Thomas Gresham in 1566.

2. Industry. Modern times mark the expiration of the



medieval corporations, the productive system of masters, officers and apprentices will march to its death; it will no longer be possible to supply the demand of commerce that demands a greater production for traffic and enrichment. In the face of the corporations, manufacturing will arise as a new productive system, dedicated to the production in quantity for the commercial supply; the commodity thus emerges as the economic form of the new growing world. Measures will still be dictated to protect the rights of the medieval masters, but the thrust of the new emerging relationship will exceed those provisions; the merchant in need of goods will deliver raw materials to the peasants, so that these in their leisure time will work them, providing a subsidiary income to their weak economies. This phenomenon determines a displacement towards suburban areas closer to the new labor force, and at the same time a distance from the cities.

where the provisions in favor of corporations are most drastically applied<sup>8</sup>.

Thus the manufacturing industry was strengthened in the different European countries, especially the most advanced ones, England and France<sup>9</sup>, which would experience a great increase with the entry of capital brought by the Jews expelled from Spain and Portugal, as well as by the immigration of technical workers, textiles, glassmakers, metallurgists, etc. who fled from Flanders, Normandy or Florence<sup>10</sup>. On the other hand, countries dictate

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<sup>8</sup> In England at the end of the 17th century, four-fifths of the population lived in suburban areas or in the countryside.

<sup>9</sup> The Netherlands had already overcome this stage, remember that their revolution took place in the 16th century, but the Spanish tercios of the Duke of Alba fell upon them, sowing destruction and death.

<sup>10</sup> Between 1561 and 1571 thirty thousand fullers and weavers, and in 1651 4500 lancers from Flanders and Normandy, respectively, went to England. Cf. G. Renard and G. Teulerse, *Economic History of*



protectionist measures to protect their industry, establish prohibitions on the export of raw materials such as wool, or tax imported products; when they facilitate trade it is because they enjoy reciprocal benefits. The struggle in this sense is cruder between France and England, but there is always room for exchange and smuggling flourishes, there being cities that are meeting places for rivals, such as Amsterdam.

The main manufacturing products were textiles, wool or cotton, silk, glassware, metalwork and metalwork, although these were still incipient; the most important of these were cloths and fabrics in general and special care was given to them.

Up to this point, production was mainly by hand, but machines emerged, using first wind power and then water power, expanded production tremendously<sup>11</sup>. The use of hard coal, together with the utilization of coal, will drive the iron and steel industry, generating the great industrial march of capitalism.

3. Agriculture. Agriculture was the foundation of medieval agriculture, but in modern times its importance began to diminish, although not completely, thus we have that even in 1787 the agricultural production of France exceeded in a quarter to the manufacturing one, but including in that one the agricultural products of re-export brought from the colonies (sugar, coffee, tobacco). Modern agriculture had two fundamental fields, the production of cereals and pastures; both were the object of governmental measures, the latter in relation to land. At the beginning, cereals were exported and their export was even rewarded, but when the population increased, the law strictly prohibited it; pastures were of interest for the breeding of cattle, especially sheep, since from them derived the possibility of

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Modern Europe, chapter III.

<sup>11</sup> Discoveries of Arkwright, Cartwright, Watt, etc.



textile manufactures; the fields dedicated to pasture expanded so much that they became a real danger for the popular feeding, at the same time as a source of peasant unemployment.

A process of great importance in agriculture is the enclosure of fields. Faced with the possibility that foreign cattle, in accordance with ancient rights, would graze on their own land, which could even spoil the plantations of those who were behind or ahead of them, fencing was presented as a solution to the problem<sup>12</sup>. The settlers had long had rights to use lands that belonged to the community, but the need to increase the pastures or expand the lands they owned led the larger landowners to demand the distribution of those lands, resulting in a partition to the detriment of the peasants. The disadvantaged opted, under pressure of necessity or of the economically stronger, to cede their rights, producing a great concentration of land in the hands of the aristocratic landowners or the bourgeois investors of their commercial profits (gentlemen-farmers, from England).

4. The classes and their situation. In the city, the wealthy class was represented by the great merchants and manufacturers, among whom the nobility had been grafted, especially the English; this wealthy class was the direct beneficiary of the economic development we have outlined, their manufactures and businesses yielded great income and led to tremendous opulence. Parallel to the increase of their fortunes and the squandering of their daily life, their political importance grows; this caste whose hands hold the finances and the banking will solve, for example economically, the reign of William of Orange. This arrogant monetary aristocracy will rival the aristocracy of blood, which will end up submitting.

In the face of this class, the small bosses, who in their

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<sup>12</sup> At the heart of the issue is a problem of agricultural property.



workshops developed a restricted manufacturing and were able to survive as long as manufacturing did not become more complex and manicured, stood up; once the machines appeared, it was impossible for them to keep up with the rhythm demanded by the new modality, they were forced to receive machines for high rents that would reduce them economically and would end up subjecting them to the growing industry, thus becoming wage earners.

Finally, the workers, a creation of modern times, wage earners who rely solely on their labor power as a means of subsistence. The workers are subject to the variations of the demand and supply of arms, as much as to the wage norms that try to stop the rise of wages (consequence of the political insufficiency of the bourgeoisie), as to the determining influences of the rise of prices. This incipient proletariat from very early on began the struggle to improve its condition, there we have in 1539 the typographers of Lyon on strike for better food, more freedom in their occupation and limitation of apprentices, even clashing with the police forces; or the strike of the typographers of Paris, or the movements of the English "luddites". In order to avoid these conflicts, measures were dictated; in England the justices of the peace were ordered to attend to the wage claims and provide their solution; or edicts were dictated prohibiting association; thus in France in 1776 it was forbidden for "all teachers, officers, workers and apprentices to form any assembly or association among themselves". But this class is already formed and initiates its struggle, being recognized by Turgot, who defines it as: "this class of men who, having no other property than their labor and industry, have all the more the need and the right to employ to the fullest extent the only resources they have to subsist" (Quoted by Renard and Teulerse, *ob. cit.*, Ed. Argos, 1949, p. 447).

In the countryside, the large estates are in the hands of



the nobility and the bourgeoisie who have appropriated land, extending their influence to the countryside. This bourgeois influx and the return of the nobles to the countryside (18th century) determined a better exploitation of the land, through rotational plantations, systematic fertilization and the application of agronomic principles; at the same time, the improvement of livestock through cross-breeding and selection began.

In front of these great lords of the land there are the small proprietors and tenants; of these the former suffer a process similar to that of the small proprietors, and of the latter only the great tenants benefit to the detriment of the minors, who, like the small proprietors, go to the city or become peasants. The peasantry, since feudalism, has been bearing heavy burdens (tributes and personal benefits) that are aggravated by taxes without having abolished them; the peasant masses have been fighting since ancient times (the peasant and French struggles of the XIV century, those of Germany in the XVI century<sup>13</sup>), and we will see them fighting even in the French Revolution, since the countryside is where the outdated feudal systems were maintained the most.

## **b. The English revolution.**

The seventeenth century is the century of the bourgeois revolution in England; this revolutionary process is the sharpening of a long-developed struggle in English society, in which forces and ideologies struggle, culminating in the agreement between bourgeois and nobles embodied in the Bill of Rights of 1688, and reaffirmed in the Act of Establishment of 1701.

### **1. Political forces and their ideology. Seventeenth**

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<sup>13</sup> Cf. Max Beer, *ob. cit.*, Part 3, and F. Engels, *The Peasants' War in Germany*.



century England presents us with three conflicting groups. The nobility nucleated around the king defends the absolutist monarchy, invoking for it the divine right of the kings, responsible only before the divinity and in no way before the people; this group gathered the landed nobility of old feudal roots. Its ideologue was Robert Filmer, who defended the monarchy by invoking the "patriarchal" right of the king. Hobbes (*Leviathan*) did not appeal to divine right to defend absolutism, on the contrary, his foundations were materialistic, although mechanistic, and contrary to religion, which determined his persecution by the monarchists. We can say that Hobbes' thought, insofar as it is based on "human nature" and seeks a rational explanation of social phenomena, was in the bourgeois trend, but insofar as it defends absolutism it adopts a reactionary position, protecting modalities that the new social demands exceeded.

The bourgeoisie and its ally the new nobility had their interests represented by the "independents"; these expressed their ideology wrapped in religious garb, taking Puritanism as the religion that imposed savings, moderation and punctuality, virtues very necessary for bourgeois development; they demanded a national Church, as well as freedom of worship, so contrary to absolutism and the Papacy. The religious postulates presented by these revolutions clearly show the influence of religion in the social life that fought against feudalism and its ally Catholicism<sup>14</sup>.

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<sup>14</sup> The religious influence is more noticeable in the peasant movements, as Engels points out, *Ob. cit.* For proof of this, it suffices to transcribe articles 3 and 12 of the program of demands of the German peasant revolutions of 1525: "3. However, Christ has saved and redeemed us at the cost of his precious blood, shed for all, without any exception, the same for the noble lord. We are born free, according to the teaching given us in Sacred Scripture. Let us be free, then, without pretending to be totally free and without rejecting all authority,



The poet Milton was one of the most conspicuous representatives of the "independents". He argued that all men are born equal and that the government was constituted by popular agreement in order to safeguard their rights from possible attacks; thus, power resided in the sovereign people, delegating it to the authorities for their own convenience, therefore the real power rested on a contract between people and sovereign. For Milton, moreover, the people in delegating their sovereignty reserved the right to remove monarchs who abandoned or flouted the contractual clauses of their authority, recognizing the right of rebellion; he justified in this way the sentence and execution of Charles I. Milton, suspicious of the popular classes, supported the establishment of the census vote, being a supporter, like Cromwell, of the monarchy to contain the insurgent forces.

Finally, the petty bourgeoisie and the peasants were grouped in the "levelers". These formed the most extreme branch of the social demands of those times; their most acute expression was in the "diggers" (diggers), who through the mouth of their ideologist, Gerardo Winstanley, demanded the abolition of property as a source of great calamities, and also clamored for the liquidation of all forms of power, such as the dominion of some men over others. This movement clearly expressed the precarious and very difficult situation endured by the peasants and the popular masses of the city; this ideology has intimate similarities with that represented by Babeuf in the French Revolution. Winstanley wrote, in *New Law of Justice*: "No

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whatever it may be." "12. Conclusion: Our twelfth article contains our conclusion. If one or more of the above articles are not found to be in conformity with the word of God, we will willingly agree to withdraw those which have been shown to be in disagreement with that word, provided that the demonstration is made to us by means of Scripture."



one should have more land than he can cultivate alone or than he works in love and harmony with others eating the common bread... without paying or receiving remuneration". "Let everyone delight in the fruits of his hands and eat his own bread made by the sweat of his brow" (History of Political Ideas, Academy of Sciences of the USSR, Ed. Carthage, 1959, pp. 196-97). These ideas were embraced by the soldiers of the revolutionary army, as opposed to the officer corps addicted to pro-independence ideas.

The disputes and struggles of these groups ended with the triumph of the alliance of the bourgeoisie and the nobility in the revolution of 1688, whose ideologist was J. Locke. Locke upheld the liberty and equality of man's nature prior to all association, liberty alienated by contract to support natural rights, among which he pointed out property; the sovereignty of the people, since it is declined in the sovereign, with the people retaining the right of rebellion (justifying the deposition of James II). He also maintains the separation of powers: legislative, executive and federal, the latter in charge of foreign relations; of the three, the fundamental one is the legislative, lord of the other two and in which there was the concurrence of nobles and bourgeois in the government, since the executive remained for the nobility and the federal subject to the king with limitations "war, peace, etc.". The influence of the monarch in the three powers served Locke, finally, to sustain the constitutional monarchy, which in turn presents a barrier to popular attacks.

Background, England presented us with the oldest political text in force, the Magna Carta of Henry III, dated February 11, 1225. It is the definitive confirmation of the Magna Carta that John without Land swore in 1215, and from whose oath Innocent IX had it detached; both are estates pacts, that is, agreements on privileges and limitations established between the king and the barons, remember that the charter of 1215 is called "Carta Baronum". To



emphasize this character, let us transcribe Art. 1 of the document of 1225:

"1. FIRST, THAT WE HAVE GRANTED TO GOD, and by this present charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired. That we wish this so to be observed, appears from the fact that of our own free will, before the outbreak of the present dispute between us and our barons, we granted and confirmed by charter the freedom of the Church's elections - a right reckoned to be of the greatest necessity and importance to it - and caused this to be confirmed by Pope Innocent III. This freedom we shall observe ourselves, and desire to be observed in good faith by our heirs in perpetuity."<sup>15</sup>

Then follow devices on land seizures, London and other city and borough charters, on fines, unification of weights and measures, and the oldest formulation of the principle of "nullum crimen, nulla poena sine lege", set forth in art. 39: "No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land." Note that this letter is for "free men".

Later, at the end of the 13th century, the Statute of "Tallagio non concedendo" of 1297, under the reign of Edward I, whose first articles are fundamental:

"Article 1. No tax shall be levied or collected by us or by our heirs in our kingdom, without having obtained the consent of the archbishops, bishops, counts, barons, knights, people and other men of the country.

"Article 2. None of our employed, nor our heirs may demand wheat, wool, hides, cattle or any other thing without

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<sup>15</sup> Leyes Constitucionales, Taurus Ediciones, 1959.



the consent of those to whom they belong.

“Article 3. No portion of the wool sacks shall be taken out as a new contribution.

“Article 4. We guarantee, in our own name and in that of our heirs, that all ecclesiastical or secular persons in our kingdom shall enjoy their laws, liberties and franchises as fully and completely as heretofore, in the times when they have enjoyed them most extensively; and if We or our predecessors have enacted statute or established customs contrary to their rights, we want them to be null and void from now on”. (C. Sánchez V., *ob. cit.*, pp. 382”3).

From that time on, the struggle between the king and the barons began, which over the years would become the monarchy-parliament counterpoint. In 1628 a Petition of Rights was presented to Charles I, in which violations of the enunciated Charters were denounced, asking the king to put a stop to these excesses, the discussion that arose was not definitive and left in suspense the problems of taxation and the sovereignty of Parliament; in 1637 the situation worsened as a result of the tax on ships, and with the union between bourgeois and rural nobles the revolution was promoted, 1638-40.

In 1646, the Long Parliament fell and the following year “An Agreement of the people” was drafted, a popular constituent act which purpose is to draft a constitution for the country. In 1649, Charles I was executed and the government was officially assumed by Parliament, but in reality by Cromwell. This same year the army that supports the revolution drafts the “Instrument of Government”. This document, which can be considered the first known written constitution, was promulgated in 1653, but it was not implemented; its importance consists in establishing representative, republican and democratic government, individual rights, state limits and the responsibility of officials. Let us look at some of its provisions:

“That as well the next as all other successive



Parliaments, shall be summoned and elected in manner hereafter expressed...

“That the Lord Protector, the Parliament sitting, shall dispose and order the militia and forces, both by sea and land, for the peace and good of the three nations, by consent of Parliament; and that the Lord Protector, with the advice and consent of the major part of the council, shall dispose and order the militia for the ends aforesaid in the intervals of Parliament.

“That as well the next as all other successive Parliaments shall be summoned and elected in manner hereafter expressed; that is to say, the persons to be chosen within England, Wales, the Isles of Jersey, Guernsey, and the town of Berwick-upon-Tweed, to sit and serve in Parliament, shall be, and not exceed, the number of four hundred. The persons to be chosen within Scotland, to sit and serve in Parliament, shall be, and not exceed, the number of thirty; and the persons to be chosen to sit in Parliament for Ireland shall be, and not exceed, the number of thirty.

“That all and every person and persons, who have aided, advised, assisted, or abetted in any war against the Parliament, since the first day of January, 1641 (unless they have been since in the service of the Parliament, and given signal testimony of their good affection thereunto) shall be disabled and incapable to be elected, or to give any vote in the election of any members to serve in the next Parliament...” (C. Sánchez V., *ob.cit.*, pp. 388-93).

In this document we find, evidently, many principles that will become an integral part of modern constitutions.

In 1660 the Stuarts returned, with Charles II decreeing amnesty for the revolutionaries; the Gentleman's Parliament began (18 years of duration) followed by another three years; during this period the following years were given the Habeas Corpus Act, 1679, this guarantee was already invoked to Charles I in 1628, as an ancient conquest, but it was not until the need to set it down in writing, to



which the latter responded, constituting an authentic conquest of the evolution of political law.

3." The revolution of 1688." The internal dissensions of the triumphant revolution of 1688 "rural knights, bourgeoisie and petty bourgeoisie: independent and levelers", determined the return of Charles II; he was followed by James II, whose absolutist desires gave the expected opportunity for the bourgeoisie to seize power. The king wanted to subjugate the nobility (especially the rural "squires"); the latter made a solid front with the bourgeoisie and they made the coup that brought down James II and enthroned William of Orange, promoting a constitutional monarchy. This noble-bourgeois movement definitively consolidated its class empire, to the exclusion of the popular masses, shaping the:

#### Bill of Rights (Bill of rights, 13/2/1689)

"Whereas the Lords Spirituall and Temporall and Comons assembled at Westminster lawfully fully and freely representing all the Estates of the People of this Realme did upon the thirteenth day of February in the yeare of our Lord one thousand six hundred eighty eight present unto their Majesties then called and known by the Names and Stile of William and Mary Prince and Princesse of Orange being present in their proper Persons a certaine Declaration in Writeing made by the said Lords and Comons in the Words following viz

(Continuation of James II's grievances and abdication)

"And thereupon the said Lords Spirituall and Temporall and Commons pursuant to their respective Letters and Elections being now assembled in a full and free Representative of this Nation takeing into their most serious Consideration the best meanes for attaining the Ends aforesaid Doe in the first place (as their Auncestors in like Case have usually done) for the Vindicating and Asserting



their auntient Rights and Liberties, Declare

“Dispensing Power. That the pretended Power of Suspending of Laws or the Execution of Laws by Regall Authority without Consent of Parlyament is illegall.

“Late dispensing Power. That the pretended Power of Dispensing with Laws or the Execution of Laws by Regall Authoritie as it hath beene assumed and exercised of late is illegall.

“Ecclesiastical Courts illegal. That the Commission for erecting the late Court of Commissioners for Ecclesiasticall Causes and all other Commissions and Courts of like nature are Illegall and Pernicious.

“Levyng Money. That levyng Money for or to the Use of the Crowne by pretence of Prerogative without Grant of Parlyament for longer time or in other manner then the same is or shall be granted is Illegall.

“Right to petition. That it is the Right of the Subjects to petition the King and all Commitments and Prosecutions for such Petitioning are Illegall.

“Standing Army. That the raising or keeping a standing Army within the Kingdome in time of Peace unlesse it be with Consent of Parlyament is against Law.

“Subjects’ Arms. That the Subjects which are Protestants may have Arms for their Defence suitable to their Conditions and as allowed by Law.

“Freedom of Election. That Election of Members of Parlyament ought to be free.

“Freedom of Speech.

That the Freedome of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament.

“Excessive Bail. That excessive Baile ought not to be required nor excessive Fines imposed nor cruell and unusuall Punishments inflicted.

“Juries. That Jurors ought to be duely impannelled and returned...



“Grants of Forfeitures. That all Grants and Promises of Fines and Forfeitures of particular persons before Conviction are illegal and void.

“Frequent Parliaments. And that for Redresse of all Grievances and for the amending strengthening and preserveing of the Lawes Parlyaments ought to be held frequently.

“And they doe Claime Demand and Insist upon all and singular the Premises as their undoubted Rights and Liberties and that noe Declarations Judgements Doeings or Proceedings to the Prejudice of the People in any of the said Premisses ought in any wise to be drawne hereafter into Consequence or Example.”.

(Succession considerations, etc., follow).

Subsequently, on June 12, 1701, the Act of Establishment was given, in which the succession was fixed and the rights of the English people were sworn, consolidating the bourgeois conquests. With the drawing up of these two documents the English revolutionary process of the 17th century came to an end, they were the starting point for the growth and rise of England; a system that established the noble-bourgeois peculiarities of the English constitutional monarchy, and to which the conservative movements of the island resorted as their vital source in their eagerness to contain the new insurgent forces of the workers' movements.

### **c. The American revolution.**

1. Background and situation of the United States before the revolution. The colonies. In the seventeenth and eighteenth centuries, the great internal discords that shook England, strong economic confrontations and bloody religious struggles, impelled many Englishmen to emigrate to America, seeking in these lands new and easier perspectives for their lives. Thus, the different North American



colonies were formed, with people eager for peace and freedom and willing to tame an unknown world. These colonies are formed and organized on advanced principles: "In 1641, the general assembly of the settlers of the uncultivated island which still bears the Indian name of Aquidneck, adopts the following resolution: 'It is unanimously resolved and agreed that the government which this body politic constitutes, to the glory of our prince, on this island and the jurisdiction dependent thereon, is a democracy or popular government; that is to say, that to the assembly of citizens regularly assembled, or to the majority of them, belongs the power of making and instituting the laws to which they shall be subject, as, also of electing from among these the magistrates who shall have the task of seeing that they are equitably applied to all without distinction'" (quoted by C. Sánchez V., *ob. cit.*, p. 465); in 1620, the 120 "Mayflower" Puritans in celebrating the organizational covenant of their civil and political society, signed by 41 of the 43 adult males "it is assumed that the non-signers were ill and died", give us the only case of a political contract in the Rousseauian style. They also put as a principle of their association the respect for freedom of worship, but only as long as they believed in the divinity of Christ. It is true that these modalities did not always shine with equal clarity "persecutions of Catholics and religious intolerance, punishments of atheists, etc." but in one way or another a society was emerging on new foundations.

In the middle of the 18th century, the political-administrative aspect of the colonies shows them divided into three groups: those dependent on the Crown, New York, New Hampshire, New Jersey, Virginia, the two Carolinas and Georgia; those subject to the proprietors to whom they had been granted, Maryland (of the family of Lord Baltimore), Pennsylvania and Delaware (of the Penn family); and those belonging to the corporations and companies, Connecticut, Rhode Island and Massachusetts. In the first



the governor was elected by the Crown, in the second by the grantee and in the third by the colonists; in addition there was a council to assist the governor appointed by those who appointed him. But in all of them there was a provincial assembly, which exercised legislative functions concerning the domestic life of the colonies;

Of course, the Crown reserved the right to control this legislation, as well as the issuance of legislation that exceeded those limits<sup>16</sup>.

This exercise of government, coupled with the lack of a class of feudal lords to monopolize local government (deduction made from the English magistrates, remember that the great merchants and company concessionaires and stockholders resided in England), demanded from the "freemen of the colonies" the political attention and management that the insurgent bourgeoisie in North America would focus on.

Economic situation. In the second half of the eighteenth century, the English North American colonies presented a flourishing economic aspect, crafts, manufacturing and shipbuilding developed in the North, while the South developed a growing agricultural economy producing cotton, tobacco, rice, indigo, wheat, corn, etc., and let it be said in passing that southern agriculture rested on slave labor. Thus, then, the colonial economic forces were thriving and were striving for a greater deployment; but against this the English colonialist interests were imposing themselves, fearing the rise and autonomy that the colonies had been enjoying for a long time, and which in these times was more accentuated. England saw its commercial interests in danger, at the same time that it protected the interests of the large landowners and concessionaires; thus the colonial system fought to break the commercial monopoly imposed by the metropolis, as well as against the prohibition

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<sup>16</sup> Cf. Diego Barros Arana, *Historia de América*.



to extend towards the lands of the West, lands that the Crown had reserved for itself, fearing that their opening would damage the English large landowning interests for lack of arms that would go to the new lands, as well as to reserve for itself the beneficial trade with the "redskins"<sup>17</sup>.

These contradictions of the metropolitan and colonial economies became especially acute in the last third of the eighteenth century, and the institutional struggle that would give freedom to the colonies will sharpen.

The ideologues. The American revolution had several ideological leaders, among them we will mention: Hamilton, who represented the interests of the thriving economic classes: industrialists, merchants and large landowners; he was an ardent defender, together with Madison and Jay, from "The Federalist" of the federalist ideas tending to create a strong, centralized government that could subject the different colonies under a solid unity, since in his understanding only in this way could internal disturbances be curbed and external attacks be confronted. Hamilton, in turn, held monarchical-constitutional ideas based on a European prince; he also accepted a president as long as he was perpetual and endowed with very broad powers; he was also a supporter of the census vote. This federalist current was the one that triumphed in the Constitution of 1787, creating a president invested with broad prerogatives in important problems of the life of the states. In Hamilton's opinion, federation as a necessity is evident in his following words: "We see the necessity of a federation as a bulwark against danger from without, as a safeguard of peace at home, as a protector of our commerce and other common interests, and as a corresponding antidote to internal discord" (quoted from *The Federalist*, *History of Political Ideas*, p. 273).

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<sup>17</sup> At the dawn of the revolution, the population exceeded two million, according to estimates, one fifth were Black, slaves from the South.



Facing Hamilton was Jefferson, defender of the interests of small landowners; this hero was a great champion of liberties and human rights, to his campaign we owe the amendments of 1791 that introduced those guarantees. As a drafter of the Declaration of Independence, in his project he branded slavery as "contrary to human nature", but the southern slaveholders had this declaration withdrawn. He opposed the monarchist ideas of Hamilton, who held them as corresponding to the form of government of a great nation, arguing on the contrary that the republic was appropriate, as demonstrated by the very existence of the United States. He also upheld the right of the people to overthrow tyranny and emphasized the necessity of revolutions; in his letter to Madison, in 1787, said: "Just as in the physical world squalls are necessary, so in the political world uprisings are indispensable".

Finally, let us deal with Tomás Paine. He is the most consistent follower of bourgeois democratic ideas, always defending the republican form of government, popular sovereignty and the vote without patrimonial restrictions. For Paine, men are born equal and inalienable, and only the need to protect their rights leads them to form a civil society, which is justified insofar as it fulfills these purposes, otherwise the people have the right to rebellion. Of interest is the thesis of this American hero (although he was born in England), that only by putting an end to reaction is it possible to put an end to wars. Paine also criticized the "exploitation of capitalism" and the right to property as the cause of social evils, but he did not proclaim its abolition, but rather its limitation and the fight against the unjust concentration of wealth.

Declaration of Virginia and Declaration of Independence. The struggle that had been brewing in the colonies intensified with the taxes on stamped paper and tea. That imposed, 1765, to extend the documents in sealed paper as much in England as in the Colony; the colonists protested,



questioning with Patrick Henry:

“Since when should a subject of His Majesty pay a tax that he has not freely consented to in person or through representatives duly elected for that purpose?”; the tax was repealed but the institutional question loomed. Both this and the tea tax were but mere pretexts used by the thriving colonial society to free itself from the English yoke, which was too heavy for it.

The event of the launching of the tea at sea, 1773, unleashed the English repression, the colonists rushed to the defense and the events that were to conclude with the independence of the United States were precipitated. The colony of Virginia was the standard bearer of this movement with Washington and Jefferson, movement that crowned on June 12, 1776 with

### A Declaration of Rights

made by the Representatives of the good people of Virginia, assembled in full and free Convention; which rights do pertain to them and their posterity, as the basis and foundation of Government.

I. That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

II. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.

III. That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation or community; of all the various modes and forms



of government that is best, which is capable of producing the greatest degree of happiness and safety and is most effectually secured against the danger of maladministration; and that, whenever any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right to reform, alter or abolish it, in such manner as shall be judged most conducive to the public weal.

IV. That no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services; which, not being descendible, neither ought the offices of magistrate, legislator, or judge be hereditary.

V. That the legislative and executive powers of the state should be separate and distinct from the judicative; and, that the members of the two first may be restrained from oppression by feeling and participating the burthens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections in which all, or any part of the former members, to be again eligible, or ineligible, as the laws shall direct.

VI. That elections of members to serve as representatives of the people in assembly ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community have the right of suffrage and cannot be taxed or deprived of their property for public uses without their own consent or that of their representatives so elected, nor bound by any law to which they have not, in like manner, assented, for the public good

VII. That all power of suspending laws, or the execution of laws, by any authority without consent of the representatives of the people is injurious to their rights and ought not to be exercised.



VIII. That in all capital or criminal prosecutions a man hath a right to demand the cause and nature of his accusation to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty, nor can he be compelled to give evidence against himself; that no man be deprived of his liberty except by the law of the land or the judgement of his peers.

IX. That excessive bail ought not to be required, nor excessive fines imposed; nor cruel and unusual punishments inflicted.

X. That general warrants, whereby any officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offense is not particularly described and supported by evidence, are grievous and oppressive and ought not to be granted.

XI. That in controversies respecting property and in suits between man and man, the ancient trial by jury is preferable to any other and ought to be held sacred.

XII. That the freedom of the press is one of the greatest bulwarks of liberty and can never be restrained but by despotic governments.

XIII. That a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that, in all cases, the military should be under strict subordination to, and be governed by, the civil power.

XIV. That the people have a right to uniform government; and therefore, that no government separate from, or independent of, the government of Virginia, ought to be erected or established within the limits thereof

XV. That no free government, or the blessings of liberty, can be preserved to any people but by a firm adherence to



justice, moderation, temperance, frugality, and virtue and by frequent recurrence to fundamental principles.

XVI. That religion, or the duty which we owe to our Creator and the manner of discharging it, can be directed by reason and conviction; not by force or violence; and therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other."<sup>18</sup>

A few days after the transcribed declaration, the Congress of Philadelphia declared the Independence of the "Thirteen United States of America", and on July 4, 1776, approved the Declaration of Independence due to Jefferson.

3. The struggle for the Constitution. The establishment of unions between states had transitory validity within the Colony, which were frowned upon by the metropolis. Once the independence was raised, the problem of the union arose, so fervently defended Franklin, among others; resulting the subscription of the "articles of confederation and perpetual union among the states", 1777; however, this union did not meet expectations and its leadership became useless. In these circumstances, the debate on the unity of the states began; they feared that a central federal government would restrict the freedom of the states and curtail their rights; against this criterion, the supporters of centralization as the only way out for survival and an effective solution to external aggressions and internal commotions stood up<sup>19</sup>.

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<sup>18</sup> C. Sánchez V. ob. cit. pp. 501"503.

<sup>19</sup> After the war for independence, popular uprisings broke out, the most serious of which was that of Daniel Shays in Massachusetts, 1776-77. The insurgents seized power at a number of points, expelled the wealthy and burned court records relating to the collection of taxes and land sales of the debt-bound poor. They demanded the



The Convention met on May 14, 1787, and concluded its work on September 4 of the same year. In addition to the fear of the states, three problems were on the verge of wrecking the union: that of representation, that of slavery and the regulation of commerce and navigation. Arduous debate arose over representation in the federal congress, some argued for representation proportional to the population, others for parity; the former defended by the populous states, the latter by the small ones who feared their absorption. The problem was settled by giving proportional representation to the House of Representatives, and parity to the Senate. But this did not end the problem, it arose whether or not to count Black people; after a long discussion it was concluded: Black people would be counted by three fifths of their number.

Next came the problem of slavery. The northern countries had no slaves, while slaves were the basis of the southern economy. The North was abolitionist, the South the opposite; to abolish slavery would concern secession, so the prohibition of the traffic was proposed, and in this situation the Southerners, especially South Carolina and Georgia, threatened to secede; Virginia, on the other hand, supported the prohibition; she had more slaves than necessary and it was in her interest to sell them. Almost simultaneously, there was a debate to empower the federal government to regulate commerce and navigation, laws that were of interest to the industrial and commercial North. Solution: the North supported the Carolinas and Georgia against Virginia and the Center: the slave trade would not be prohibited before January 1, 1808 and the Central Power was empowered to legislate on commerce and navigation.

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proclamation of land as common patrimony, the creation of specialized credit banks and the issuance of paper money, and the guarantee of special territorial extensions, etc.



With minor debates, the drafting was concluded and on September 17, 1787, the "Constitution of the United States of America" was signed:

"For the first time in the history of mankind, a democratic republic was structured on the basis of popular sovereignty and the rights of man, according to the following principles: a) a written constitution or fundamental law creating the legal order and the system of government; b) a government formed by three powers, with the character of constituted powers, with respect to the constituent power and subordinated in its operation to the constitutional precepts; c) popular sovereignty as the source of all power; d) equality before the law; e) political rights for all citizens; f) the rights of man relating to liberty for all inhabitants; g) division and interdependence of the powers of government; h) representative government by direct or indirect popular election in its three branches; i) periodicity in the exercise of political functions; j) responsibility of all public officials; k) publicity of acts; l) independence of the judiciary as a public power; ll) attribution of the judiciary to declare the unconstitutionality of laws and decrees; m) limitation of the powers of all officials; n) government of the law and not of the men in charge of complying with it or enforcing it". (C. Sánchez V., *ob. cit.* Pages 515/16).

This constitution was bitterly attacked by Jefferson for not containing a "Bill" of rights, which after strong campaigning

were added by the ten amendments ratified on November 15, 1791. Slavery continued to govern in the United States until amendment XIII ratified on December 6, 1865, after the Civil War; amendment that according to the certification of Secretary of State Seward, became part of the Constitution; whose text reads:

Neither slavery nor forced labor, except as a punishment for a crime of which the party concerned has been lawfully



convicted, shall exist in the United States, or any place under its jurisdiction.

The Congress is hereby empowered to give effect to this article by appropriate laws<sup>20</sup>.

### **ch. The French revolution.**

1. Economic Sketch. The English revolution of 1688 merely sealed the revolutionary process of the seventeenth century, the bourgeois-noble alliance determined a bloodless institutional change; the American revolution did not encounter feudal obstacles, except in minimal proportion, derived from the Crown; thus, in these movements there are not the sharp characters of the French revolutionary process, nor is the clash of opposing forces so violent, nor does the bourgeoisie itself have to confront movements that tend to exceed its limits. Moreover, it was in France that the revolutionary principles crystallized most clearly. For these reasons, an economic outline is necessary to clarify the panorama, while at the same time serving as a throbbing and thriving background to the revolutionary events.

Peasantry. This foundation of the feudal system had, since ancient times, repeatedly fought against the oppression that suffocated it (remember the "jacquerie", 1358), but at the gates of the revolution it had not succeeded in its attempt. France was in 1789 an agricultural country, according to data of 524 million pounds of exports, 311 million corresponded to agricultural products, of course, including re-export products; out of a population of 24 to 25 million, 22 million were dedicated to peasant work, that is, 92% of the population. But the land belonged, in general terms, in two thirds to the Church and to the feudal lords;

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<sup>20</sup> Antonio Zamora, *Digesto Constitucional Americano*, Ed. Claridad, 1958.



but let us see some concrete data:

"The nobles of Orleans, for example, were masters of 40% of the land; in Burgundy, 35%; in Toulouse, 28%; in Landes, 22%; in Picardy, 33%; in Artois and Béarn, 20%. In Upper Brittany, Normandy, Potou, Ile de France, their holdings were more extensive than in the other provinces... The clergy in the North owned 40% of the area; in Lannais, 29%; in Picardy, 18%; in Burgundy, 11%; in Berry, 10%. Everywhere the convents, the monasteries, the bishoprics owned the best land" (Paul Bouthonnier, *The Role of the Peasants in the Revolution, Ten Essays on the French Revolution*, Ed. Pages, 1947, pp 178/79).

In addition to these large landowners, land was owned by merchants and manufacturers, landed proprietors, and well-to-do peasants.

But in front of these owners stood the great mass of landless peasants, tenants, laborers, serfs, etc., who whatever their condition were in total helplessness before the lord who exploited and harassed them; they were subjected to the statute of the work of the fief, they had to take their grains to the mills of the lord, their olives, grapes, etc. to the Castilian dams and cook their bread in the ovens of the castle. In addition, they were subjected to the depredations of the feudal agent, who robbed them with impunity, since justice was also done in the castle. The feudal abuse went so far as to prohibit the sale of the harvest until the lord sold his own, or to demand the delivery of the harvested quota before collecting his own share. The same "freeholders" were subject to census or "champart"; and each transfer was subject to tribute.

On the peasantry still fall the set of royal impositions: carving, capitation, twentieth, "aides" and highly burdensome gabelle; those that in Saintonge represented a quarter, in Limousin a third and in Bordelais, 36% of the annual income.

In addition, the Church received the tenth or thirteenth



part of the main crops.

To this misery were added the diseases: scarlet fever, typhus, typhoid, smallpox, etc.; in 1741 in the Brittany area, deaths did not fall below 80,000 a year. In conclusion, oppression, misery and disease were crushing the French peasantry<sup>21</sup>.

Proletariat. The latter was not a determining force in the revolution; its action was reduced to supporting the revolutionary bourgeoisie of the time. Their number amounted to about 600,000; being the cities that concentrated them in greater proportion Lyon and Marseilles, 58,000 and 80,000 respectively, occupied in the silk, sugar, soap, textile industries, etc.; Paris was a city of craftsmanship. Their wages and prices will give us an idea of their situation:

"Here is the figure for daily wages: the average earnings of masons were 2.30 francs a day; Moselle weavers, 75 centimes; laborers in Beurg, 1 franc 28 centimes; a Breton spinner (woman) 30 centimes; a skilled miner 1 franc at 1 franc 28 centimes. As to the approximate purchasing power of these wages, the following prices will give some indication: in 1778, a kilogram of meat cost 1 franc 10 centimes in Paris; and 65 centimes in the rest of the country; a kilogram of butter, in Paris, cost 1 franc 28 centimes. In general, the average daily wage was equivalent to the price of 6 pounds of bread" (Etienne Fajon, *The Working Class in the Revolution, Ten Essays Cited*, pp. 161-163).

In the "cabiers", made by the bourgeoisie, there was generally no room for workers' petitions, nevertheless in the corresponding Third Estate of Marial it is said:

"They also ask that the workers' daily quota be increased in accordance with flour prices. When flour only cost 20 pounds, they earned 20 sous "1 sous: 5 cents"; today it costs as much as 40-42 and they still only earn 20 sous. Therefore the father of the family cannot live and support

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<sup>21</sup> Cf. Paul Bouthonnier, *The role of the peasants in the revolution.*



his family; the spinners consider that... machines are a serious detriment to poor people: they reduce the price of spinning to nothing, and, therefore, the spinners ask that they be abolished." (E. Fajon, *ob. cit.*, p. 103).

These young proletarian forces resolutely supported the revolution; and they were already showing their combative capacity, think of the Lyon textile strikes of 1774, 79, 88, the first of which put the city in the hands of the workers for several days, and whose repression sanctioned death penalties and galleys. With this pugnacious class, the Chapelier law was passed on June 14, 1791, which prohibited, under severe penalties, the association of workers<sup>22</sup>.

Trade and industry. The French trade of the period we are dealing with was flourishing, and after the treaty of Utrecht it had quadrupled: in 1787 the French imports amounted to 310 million pounds, without counting those coming from the colonies, and the export to 524 million pounds, of which 311 corresponded, as we already said, to agricultural products and 213 to industrial products. The French trade was with Spain, Rome, Sweden, Denmark, Russia, Austria, Prussia, etc. To Hamburg, for example, 40 million pounds of raw sugar were exported. The trade with the French colonies of America amounted in 1789 to 296 millions; France sent 78 in flour, wines, fabrics, salted meats and received 218 in wood, cocoa, sugar, coffee, cotton, etc.; but of these 218 millions only 71 remained, the rest was re"exported.

An example of the finances of those times is the Caja de descuentos, which was created in 1776 with a capital of 15 million, and in 1789 had a capital of 100 million; its purpose was to discount documents at 4% and in installments of 2 and 3 months, as well as to trade in gold and remit circulating bills.

The construction of ships also denotes the impulse of the

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<sup>22</sup> Cf. Etienne Fajon, *The Working Class in the Revolution*.



industry; we can see the following chart:

1778	7 boats	1875 tons
1779	24 boats	5485 tons
1780	17 boats	4760 tons
1781	34 boats	16800 tons
1784	33 boats	16130 tons

(Jean Jaures, *Socialist History of the French Revolution*, Ed Poseidon, 1946, p. 68).

As an illustration of French industry at that time, let's look at the situation in Lyon:

"In 1788, the great Lyonnais factory covers very many ways of working in sea; 14177 looms constitute its material; its staff, 58500 workers, workers, assistants and apprentices, three sevenths of the population. There are 2700 looms for gauze and crepe alone, each run by two men, and ten important houses, each of which does a business of 800 to 900,000 francs. From 10,000 to 12,000 bales of silk produced in France or imported from the Levant, Italy and the Far East, 8 or 9,000 remain in Lyon. Half of the silk produced in Lyon goes to Paris and the rest is divided in half between the provinces and abroad. In addition to the silk industry itself, 25 to 30 houses with 2,700 looms, doing business worth 20 million, make trimmings, braids, gold lace, etc., 20 houses whose transactions amount to 10 million, specialize in gold spinning; embroidery employs 6,000 people. Just as the luxury industries have grown, so have the other industries during the 18th century" (Maurice Wahl, quoted by J. Jaures, *ob. cit.*, p. 90).

This formidable economic force, sure of its power, is ready to establish the decisive struggle; an example of the bourgeois attitude before the convocation of the States General are the petitions made by the bourgeoisie of



Nantes: "The bourgeoisie of the City Council requested: 1st, that the common state have a deputy with voice and vote for every ten thousand inhabitants; that this deputy could not be a nobleman, nor a seneschal, delegate, procurator, prosecutor or tenant of the lord; 2nd, that the election of these deputies be of two grades; 3rd, that the deputies of the common state be as many as those of the other two orders in all deliberations, and that they be counted by vote per head; 4th, that personal benefits be declared abolished and that the tax to be divided on all possessions" (J. Jaures, *ob. cit.*, p. 77).

Nobility. This rested on their feudal rights. We have seen that on the land weighed: the census, fixed amount in cash; the lending and sales, right on the transfer, which according to calculations amounted annually to 36 million and that fell on the sixth or fifth part of the transaction; in addition there were feudal rights on the communal lands, on the animals of work, fishing, the leide (imposition on the merchandise), the tax on chimney, fire and campfire that taxed houses, the tax on the transit of livestock, etc.; and finally, the very odious right to hunt, a feudal diversion that cost the peasants annual losses of 10 million pounds.

It has been calculated the feudal income in about 100 million pounds per year; amount that would denote the expiration of the system as the bourgeois advance, but the feudal importance is reflected in the policy in a decisive way, and concurs voraciously and parasitically to consume the budget. Let us see the following data: The 25 millions of the Royal Household maintained the palatial nobility; the 31 millions of pensions went to the hands, for the most part, of the nobles of royal blood; the offices of provincial governors, useless posts, imported revenues of 100,000 annually for the nobles; in the war budget, 12,000 noble officers imported 46 million pounds, while 135,000 soldiers only 44 million; furthermore, the nobles appeared as creditors of the Public Debt perceiving tax, without having



contributed a cent.

The Church. The Church always appeared to be poor and its "high ministry" freed it from tax burdens, from which it redeemed itself; the Church helped the State with the spontaneous sum of 12 million per year, a sum that returned to its coffers for the fulfillment of its purposes. Economically, the Church served the State as a mediator of loans to the Public Treasury, since its poverty did not allow it to lend but to look for lenders. According to a report presented to the Constituent by Treihard, the assets of the Church amounted to 4000 million pounds, of which 3000 corresponded to rural real estate; this sum is incomplete, but it was never possible to make a precise calculation of the ecclesiastical assets. Finally, according to the

According to the report of the Finance Commission of the Constituent Assembly, the tithes received by the Church amounted to 123 million, of which only 10 million were contributed by the nobility.

Taxes and public debt. The direct taxes were carving, capitation and vigésima. The carving was assigned annually in proportion to income, but the clergy and the nobility were exempt and the assignment was arbitrary. The capitation was a tax on income, which was levied according to the 22 established groupings, the first "the dauphin" paid 2000 pounds, the least wealthy, the last, one pound; the Church had redeemed itself by paying 24 million of the 4 million it was due annually, and the nobles evaded this tax with false declarations, relying on the fear of the collectors. The twentieth was the tax levied on the income from land, industry and commerce, in practice imposed mainly on land; of the 76,500,000 it amounted to in 1784, 74 million came from land; from it the Church, too, had been freed in 1710 by the payment of only 8 million.

Direct taxation weighed on the commons in general, as evidenced by the taxation table for the district of Toul:



Clergy	pounds	7628
Nobility	pounds	396
District officials	pounds	396
Tiers (all others)	pounds	189615

“In this case, the Third Estate (Tiers) fulfilled 96% of the indirect taxation. In 1789, out of 475 million of inflow to the budget, direct taxation produced 190 million or 40% (size: 90 million, capitation: 40 million, twentieth: 60 million).” (Jacques Solomon, *The Finances of the Revolution, Ten Essays Cited*; p 100-101).

Indirect taxes consisted of taxes on property titles, carriages and market transactions. “customs and collection house had 1,600 internals.” We have “aides” and the “gabelle”; the former taxed consumer products such as beverages in particular. But the most obnoxious of the levies was the gabelle, which imposed the salt, an idea of which is given to us by the following: In 1789 the salt imposed cost 12 soles, by decree of the Constituent, in 1790 it was lowered to one sol; this heavy burden originated smuggling, which provided more than a third of the sentences each year.

According to the report presented by Necker to the States General, the budgetary deficit was 56 million pounds; and, what is worse, the Treasury had spent 172 million of the income corresponding to the last eight months of 1789 and 90 million of the income to be received in 1790. But what was really serious was the public debt, which, according to Necker’s report to the Constituent, amounted to 4,467 million pounds; of which 1050 corresponded to tontines and annuities and 1120 to perpetual annuities. The interests of these debts devoured the income, in 1789 they amounted to 318 millions, that is to say 50.55% of the budget; these small figures reveal the importance of the creditors of the Public Debt, to the payment



of whose interests 250 millions were assigned annually. This interest paid represented one tenth of the total product of the land, and shows us the fiscal bankruptcy that threatened France and the corresponding bourgeois restlessness: "Rivarol has written that the revolution was made by the rentiers, and it is certain that if many bourgeois have demanded a new order, it was to place the Public Debt under the guarantee of the nation, more solid than that of the king" (J. Jaures, *ob. cit.* pp. 56 and 57)<sup>23</sup>.

2." Political ideology: Let us see some French thinkers whose ideas influenced the revolution. Voltaire began an acerbic criticism of the Church and feudalism, he upheld natural law as the foundation of individual freedom; for him private property was an inalienable right and the law should guarantee it. Voltaire represented the bourgeoisie in search of guarantees, for him what was necessary was an "enlightened despotism" because the people should remain in ignorance, these are his revealing words:

"When the populace starts to reason, everything will fall apart."

Montesquieu is another typical representative of the bourgeoisie, but this one already in power. In his *Spirit of the Laws*, this thinker tries to explain the substrata of the State, for which he resorts to the *climaté*, the soil, politics, etc., an attempt that imports the bourgeois tendency to give a reason for phenomena and events, his idealistic rationalism deviates him from his task and frustrates him. His most important idea is the separation of the powers of the State, developing Locke, he maintains the convenience of a legislative, executive and judicial power independent of each other, as a guarantee of freedom. Montesquieu defended, finally, the establishment of an English-type constitutional monarchy; his clear defense of the noble-

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<sup>23</sup> On finance Cf. J. Solomon, *Finance and the Revolution*, and J. Jaures, *ob. cit.*, T.I., *Causes of the Revolution*.



bourgeois alliance and his fear of the people is revealed in his words: "If you annihilate within the monarchy the prerogatives of the lords, the clergy, the nobility and the cities, you will quickly obtain, as a result, a popular state, or, what is the same, a despotic one"<sup>24</sup>.

Rousseau is the most consistent democrat of the ideologists of revolutionary France. For him society is born of a contract between men and possessors of rights, the grouping and improvement of humanity produces tools, these produce property "the first great differentiation and inequality: rich and poor"; to protect property the State arises "second inequality: weak and strong to impose itself"; and, finally, submission to a despot marks the third and extreme inequality: all equally slaves before the omnipotent despot. But in the face of despotism, it is up to men to rescind the social contract: to rebel. Rousseau consequently upheld popular sovereignty as the source of all power; based on the unity of sovereignty he combated Montesquieu's separation of powers, as well as the vote based on property; for Rousseau the vote must be universal and popular sovereignty demands that laws be submitted to referendum and the executive, its form and magistrates must depend on a law and decrees submitted to the people in recognition of their sovereignty. Although recognizing the inviolability of private property, he fought against wealth. Rousseau by his ideas represented, clearly, the petty bourgeoisie and small landowners uncertain of their situation within the new expanding economy<sup>25</sup>.

Representatives of the plundered masses are Meslier, Morelli, and Mably; those who make a harsh criticism of the Church and the prevailing system, denouncing wealth as a source of derangement, call for the abolition of property as the origin of evils; they dream of the establishment

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<sup>24</sup> Montesquieu, *The Spirit of the Laws*, L, II C, IV

<sup>25</sup> We will deal with Rousseau in Part II, A, a and b.



of a communal agricultural society in which work will be obligatory for all "in accordance with their strength, talents and age" (Morelli); they believe in the transition to a new society through reforms "limited successions, education, etc." or peaceful transition, but they do not reject insurrection, which Meslier calls for; they also combat the negative ideas of "the innate evil of man", on the contrary, they trust in the possibility of taking advantage of human virtues (Mably). It is interesting to quote the following words of Mably referring to law as an instrument of class:

"We have created for ourselves two kinds of measures and weights, and, to the shame of our reason, the wealthy sentence to death for robbery for fear of being robbed, and approve of conquests, because they themselves are the ones who plunder the people" (G. Mably, *De la legislación o Principios de las Leyes*, *Historia de las Ideas*, p. 256).

To conclude this point, we will quickly refer to the revolutionary groups. The constitutionalists, a group representing the big bourgeoisie, formed the tendency that was imposed in the Declaration of 1789 and the Constitution of 1791, with a monarchic-constitutionalist tendency. The Girondins, representatives of the middle class and big bourgeoisie, acted as mediators, and although at the beginning they were monarchic-constitutionalists, they became republicans, won by the facts. It was these groups that were satisfied with the work of 1791, and they were formed by people like Sieyès, who considered the bourgeoisie as "shareholders of a great company", a simile with which he explained why active citizenship should only correspond to taxpayers.

Facing them are the Jacobins, defenders of the petty bourgeoisie and peasants, and actors of the revolutionary struggles of '92 and the Declaration and the Constitution of '93.

Among its most conspicuous members were Robespierre and Marat. The first, an ardent rousseauian



defender of popular sovereignty and universal suffrage, fought for the conditions for the proliferation of small property; he was the leader of the revolution of 1793, although he defended property, he demanded to fight its excesses; he was a great enemy of the counterrevolution. Marat, like the previous one, was an authentic defender of popular sovereignty and universal suffrage; his tireless counterrevolutionary struggle that did not cease before anything or anyone has made this revolutionary one of the most disfigured personalities by interested history "a case similar to that of Catiline, a historical image tremendously debased by his enemies, among them the great Cicero". Within this group were Desmoulin, Collot d'Herbois, Saint Just, etc., precluded figures of the revolution.

To conclude, we will refer to the "rabious" (Roux Leclere) for whom the fundamental thing was the "social and economic demands", clamoring for the nationalization of the land and its division into plots. And Babeuf, the egalitarian, for whom the conquered liberty was nothing more than a "beautiful and sterile fiction of the law", calling for a community of goods, was the organizer of the rebellion of the equals. All these were but the first vague steps of forces in potentiation.

3. Declaration of Rights of 1789. The States General convened to meet on May 5, 1789; in their opening it was announced that they would not only deal with economic matters, but also with freedom of the press, measures to guarantee public safety and the honor of the family, and modernization of criminal and civil legislation. To these poor molds they intended to submit the States General which were meeting after 175 years; but the revolution had begun. On June 17, the Third Estate, the commons which, in Sieyès' words, were everything, called the other two orders to form together the National Assembly and fulfill its functions, after the logical resistance of the king, nobles and high clergy joined the Tiers on the 23rd of the same month;



and on July 9, considering Sieyes' previous request, the meeting of states became the National Assembly.

Constituent and, as such, it is committed to creating a constitution. The need for a declaration of rights is raised and a long debate begins. In the meantime, the peasants had begun the struggle against the feudal lords and in the face of the threatening magnitude of the movement and to remedy greater evils, the resolution presented by the Viscount of Noailles and the Duke d'Aiguillon was approved on August 4, 1789, abolishing feudal rights and whose final draft was approved on August 6 of the same month and year:

"The National Assembly abolishes the feudal regime completely; it decrees that the rights and duties, whether feudal or quiet"rent, those belonging to real or personal dead hands, are abolished without compensation. All other customary obligations are redeemable, and the price and method of repurchase shall be determined by the National Assembly. Extinguishable rights which are not abolished by this decree, shall continue in force until they have been redeemed" (P. Bouthonnier, *ob. cit.*, p. 184).

The Constituent Assembly on August 25, 1789, after an arduous discussion, voted the:

#### Declaration of the Rights of Man and of the Citizen.

The representatives of the French people, constituted in National Assembly, considering that ignorance, forgetfulness or contempt of the Rights of Man are the only causes of public evils and of the corruption of governments, have resolved to set forth in a solemn Declaration the natural, inalienable and sacred rights of man, in order that this declaration, ever present to all the members of the social body, may constantly remind them of their rights and duties; in order that the acts of the Legislative Power and those of the Executive may be compared at every instant with the



object of every political institution and be more respected; in order that the claims of the citizens, founded henceforth on simple and indisputable principles, may always tend to the maintenance of the Constitution and the happiness of all.

Consequently, the National Assembly recognizes and declares, in the presence and under the auspices of the Supreme Being, the following Rights of Man and Citizen:

Art. 1. Men are born and live free and equal in rights. Social distinctions can only be based on common utility.

The purpose of every political association is the preservation of the natural and imprescriptible rights of man. These rights are: liberty, property, security and resistance to oppression.

The principle of all sovereignty resides essentially in the Nation. No body or individual may exercise authority that does not expressly emanate from the Nation.

Art. 4. Freedom consists in being able to do everything that does not harm others. Thus, the exercise of the natural rights of each man has no other limits than those which assure to the other members of society the enjoyment of the same rights. These limits can only be determined by law.

Art. 5. The law has no right to prohibit actions other than those harmful to society. Everything that is not forbidden by law cannot be prevented, and no one can be constrained to do what the law does not order.

Art. 6. The law is the expression of the general will. All citizens have the right to participate personally or through their representatives in its formation. It must be the same for all, whether it protects or punishes. All citizens, being equal in their own eyes, are equally admissible to all public dignities, offices, and employments, according to their capacity and without other distinctions than those of their virtues and talents.

Art. 7. No man may be accused, arrested or detained



except in the cases determined by law and according to the forms prescribed by law. Those who solicit, issue, execute, or cause to be executed arbitrary orders must be punished; but every citizen called into custody by virtue of the law must obey instantly. He becomes guilty if he resists.

Art. 8. The law must not establish penalties other than those strictly and evidently necessary, and no one may be punished except by virtue of a law established and promulgated prior to the crime, and legally applied.

Art. 9. Every man is presumed innocent until he has been found guilty, and if it is judged indispensable to arrest him, any rigor not necessary to secure his person shall be severely repressed by law.

Art. 10. No one shall be disturbed on account of his opinions, even religious ones, provided that their manifestation does not disturb the public order established by law.

The free expression of thoughts and opinions is one of the most precious rights of man; every citizen may, consequently, speak, write and print freely, except for the liability for the abuse of this freedom in cases determined by law.

Art. 12. The guarantee of the rights of man and citizen requires a public force; this force is therefore instituted for the benefit of all and not for the particular utility of those to whom it is entrusted.

For the maintenance of the public force and for the expenses of the administration, a common contribution is indispensable. It must be distributed equally among all citizens, according to their possibilities.

Art. 14. The citizens have the right to verify by themselves or through their representatives the necessity of the public contribution, to freely consent to it, to follow its application and to determine the quality, the quota, the collection system and its duration.

Art. 15. The corporation has the right to request an account of its administration from any public officer.



Art. 16. Any society in which the guarantee of rights is not assured, nor the separation of powers determined, lacks a Constitution.

Art. 17. Property being an inviolable and sacred right, no one may be deprived of it, except when the necessity public, legally ascertained, obviously requires it and under the condition of a fair and prior compensation<sup>26</sup>.

The Constituent Assembly was dominated by moderate tendencies, and the Constitution of 1991 is its clear reflection: It affirms that all men are equal before the law and that the purpose of society is to watch over the imprescriptible rights of man, such as freedom, property and security; but it maintains the monarchy, which will be constitutional, and to contain the dissenting masses it establishes active and passive citizenship, and the indirect election system.

The declaration of 1793. Neither the dictated constitution nor the followed policy satisfied the advanced revolutionaries, who saw the reaction preparing the counterattack; the king was betraying in plain sight: he was plotting the invasion with Brunswick, chief of the Prussian army, and was sabotaging the application of the decrees. In these circumstances the Mauconseil Section declared Louis XVI dethroned, receiving the support of all the sections of Paris "electoral districts of the city" except one, and an ultimatum was given to the Assembly until August 10, 1792; when the deadline expired, the people of Paris stormed the Tuileries Palace and dethroned the king. The popular pressure, in addition, forced to convoke the National Convention, by means of universal suffrage; those movements gave as a result the declaration and the constitution of 93; this last one recognized the popular sovereignty, the universal vote and an executive elected by the Legislative was

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<sup>26</sup> *Declaraciones de Derechos*, Bibliográfica Omega, Buenos Aires, 1961.



established; but it did not govern given the circumstances.

We will transcribe some of the articles of the Declaration as being of singular importance:

Security consists of the protection granted by society to each of its members for the preservation of their person, rights and property.

Art. 8. The right of property is that which belongs to every citizen to enjoy and dispose at will of his income, his goods and the fruits of his labor and industry.

Art. 17. No kind of work, cultivation or trade may be forbidden to the activity of citizens.

Art. 18. Every man may hire his service and his time; but he may neither sell himself nor be sold; his person is not alienable property. The law does not recognize servitudes; there can only be a commitment of care and recognition between the man who works and the one who employs him.

Art. 21. Public welfare is a sacred debt. Society owes subsistence to unfortunate citizens, either by providing them with work, or by ensuring the means of subsistence to those who are unable to work.

Art. 22. Instruction is the need of all. The society must favor with all its power the progress of public reason and place instruction within the reach of all citizens.

Art. 23. The social guarantees consist of the action of all to ensure to each one the enjoyment and preservation of his rights; this guarantee is based on national sovereignty.

Art. 28. A people always has the right to revise, reform and change its constitution. One generation cannot impose its laws on future generations.

Art. 31. The crimes of the mandataries of the people and of their agents shall never go unpunished. No one has the right to consider himself more inviolable than other citizens.

Art. 35. When the government violates the rights of the people, insurrection is for the people and for every portion



of the people, the most sacred of rights and the most indispensable of duties<sup>27</sup>.

#### **d. The independence of Latin America.**

Here we will only develop a schematic outline of this topic, since the Hispanic American movement did not represent a significant contribution to the structuring of the Modern State, and therefore its exhaustive treatment is unnecessary for our purposes.

1." The Spanish-American situation: There is no doubt that the Conquest presents featuous actions and of arduous and heroic enterprise; but it is followed by the Colony, which is nothing more than the structuring of the Spanish domain for the benefit of the metropolis, and without the least regard for the interests of these lands and their occupants.

The flourishing agriculture of the indigenous regimes declined due to Spain's greedy policy for precious metals; the brought products: sugar cane, coffee, rice, wheat, etc. and the native corn, potatoes and fruits were successfully cultivated, although monopolistic commercial obstacles and prohibitions to carry out certain plantations (vine, olive, except in Chile and Peru) weighed on them to avoid competition to the European and metropolitan products. Cattle breeding did not develop much either, except in Argentina, close to emancipation, and the strength that cattle represented for agriculture did not fulfill its purpose either.

The Indian industry could not, thanks to the obstacles, develop, because it followed the Spanish interests; for example, let's mention the textile industry: when the Hispanic production was absorbed in great part by America, making the metropolitan market more expensive, the

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<sup>27</sup> Gmo. Cabanellas, *Diccionario de Derecho Usual*, 1946.



Indian textile industry was encouraged, when it gained momentum and the internal market of Spain was saturated, the American production was prohibited and restricted, all to favor the Metropolis.

Mining was the privileged line of the colonial economy, to it the dominators dedicated themselves with fruition and to it they ruthlessly sacrificed the subjugated; Spain, within its obtuse mercantilist policy, looked at America as a golden sinkhole that exclusively served to pay for its illfated imperialist actions. Zacatecas, Huantajaya, Laicacota and Potosi produced immense riches, Potosi is said to have yielded three billion pesos in silver, according to the French six thousand; according to Humboldt, America produced 4851 billion pesos in silver alone; but this plunder, which in the end did not even benefit Spain, cost the death of five million Indians in Potosi alone in two and a half centuries, according to A. Svirichi this amount rises to 8 million.

The trade during the colony was developed monopolistically, the ports for the embarkation and disembarkation of merchandise were destined to privileged places, only at the end of the Spanish dominion several ports were opened (9 in Spain, 25 in America); the traffic was exercised by certain companies enriched in the Indian trade, and the merchants in their almost totality were Hispanic. The products arriving in the Indies suffered, due to the existing obstacles, heavy surcharges that raised them to prohibitive prices, the products experienced a surcharge, only customs, of 70%, add to this the huge profits and you will have a picture of the colonial trade. Moreover, since all trade was in the hands of the Spaniards, they paid whatever prices they wanted for native products and charged whatever their appetites demanded for imported products. Finally, inter-colonial trade was strictly prohibited, a prohibition lifted only in 1774 by Royal Decree, recognizing, as the same decree states, a right that had already been taken



by the Creoles.

All the more reason why trade with other nations was forbidden, only England obtained a ship permit in 1713. To give an example of this intolerable situation, let us look at the case of Uruguay: This country needed sugar and coffee from Brazil; but to acquire them it had to wait for them to be exported to Spain, then send them to America with the consequent customs and freight surcharges; add to this that the Uruguayans had to go to Panama, the port of disembarkation, to fetch the necessary products. These conditions gave rise to smuggling, a business that reached fabulous figures; thus, by way of example, according to Campomanes, two thousand tons of merchandise entered the Viceroyalty of Peru legally every year, against thirteen thousand tons of smuggled goods. Such a great illicit and uneconomical business for Spain led Charles III to ask for help from the Church; the Royal Order of September 15, 1776 states:

“The King being concerned that one of the principal causes of smuggling being so frequent and general in those dominions of America, arises from the common error, propagated in them, that in the practice of this disorder there is no sin...; His Majesty has resolved that in his royal name I require and exhort the Christian zeal of Your Majesty so that

by themselves and through their vicar, priests and preachers dedicate themselves to uproot from the ignorance of the people that false doctrine,... certainly many of those who embrace such a disorder would not do so if they were well educated and believed, as they should, that in addition to the temporal punishments they sin gravely” (Movimientos revolucionarios en las colonias españolas de América, Lincoln Machado Ribas, Claridad, 1940, p. 154).

But such a pious appeal and fear for the health of the souls of the Indian smugglers was worthless.

Among the taxes that weighed on America we have: the



almojarifazgo, customs tax; armada, for the navy of war that defended the canned fleets; consulate, for expenses of the commercial justice; all of which fell on commerce. In addition, there was the estanco (tobacco, salt, cards); the alcabala, imposed on real estate transactions; and the lances and medias anatas, on the nobles who did not render feudal personal services and employees, respectively. All these incomes formed the fiscal revenues; to which should be added the rights of the Crown on the mines and their exploitation, as well as on the lands of the Inca that had passed into its power.

As for the population we have: the whites, chapetones or gachupines, residents or just passing through; the criollos, the new generations already rooted in America and the foreigners, always an object of suspicion and distrust; the Indians, the subjugated who supported the greatest colonial exploitation and base of the feudal encomendera and mining economy; and, Black people, slaves for the tropical and coastal plantations, especially for the sugar industry. In all of these the supremacy corresponded to the whites, the mestizos only began to climb positions with the approach of emancipation. Among the whites, they were not well regarded as adventurers eager for profit and treasure; among Hispanics and Indians, on the other hand, there was a community of interests, although as time went by, the oppositions that would lead to the Creole opposition until independence began to appear.

The influences. A debated issue is the influences that operated on the Spanish-American independence; it is discussed if France, the USA or England had a greater influence. It is well known that the processes follow their own course and their results are the specific response to their development within the objective laws that regulate the social process; well, in accordance with this idea, it is more accurate to speak of the different influences that affected Spanish America and the modalities in which they



operated in the conformation of the independence process initiated long ago. Considering the liberation from Spain as progressive maturation and political coming of age.

Just as European dissent served American independence, Spanish America also benefited from the Franco-English struggles for hegemony, as Cornelio Saavedra said: "if we look at things in the right light, the revolution of 1810 must be attributed to Napoleon's ambition and that of the English to want to be lords of this America" (*Independencia de Hispanoamérica*, Nicolás García Samudio, *Tierra Firme*, 1945, p. 118).

Let us see, now, the influences. England has evidently influenced our libertarian deed; this nation of thriving industry and commerce needed markets, since there were no better ones than the Spanish colonies in America, and so from ancient times it dedicated itself to undermine Spanish commerce, fundamentally through smuggling. From the 18th century onwards, he tried to take over the colonies by force (Vernon's attack on Cartagena and Buenos Aires); his attempt failed and he resorted to promoting independence. Let's look at the following data: The *Morning Chronicle*, in its edition of August 20, 1785, is the first European newspaper that informs on the Spanish-American independence; England pays for Miranda's expedition against Venezuela, 1806<sup>28</sup>; English sailors direct the independent ships (Cochrane, Brown, etc.) and even entire crews are English; English diplomats maneuver behind the relations between Brazil and Argentina, forge commercial pacts between both, unchain the fight for Uruguay, etc. The clear purpose of these English efforts is shown in the communication sent by the French consular representative in

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<sup>28</sup> Several authors fix the sum provided by the English government to Miranda at 6000 pounds sterling, in addition to the bills of exchange that he subsequently drew in charge of the Secretary of the Treasury, Vansittart. Cf. N. García, *ob. cit.*, chapter I.



Caracas to his government:

“England would like to make the four parts of the world the domain of her monopoly. She is trying at this moment to revolt the Spanish provinces of southern America and to remove them from the dependence of her metropolis, in order to place them under her own commerce. An expedition formed at his expense and commanded by General Miranda, a Creole from the city of Caracas, is destined to disorganize the eastern part of the Tierra Firme, commonly known as the Caracas Coast. If the banner of insurrection were to succeed there, all the Spanish colonies would successively separate from their metropolis, and England would find in them a commercial power equally disastrous for France, for Spain and for the entire “mercantile world” ... (Lincoln Machado, *ob. cit.*, p. 211).

And after the triumph of Ayacucho, satisfied J. Canning, English foreign minister will say: “Spanish America is free, and if we set our business right, she will be English”. The same Canning will recognize the Latin American nations, proclaim the principle of non-intervention and sign treaties of friendship, commerce and navigation with our nations.

The United States also played an important role in the independence. This newly emerged nation was linked to our countries by a flourishing commerce that in 1795 represented Dls. 1,389,219 in exports and Dls. 1,739,138 in imports, and in 1801, Dls. 8,437,659 and Dls. 12,799,898 for exports and imports, respectively, favorable to the South. The Spanish colonies sought alliance with the United States for their emancipation struggle, and resorted to it for loans in arms, munitions and ships, as well as for diplomatic support; in exchange they were offered free passage of their merchandise through the Isthmus of Panama and Lake Nicaragua, and the products of the South would be transported in North American ships (N. García S., *ob. cit.*, p. 21).



In addition, the influence of the United States made itself felt ideologically and Washington's heroes were held in high esteem,

Franklin and Jefferson. Finally, we will say that it was precisely in that nation where the new nations carried out the most delicate diplomatic work, where the representative of Gran Colombia, Don Manuel Torres<sup>29</sup>.

Finally, France also influenced the emancipation of the Spanish colonies in America, in addition to its commercial interference, it is enough to remember the invasion of Spain by which Napoleon tried to annex all the colonies; his failed attempt also propitiated independence; let us quote his words in his message of December 12, 1809:

"The Emperor will never oppose the independence of the continental nations of America. That independence is in the necessary order of events, it is in justice, it is in the well understood interest of the powers. It is France that has established the independence of the States of North America; it is she who has contributed to increase them with several provinces. She will always be ready to defend her work. Her power does not depend on monopoly, she has no interest contrary to justice. Nothing that can contribute to the happiness of America is opposed to the prosperity of France, which will always be rich enough when it is treated equally by all nations and in all markets. Whether the peoples of Mexico and Peru wish to remain united to the metropolis, whether they wish to raise themselves to the height of a noble independence, France will not oppose it so long as those peoples form no ties with England. France does not need for its prosperity and commerce to vex its neighbors or impose tyrannical laws on them" (N. García S., *ob. cit.*, pp. 86-87).

But the most valuable French influence was its ideological contribution that nurtured Miranda, Moreno, Nariño,

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<sup>29</sup> On this aspect, N. García S., *ob. cit.*, C. VII and VIII.



Hidalgo, Sánchez Carrión, etc. and so many other illustrious Americans.

All these added influences came, then, to cover the Creole movement that had already been insinuated for a long time. To conclude this point, suffice it to say that England and the United States had a greater influence on the upper classes, fearful of the Jacobins, so grossly falsified by their enemies, while France was more with the advanced masses; but in one way or the other the plagiarized dimensions imposed in America without bringing about the radical changes that should have solved them determined their ineffectiveness and the social backwardness that Hispanic America has just begun to remove.

3. The movements. These lands from their beginnings present commotions, first the struggle between conquerors, then those against the colonial regime; later indigenous and mestizo uprisings, finally the uprisings of Creoles (Antequera, Monpox in Paraguay; Berbeo, in New Granada, etc.), and concluding with the emancipation.

The first Spaniards found land in abundance and made the *partija* of *encomiendas*, the following ones came to trade, but the last ones will only have the craftsmanship and the formation of the commons of the cities. On the other hand, the Creoles began to see their interests as opposed to those of Spain, which demanded too much and continued its policy of general plundering; they also had to suffer the venalities of the Hispanic authorities who only sought profit, it should be noted in passing that the Creoles themselves had accustomed them to do their own. Finally, they already feel capable of directing their political business for their own benefit, without maintaining a parasitic and growing bureaucracy. But we must say that when the Creoles threw off the Spanish yoke they only wanted to be the only masters in substitution of the *chapetones* and never thought of transforming the feudal social conditions in which they rested; their bourgeois ideas were nothing



more than a varnish of "diletanti" and in no way an authentic renovating spirit. Proof of this are the struggles they unleashed against popular movements and their consequent historical disfigurement, think of Güemes, Artigas, Morelos and our own Túpac Amaru, to whom justice is only now beginning to be done. The Creoles, then, wanted and achieved power; the American people helped them and they made use of it, but they never thought of an authentic bourgeois revolution.

The context for the libertarian movements in the colonies came in 1808 and 1810 with the abdications of Charles IV and Ferdinand VII, which triggered the Spanish American liberation movements.

The hesitation of the Spanish authorities in the face of the French invasion was favorable to the Creoles, who later exchanged their loyalty to the Crown for separation from the metropolis; the movements of New Granada, Buenos Aires and Mexico, especially the first two, set the tone for all of Latin America and from them the movements flowed in all directions. We believe unnecessary to make the historical account of these events, suffice it to say that when Fernando VII returned to Spain, the reconquest of the colonies began, the libertarian movements receded until their almost extinction, marked by the battle of Sipe-Sipe "1815", cause of immense rejoicing for the European reaction<sup>30</sup>; at this time, independence was only maintained by Güemes in the north of Argentina and Páez in the east of Venezuela. Subsequently, the great campaigns of Bolivar and San Martin began, concluding the libertarian deed in Ayacucho on December 9, 1824.

As an example of an Act of Independence that occurs in all American countries upon their liberation, we have that of Venezuela, whose final words we transcribe:

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<sup>30</sup> Ferdinand VII received the congratulations of the Pope, the King of France and the Czar.



"We, therefore, in the name and with the will and authority we have of the virtuous people of Venezuela, do solemnly declare to the world, that its united provinces are and must be from this day forth free, sovereign and independent states, and that it is absolved from all submission to and dependence upon the Crown of Spain, or those who are said or said to be its proxies or representatives, and that as such free and independent state, it has full power to give itself such form of government as may be in accordance with the general will of its peoples; to declare war, to make peace, to form alliance, to arrange treaties of commerce, boundaries and navigation; to do and perform all other acts which free and independent nations do and perform. And in order to make this our solemn declaration valid, firm and subsisting, we give and we mutually pledge our lives, our fortunes and our sacred national honor to one another" (C. Sánchez V., *ob cit.*, p. 616).

The independence of Peru. The schematic description is applicable to our country, but the question arises: why did Lima, capital of the viceroyalty of Peru, not insurrect, especially if Upper Peru and the southern coast were raised? Let us listen to Riva Agüero:

Why didn't Lima do in 1810 what it has done so many times in the republican era? The answer is not doubtful: Because it did not want to revolt, because it was not enthusiastic about the cause of the revolutionaries. And this was due to economic reasons. The employees of the administration and the merchants, almost all of them Spanish peninsulars, formed a very considerable part of the neighborhood and had much to lose with a change of government. The nobility maintained close ties with Spain; and in the first years of the War of Independence very few titles and entailed estates sympathized with the insurgents: the separatist tendencies of our nobles came later, around 1814. The middle class and the people did not hate Spanish domination. Since the replacement of the galleon system



with the Cape Horn system of trade, the prodigious opulence of the merchants of Lima, which the monopoly had produced in the seventeenth century, had disappeared; but they still enjoyed great comfort and ease.

"This does not mean that the people of Lima were fully satisfied with the colonial system. In this essay we have had occasion to note the unequivocal manifestations of their discontent. The intelligent and enlightened Creoles lamented the fact that public honors and jobs were the almost exclusive privilege of the Spaniards. The new doctrines that had been introduced in education and the diffusion of the books of the encyclopedists, of which we have already spoken, awakened yearnings for progress and freedom. But if there was a fervent desire for reform, almost no one wanted a revolution. It is clear that with time the opinion changed, since 1813 the change began to be noticed. The idea of the American revolution, which was not born spontaneously in Lima, was gradually penetrating it, by way of imitation, in a reflex manner. The example of the whole continent stimulated us and suggested us; the needs of the war came to produce scarcity and even misery; the donations and aid that the viceroy demanded, left the consulate funds exhausted, the merchants and owners were ruined; no, it was possible to bear the weight of the fight against South America; and the colonial regime that previously ensured the modest tranquility in which we lived, ended up being disastrous and insufferable. The reaction of 1814 convinced the liberals that nothing was to be expected from Spain. For all this the tiny separatist group grew from day to day: and the people of Lima began to conspire with great diligence and activity. But the opportune moment for the uprising had passed, because the powerful army of the military operations gathered in the territory of Peru made the bravest and best combined conjurations unsuccessful" (José de la Riva Agüero, *Precursores de la Emancipación*, Don José Baquijano y Carrillo, Patronato



del Libro Peruano, 2a edition, 1957, pp. 47/48).

From 1814 onwards, the Peruvian insurrectional movement grew incessantly, but already in the central viceroyalty a large number of troops had gathered. The independence process had gone beyond the liberalist tendency of Baquíjano and Carrillo, and was centered around separatist ideas, whose exponent was José de la Riva Agüero; to him is attributed the allegation that appeared under the title of "Manifestación histórica y política de la revolución de la América y más especialmente de la parte que corresponde al Perú y Río de la Plata", a work written in Lima, center of oppression and despotism in the year 1816 and printed in Buenos Aires", a document that is an account of the grievances that Spain inflicted on the Creoles, as well as the motives that impelled the revolution.

Once independence was achieved, the Congress of 1822 was summoned, formed by 92 representatives: 28 lawyers, 26 ecclesiastics, 8 doctors, merchants and the rest from other professions. This Constituent voted the bases of the Constitution to be drafted, on September 17, 1822; the importance of this document is in shaping the bourgeois-democratic ideas, as confirmation of what has been said, let's see the following articles:

"Sovereignty resides essentially in the nation: it is independent of the Spanish monarchy and of all foreign domination, and cannot be the patrimony of any person or family.

Art. 4. Its government is popular and representative.

Art. 6. It is the duty of the nation to make its constitution and laws through its representatives.

All citizens must concur in the election of their representatives in the manner established by the Constitution, this being the only function of the national power that can be exercised without delegation.

Art. 8. Representation shall be based on the population.

Art. 10. The most necessary principle for the



establishment and preservation of liberty is the division of the three principal functions of the national power, commonly called the three powers, which must be separated and made independent of each other as far as possible.

Art. 14. The exercise of executive power may never be for life, much less hereditary.

The imposition of contributions and the manner of distributing them shall be determined exclusively by the Congress.

(José Pareja Paz"Soldán, *Las Constituciones del Perú*, Edic. Cultura Hispánica, 1954; pp. 453 and following).



## II. STRUCTURE OF THE BOURGEOIS-DEMOCRATIC STATE

### A. Principles of the bourgeois-democratic state.

The thought that culminated the development of modern times is represented by the philosophy of the Enlightenment; this is the clear apex at which the vigorous intellectual movement initiated in the Renaissance arrived. In the face of the theological and anti-scientific medieval thought, that of the long and insular disputes, exorciser of audacious and creative thinkers, the modern empiricist, scientific and rationalist current arises, which will engender and make possible the definitive liberating thought of thought. It is the new thought of Bacon and Descartes, authentic modern philosophers, expression of the rising bourgeoisie, which will drive the eighteenth-century enlightenment of revolutionary France, a thought that is as important as it is silenced. This enlightenment is what will be the basis for the acquisitions of the bourgeoisie in its rise to power, and it is precisely here that the long tradition incubating in Europe crystallizes in its most precise and definitive forms; the principles that inform the theoretical structure of the bourgeois-democratic state reach their most solid and clear enunciation there. And this was made possible by having left behind the theologizing thought



that strangled medieval reason; in the social sciences, the field in which we are developing, they applied rationalist methods in the judgment of human realities, and if their conquests sin of mechanicism and idealism, their historical limitations, understandable, justify it<sup>31</sup>.

### **a. Freedom and equality.**

Let us examine this point in its historical development.

1. Grotius. This Dutch thinker is, in justice, one of the scientific founders of law<sup>32</sup>, developing natural law. Let us say in passing that the merit of Hugo Grotius consists in having freed Natural Law from its theological and state relations that suffocated it, initiating the subsequent development of law; this eminent jurist "constantly emphasized this transcendence of the idea of law, which places the just and the good above all being, which prevents us from 'funding its meaning' in any entity. In this, and not in the 'discovery' of natural law, consists his own philosophical and historical "spiritual contribution" (E. Cassirer, *Filosofía de la Ilustración*, Fdo. de Cultura Económica, 1943, p. 231).

For Grotius, following his jusnaturalist thesis, man has a set of "faculties" inherent to his quality of man, among which is freedom, understood as the "power" residing in himself, as opposed to the power of others, the latter corresponding to the lordship or that of the fatherland.

2. Hobbes, the English philosopher, considers freedom in general as the absence of opposition, understanding by opposition the external impediments to movement.

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<sup>31</sup> On the Enlightenment, cf. Georges Politzer, *La filosofía del Iluminismo y el pensamiento moderno*.

<sup>32</sup> Let us note that Grotius corresponds to the first European society that carried out a bourgeois revolution, the sixteenth century Holland; in this regard *History of Political Ideas*, chapter IX, 5.



Specifically referring to human freedom he will say: "According to this genuine and common meaning of the word, he is 'a free man' who in those things is able, and by his strength and wit, is not hindered to do what he wishes" (quote from Leviathan, C. Sánchez V., Manual de Derecho Político, Ed. Bibliográfica argentina, 1959, p. 335). This delimitation of freedom is a very empirical and English definition, which specifies natural freedom; but, says Hobbes, just as man, for his own convenience to escape from the chaos that afflicts him, turns to association, he seeks "civil liberty", a superior and civilized form. The freedom attained is that which the sovereign offers him, consisting of the set of permissions that he gives him for his development, and which in no way have any foundation in the personality of man, but in the liberality of the ruler. Theory in accordance with the state theory of its author.

3. Locke, the theoretician of the English revolution of 1688, also gives an empirical definition of freedom; for him it consists in the execution of actions empowered by law, which seeks to order the actions of all men so that they do not hinder one another. From this derives the very high function of the law, which must attend to the satisfaction of the aspirations of the collectivity; it should be remembered that Locke was the installer of the principle of separation of powers within the State, so that there is a counterbalance of functions and avoid arbitrariness; approach of which has developed the mission of the judiciary as a comptroller of legality, support of individuality against state excesses. Locke follows the Hobbesian conception, only that he does not accept the absolutism of the sovereign, nor freedom as a grace of the sovereign, but that the State exists to guarantee the individual and freedom is a right of man as such.

4. Montesquieu conceptualizes freedom as consisting in the faculty recognized by law to man of "being able to do what must be done and not being obliged to do what must



not be done". For him, then, the question is also transferred to the law, which has a moral magnitude (subtle ethical grasp of what is wanted and due by man); to the law thus corresponds the determination of the sphere of freedom corresponding to man, setting the limits of action within the framework of which the movement of one man does not harm another, because if the latter were to happen, organizational chaos would ensue. It is interesting to note the similarity of ideas between L. ocke and Montesquieu.

5. Rousseau is the one who takes the conception of freedom to its bourgeois culmination, following a consistent development of his ideas, clearly and precisely set forth in his *Social Contract*. "Man is born free," says Rousseau, "and yet he is in chains" (*Social Contract*, Ed. Araujo 1938, p. 8). Yes, man is born free and freely develops in society, man suffers no subjugation and he is his own master, not his own slave.

This free birth and his free life make man's dignity, it is his entitative, intrinsic quality that makes the individual a human being. Man cannot renounce this condition because: "To renounce freedom is to renounce the quality of man, the rights of humanity and even one's own duties. No compensation is possible for him who renounces all. Such a renunciation is incompatible with the nature of man, and deprives one's acts of all morality and one's will of all freedom" (Rousseau, *ob. cit.*, p. 13).

But man no longer lives in that natural state to which it is impossible and unnecessary to return; the progress of humanity leads to a higher form of liberty, civil liberty. At some remote time men organized society by the celebration of a pact, by which all men alienate their natural liberty by yielding it to the whole of all, to the collectivity; this receives from each and every one his individual liberties and returns to them a higher liberty, civil liberty, a liberty backed by the organized group and no longer subject to the



attacks of anyone.

For Rousseau, therefore, freedom is a primordial right of man, unrenounceable because in it consists the very quality of man; freedom that if it is alienated in the collectivity is to collect it, to increase it and to collect it dignified and respected. Let us emphasize that between the abandonment of freedom and its reconquest there is no time, because in the latter there would be a lapse of time of man dispossessed of his humanity and becoming, consequently, a concessionary by liberality of the dispenser who returns freedom; the simultaneity of alienation and restitution of freedom is indispensable to the Rousseauian hypothesis.

Freedom is evidently the fundamental principle of the state modality we are analyzing; the bourgeois state is inconceivable without freedom as the basis of all its institutions. But freedom as a constitutive element of the human personality, as an integral part of the essence of man, in no way considered as a gracious concession. Freedom is, therefore, a primordial, connatural and inalienable right that underlies the human being, without which man loses his quality as such.

6. This principle became part of all the declarations on rights as a primary statement and completed with connotations on its understanding and extension as it corresponds to an organized society and following the practical and delimiting Saxon tendency. Thus, freedom and its delimitation demarcated the territory forbidden to the State, and indicated the sphere of action proper to the individual. Let us look at the devices:

Declaration of Virginia: Section 1. That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity;...

French Declaration of '89: Art. 1. Men are born and live free and equal in rights. Social distinctions can only be



based on common utility.

Art. 4. Freedom consists in being able to do everything that does not harm others. Thus, the exercise of the natural rights of each man has no other limits than those which assure to the other members of society the enjoyment of the same rights. These limits can only be determined by law.

7. When men are born free, it is inconceivable to accept the subjugation of some to others, the conditions of lord and servant, the privileges that exalt some and degrade others, the blood nobility and the diminished or lowered qualities; if all this is nothing more than the product of a society denatured, twisted and violated in favor of the powerful and against the humble. The bourgeoisie upholds, then, in addition to liberty, the equality of men, recognizing neither privileges nor inequalities other than those "founded on common utility". Theoretically founding this statement Rousseau will say: referring to the clauses of the social contract: "These clauses, properly understood, refer to only one, namely: the total alienation of each associate with all his rights to the whole community; because first of all, each one giving himself entirely, the condition is equal for all; and, therefore, none has an interest in making it onerous for the others" (Rousseau, *ob. cit.*, p. 18).

It is self-evident that freedom and equality, thus conceived, was an effective instrument of the bourgeoisie in its struggle against feudalism and its outdated and retarded privileges; at the same time it was a firm step in the liberation of oppressed humanity in its long and inexhaustible march to the annihilation of oppression and exploitation.

## **b. The sovereignty of the people.**

Let us look at the evolution of the social contract theory.

Grotius considers that every human being tends to sociability because he contains an "appetitus societatis" that



impels him to join other human beings; each one carries within himself an impulse, an instinctive tendency that takes him out of himself and transcends him towards others. Behind this social appetite is not hidden any utilitarian principle, but the simple human tendency; Grotius considers, on the other hand, that the State, like law, has as its fundamental task the protection of society, but he considers that such a "directive tendency is not the result of an instinctive tendency, but of an instinctive tendency.

"Protection must be such that it corresponds to the nature of the human intellect. Therefore, the principle that utility is the mother of the just and equitable cannot be conceived in this way because man would never cease to seek and demand the right for the sake of the right itself, even if it did not bring him any profit or advantage" (E. Cassirer, *ob. cit.*, p. 246).

Hobbes maintains, on the contrary, that man living in natural life is in a state of permanent war, seeing his rights transgressed at all times; without any force to guarantee and protect him from a surprise attack, man lives in a state of anxiety, given over to his unbridled selfishness and in a perennial struggle with no end in sight. Faced with such an anarchic situation, man associates and delegates his rights to a sovereign, to whom he entrusts to bring order and harmony, investing him with the broadest powers that make him an absolutist ruler. As we would say, once the society is constituted, the sovereign becomes the gendarme of order, endowed with absolutism with no other arbitration than his will, subject only to keep harmony and to guarantee the peaceful development of society; and the subjugated become tame lambs whose displacement is rigidly marked within the boundaries that the benevolence of the sovereign dispenses to it. For Hobbes, then, the basis of society is submission and domination: submission of the members of society, domination of the exalted sovereign. Let us emphasize that Hobbesian ideas are, despite their



mechanistic rationalist materialism, a setback in the ascending march of the bourgeoisie.

2. As for liberty, in the theory of the social contract Rousseau marks the greatest achievement in precision and lucidity. According to his thought, man does not have a social appetite as enunciated by Grotius, nor did the chaos denounced by Hobbes reign in the state of nature; for Rousseau both theses are false: man has been led to the formation of society insensibly and unconsciously, the objective circumstances of the process of its perfection have engendered property and the problems that this brought with it have imposed the organization of the state. That is why man associates, that is why he enters into a pact, reaches an agreement, a social contract; men, free as such, alienate their natural liberties, each and every one, without reserving any part of their rights so that there may be the indispensable egalitarian concurrence, dispossess themselves and all together form the collectivity. This collectivity as a total body takes from each of its members his entire liberty, and each one as a member of the whole accepts the absolute alienation of the others; this social corporativity thus organized does not appropriate the liberties deposited, but gives them back exalted and guaranteed.

From what was said, man was faced with a problem: "To find a form of association which would defend and protect from all common force, the person and the goods of each associate; and by which, each one, uniting himself to all, would therefore obey only himself and thus remain as free as before" (Rousseau, *ob. cit.*, p. 18). Such is the problem; the solution, the social contract. Given these conditions, it is unacceptable that the social contract diminishes man; quite the contrary, inasmuch as his situation as a result of it "is really preferable to the one he had before, and instead of an alienation, an advantageous change has taken place from one uncertain and precarious situation, for a better and more secure one; of natural independence, for liberty;



of the power to kill one's neighbor, for one's own safety; and of the force which others could overpower, for a right which social union renders invincible" (Rousseau, *ob. cit.*, p. 34).

The social collectivity formed is not just any being, but it is an entity with its own will, the general will, that is the agreement and acquiescence of the contracting parties. Such will, which must be unanimous for this constitutive pact, being the product of the free concurrence of the participants, acquires sovereignty, that is, the maximum authority before the contracting parties. If men are free and possessors of a will and decision of their own, they and only they freely determined will be able to submit their will to the situations they set; therefore, only in the body formed by them resides sovereignty and only in the social body corresponds its exercise, only the general will will be the sovereign will odd in hierarchy and absolute in authority. And the general will that the sovereign social collectivity exercises will be for the benefit and increase of all, inasmuch as it is the collective will that has only one goal, the general good.

3. The term popular sovereignty indisputably only makes sense in opposition to real sovereignty, to the power of a man, as a claim or resumption by the one to whom it legitimately corresponds. In Rousseau, sovereignty takes on a precise meaning:

"It is the power of the people to make their own laws, to organize themselves politically and to govern themselves" (C. Sánchez V., *Manual de Derecho Político*, p. 103).

Thus defined, sovereignty is defined as belonging to the collectivity, to the people, being exercised by them through suffrage; and its qualities stand out: inalienable, non-transferable and non-renounceable power; non-delegable, since the government entrusted only involves functions commissioned by the people; indivisible, indissoluble unity whose manifestation is the popular will; and



supreme, since there is no superior will.

In conclusion, we will say that modernly the sovereign power is the constituent power, the only power that is not subject to subjection and authentic depositary of the popular will.

Popular sovereignty, like liberty, is also an unfading milestone of popular ascendancy, of greater or equal transcendence than the former.

This principle was also included in the revolutionary declarations, as follows:

Declaration of Virginia: That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants and at all times amenable to them.

French Declaration of '89: Art. 3. The principle of all sovereignty resides essentially in the Nation. No body or individual may exercise authority which does not expressly emanate from it.

Bases of the Political Constitution of 1822: Art. 2<sup>o</sup> Sovereignty resides essentially in the nation;...

### **c. The fundamental rights.**

1. In dealing with the ancient State we said that although Greece and Rome had known a sphere of action, recognized as private of the individual, before which state action retreated, antiquity had never come to conceive that field of activity as the product of a set of individual rights; This concept is, we reiterate, modern in its entirety, the ancients only conceived their quality of "citizen" as political concurrence to the government of society and nothing more, that was the end of their citizenship; at no time did they conceive themselves as subjects of primary and inalienable rights.

An attempt has been made to find antecedents of this modern conception in the medieval charters, but such



documents are only covenants of privileges and estate limitations; they do not contain, either, the precise modern content of fundamental rights. The first clear enunciation of this concept, already fully formed, we have it in the "bill" of rights, when it says: "They claim and they insistently ask for all the aforementioned things as indisputable rights and liberties;..." it appears, then, in a document in which the bourgeois had a preponderant participation, denouncing its clear bourgeois origin.

It has been said that the declarations of rights are the work of the practical Saxon spirit, that before enunciating principles they wanted above all to have their limits and powers clearly demarcated; and that they are foreign to French revolutionary theory, of a principled tendency, arguing that the French declarations are due to English and American influence. But in one way or another the enunciation of the rights contained in the declarations are of singular importance and transcendence, inasmuch as what is sought in them is the precision and recognition of the sphere of free movement enjoyed by each citizen as a man, as a member of organized society. On the other hand, the declaration and delimitation of the state and individual spheres, with the express recognition of the inalienable rights of man is, unquestionably, the characteristic note of the Modern State, together with constitutionality.

2. The declaration of rights represents and encloses historical significance. Every society when it is structured and inaugurates stages of singular relief establishes briefly and precisely the principles on which it is established; it is a public profession of its foundations and attempts, that marks the culmination of long struggle for ideals that establish its birth certificate. To such a demand, in accordance with the solemnity that the historical moment demanded, responded the Virginia declarations, the French declarations of '89 and '93, and the declaration of the "Rights of the working and exploited people" of 1918 of the



USSR.

These documents are thus the solemn determination of a political "ethos" that comes to fruition.

3. On the other hand, the declarations refer to the individual rights of man. The bourgeois-democratic declarations are clearly recognitions of man as an isolated person, this in consequence with his aspirations; what the ascending class, which manifests itself in them, seeks is to establish the most advantageous conditions to give free rein to its

individualism, let us note that the declaratory documents precede the rise of capitalism; they have served, therefore, to propitiate or found the necessary guarantees to the interests of the bourgeoisie<sup>33</sup>. The rights declared are those corresponding to the needs of that class; if in the declaration of 1793 there are social guarantees, articles 21 and 22, it is the yielding to popular pressure, moreover, let us remember that this declaration was the work of the Jacobins. It is clear that the declarations also contain provisions on rights exercised between individuals (freedom of the press, assembly, religion, etc.) and, logically, rights of the individual in the State (equality before the law and competition to passive and active election).

4. Fundamental rights are, finally, absolute, that is to say that they do not exist, according to the bourgeois thesis, because the State has recognized them, but because being connatural to human nature, society has no place for them, and does nothing more than declaratively enunciate them.

5. What fundamental rights are recognized? The different declarations of the rights of man and the citizen recognize as fundamental, that is to say absolute rights, those enunciated in the second article of the French Constitution of 1789:

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<sup>33</sup> Remember how, on the basis of freedom, the Le Chapelier law was passed to stop workers' organization.



“The end of every political association is the preservation of the natural and imprescriptible rights of man. These rights are: liberty, property, security and resistance to oppression.

The delimitation and specification of these rights can be found in the New Declaration of 1793:

Art. 6. Freedom is the power belonging to man to do everything that does not harm the rights of others; its principle is nature, its rule is justice, its safeguard is the law; the limit of morality is found in the maxim: “Do not do unto another what you would not want done to yourself”.

Art. 8. Security consists of the protection granted by society to each of its members for the preservation of their person, rights and property.

Art. 16. The right of property is that which belongs to every citizen to enjoy and dispose at will of his income, his goods and the fruits of his labor and industry.

Art. 33. Resistance to oppression is the consequence of the other rights of man.

Art. 34. There is oppression against the social body when one of its members is oppressed. There is oppression against each member when the social body is oppressed.

It is in fundamental rights that the class origin of bourgeois democracy can be seen most clearly<sup>34</sup>.

## **B. Organization of the bourgeois-democratic state.**

We have dealt with the principles that preside over the structure of the Modern State, which can be reduced concretely to one, that of freedom, origin and source of the whole system; it is this basic foundation that C. Schmitt calls the “principle of distribution”, the same that

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<sup>34</sup> On fundamental rights cf. C. Schmitt, *Theory of the Constitution*, Section II, paragraph 14.



establishes in principle the unlimitedness of the human person as holder of freedom as an entitative quality of man. But every society needs a vigorous and effective organization to fulfill the purposes entrusted to it by the social pact, otherwise the State would not fulfill its mission and therefore would be superfluous. This second aspect is presided over by the "principle of organization", that is, the "distinction of powers" (Schmitt); this being the authentic and basic organizational principle because thanks to it the collectivity develops its activity with order and concert, at the same time as it is a guarantee of the correct functioning and guarantor of the freedom of the members of society.

**a." The separation of powers."**

1. It is undoubtedly a conquest of the long political experience, in it must be seen a crystallized reflection of the king-parliament struggle developed during the Middle Ages; the politicians in developing it found precedents in the mixed government of Rome. This principle of separation of powers was achieved by the English in the study of their traditional usages. It is interesting to note, again, that bourgeois theory began its criticisms of outmoded feudal society with the empirical study of the phenomena focused on "the opposite character of medieval thought", and thus was able to gradually pour out germinating forms for long periods of time. English political theory, we say, achieved the aforementioned principle by analyzing the course of Parliament; at first it was merely the interpreter of juridical custom, but it did not have, at that time, a creative legislative function, but merely an interpretative one.

But his power increased and he began to attribute legislative functions to himself; against these, James II crashed, arguing that legislation was more a function of man's creation than of interpretation; but absolutism would crash in England against the already cemented



strength of Parliament, and after the ups and downs of wars and internal struggles, the supreme independent character of Parliament was sealed in the "glorious noble-bourgeois revolution" of 1688.

2. The first clear attempt at an effective separation is found in Cromwell's "Instrument of Government" of 1653, where a separation between the legislative and the executive is established. Thus, Article XXIV of that document established: "All bills passed by Parliament shall be presented to the Lord Protector for his assent within twenty days... then... such bills shall become laws, although he has not given his assent...; provided such bills contain nothing contrary to the matters contained in the present "constitution". Article XXX stated: "The revenue shall be levied... by the consent of parliament and not otherwise. The importance for Cromwell of the Parliament is clearly seen in the speech of dissolution of the former, to which he imputes not having dictated "those good and beneficial laws that the people expected"; the Lord Protector in his opening speech, on the other hand, emphasizes the independence of the Parliament: "I have not said these things "suggestions as to necessary legislation "as would be said by one who would assume over you dominion; but as one who will be resolved to be your partner in the interests of these great affairs, and of the people of these Nations" (quotations taken from C. Friedrich, *Teoría y realidad de la organización constitucional, democrática*, Fdo de Cultura Económica, 1946, pp. 173/74).

3. Locke was the first to structure the thesis of the separation of powers. For him, power is divided into three bodies: that corresponding to Parliament, or the power to legislate, the Executive and the Federal, through which the nation functions in its internal and external development. By the Executive the monarch presides and directs the administration, one of whose most important functions is the judiciary; and, by the federal power, the monarch also



receives the power to legislate.

foreign representatives and attends, in general, to the external business of the collectivity; the federal power must correspond to the monarch because of the celerity required by the fluctuating international reality. However, this does not imply that the king does not participate in Parliament, since he acts as "king in parliament" in the English tradition.

Montesquieu, as we said, develops Locke's theory, but interprets the latter by identifying the internal power with jurisdiction, becoming the judicial power, and turning the federal power into the executive power we know today. Undoubtedly, the alterations that Montesquieu imprints on Locke's thought, make him the founder of the separation of powers as we know and understand it.

For both thinkers, this principle of differentiation is the greatest guarantee that can ensure the freedom of citizens, since the concentration of powers in a single person, they say, leads irremediably to arbitrariness and despotism.

4. All this doctrinal elaboration is evidently derived from the political experience of the peoples, but it is a direct expression of the idea of equilibrium of opposing forces which dominated European thought from the sixteenth century onwards; and which manifests itself in the theory of international equilibrium (first of the five Italian States among themselves, then of European equilibrium); of the balance of import and export in the balance of trade; in the theory of the balance of selfish and altruistic affections in Shaftesbury's moral philosophy; in the theory of the balance of attraction and repulsion in Newton's theory of gravitation, etc. (C. Schmitt, *ob. cit.*, p. 213).

The separation of powers is presented, then, as the political enunciation in search of controls and counterweights that guarantee a balance in the exercise of power, and protect the individual from possible excesses of power, especially of the centralized executive. We have already



referred to the transactional nature of this thesis between monarchism and republicanism, resulting in the constitutional monarchy, and the reasons and forecasts that were hidden behind it in England with Locke and in France with Montesquieu.

5. The content of the aforementioned principle is not well expressed by the term separation, nor division of powers, since both allude to a sharp separation of each one with respect to the others, which is not the reality; think of the interrelations that mediate between the different powers "judicial and legislative control over the executive, legislative initiative of the executive and the judiciary, convocation of the legislative by the executive, appointment of high magistrates by the legislative and of judges by the executive, etc."; interrelated differentiation that can more happily be expressed as "distinction of powers" (C. Schmitt).

6. The organizational principle analyzed is manifestly present in the North American constitution, (the Declaration of Virginia already brought it in its Art. V) and in the English state life; in France the constitution of 91 also had it among its foundations, and of it says the Declaration of 89, in its art. 16:

Any society in which the guarantee of rights is not assured, nor the separation of powers determined, lacks a Constitution.

Since then, the separation of powers has become a guiding principle in the organization of societies; thus, the Bases of the Peruvian Constitution of 1822 enunciated this principle in Article 10:

"The most necessary principle for the establishment and preservation of liberty is the division of the three principal functions of the national power, commonly called the 'three powers', which must be delimited by making them independent of each other as far as possible."



## **b. The representation.**

1. Representation traces its origins to the Middle Ages; if Simon de Montfort, when he summoned the Parliament in 1265, calling the knights of each county and the burgesses, did it accidentally or with great political calculation, it does not detract that meeting as one of the first formal representations and of great significance in the western political evolution. It is true that the Church, when meeting for corporate purposes, used this system, appointing representatives of the religious communities to the summoned events; the medieval people must have followed in imitation of this system. It is precisely from the 13th century that such a representative system began to be used systematically in the estates' meetings; the bourgeois appointed their representatives to these meetings so that in their name they could agree with the other estates and the prince on the granting of privileges and approve the taxes to be levied on them. This long process of political experience already presents us with prominent or designated persons, given the impossibility of the interested parties to attend in person; as well as the powers with which they are equipped to bind themselves and their representatives, at the same time as they enter into deliberations and discussions, a give and take of limits imposed and privileges taken from the prince and the granting of funds for the royal treasury. It is interesting to note the influence of these convocations as a driving force of representation, due to the needs of the monarchy, always in need of funds; from this will derive the exclusive power of Parliament (today of the Chambers) to create taxes, which is also emphasized in the eighteenth-century declarations of rights as in the current bourgeois-democratic constitutions.

Later, once the organizational unity of the estates was strongly consolidated, they claimed to be the political representatives of the whole community.



2. It is really surprising, in our way of seeing things today, that precisely representation was once defended as the foundation of absolutism; such a criterion is given in Hobbes. For this thinker "a multitude of men becomes a person when it is represented by a man or a person... It is, in fact, the unity of the representative, not the unity of the represented that makes the person one... unity cannot otherwise be understood in the multitude" (quotation from *Leviathan* brought by C. Friedrich, *ob. cit.*, p. 254). Here again we see the limitation of the mechanistic rationalism of Hobbesian thought, but at the same time the ideas presented are a consequent development of his reactionary bourgeois approach. We have already seen that for Hobbes the state of nature is a permanent and tumultuous chaos, at the bottom of which beats the fiercest selfishness (let us remember his famous phrase "homo homini lupus"); Well, it is logical that in the face of such unrestraint, taking into account Hobbes' idea of society as an aggregate of totally separate units (elementalist mechanism), it is logical that he only sees as a solution the enthronement of a sovereign who, rising above the others, alone represents the desired order and harmony but impossible to conquer, if not by alienating himself to the great absolute and supreme lord.

3. In contrast to the absolutist, let us examine the thought of Rousseau, a clear defender of popular sovereignty, on the subject of representation. For him, as we have seen, sovereignty, that is, the ultimate power, resides only in the collectivity based on the social pact, a contract which is in no way a contract between lord and people, but made between men, free as such, to found society. Now, such sovereignty is non-delegable, it cannot be represented by anyone, but is possessed only by the social body: "Sovereignty cannot be represented, for the same reason that it cannot be alienated; it consists essentially in the general will, and the will is not represented; it is the same or it is another, and in this there is no middle ground. The



deputies of the people are not, therefore, nor can they be their representatives; they are but their commissioners who can conclude nothing definitively. Any law which the people in person have not voted for is null and void, it is not a law". And, further on: "Whatever it may be, when a people appoints representatives, it ceases to be free" (Rousseau, *ob. cit.*, pp. 95 and 97).

How, then, according to the Rousseauian thesis, the form of government and the designation of those in charge of its execution are established. Rousseau tells us simply: by the establishment of a law and its execution, by the first the sovereign establishes this or that form of government and by the second he designates those in charge of the government; the former is a law, the latter is simply a particular act and therefore is no more than a consequence of the law. But in what way does the government that does not exist execute the particular act of execution; for, it happens that the sovereign, according to Rousseauian thought, changes his sovereignty in democracy and in the exercise of its power, men being changed into magistrates, performs the particular act.

Rousseau knows perfectly well that authority is prone to arbitrariness and perpetuation; against this evil he demands the periodic meeting of the popular assembly (especially if it does not need to be summoned), at the opening of which two questions would be proposed: "First, whether it is convenient for the sovereign to preserve the form of government; second, whether it is convenient for the people to leave the administration to those who are presently in charge of it" (Rousseau, *ob. cit.*, p. 101). These principles were adopted by the Jacobin constitution: universal election of the Congress which elected the government, and legislative referendum.

4. The development and complexization of modern life definitively accepted and consolidated the principle of representation; and it could not be otherwise, direct



democracy as practiced in the ancient world is inconceivable in modern times, the number of citizens makes it impossible; in turn, modern life with its multiple demands requires specialization. These considerations imposed on the modern state representation as a fundamental constituent element of its state system.

The bourgeois state is presided over by two formal political principles: identity and representation. The first is the solid unity based on well-founded frontiers and whose substratum is the people, it is political unity as a real magnitude "actual in its immediate identity" with itself; the second is the opposite principle which, based on the impossibility of the real presence of the people, postulates the need for the latter to be always represented by men. In conclusion we will say, then, that at present the representative system is universal and that there is no bourgeois-democratic system that does not present it.

Representation brings with it other problems related to legislation and the legislature, suffrage, etc., but they go beyond our purposes<sup>35</sup>.

5. As in previous cases, the principle of representation was stipulated in the declarations and constitutions either directly or indirectly when referring to suffrage or the fixing of taxes. Thus we have:

Bill of Rights, Art. 8: That elections of members of Parliament must be free.

Declaration of Virginia, Art. VI, 2nd part: ..., have the right of suffrage and cannot be taxed or deprived of their property for public uses without their own consent or that of their representatives so elected...

French Declaration of 93, Art. 29: Every citizen has an equal right to participate in the formation of the law and the appointment of his or her agents and agents.

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<sup>35</sup> Cf. C. Schmitt, *Theory of the Constitution*, paragraph 16, Bourgeois state of law and political form.



Bases of the Peruvian Constitution of 1822, Art. 4: The government is popular and representative.

### c. The bureaucracy.

The bureaucracy is unquestionably one of the integral elements of the modern State, and the more it advances, the more it acquires increasingly precise and extensive forms, given the amplification of functions that the contemporary State has. This body of officials, magistracy, state service, and even civil service, which we know better as bureaucracy, has ancient roots; we can say that it arose in the Middle Ages together with the process of centralization. It is precisely in England where the formation of the bureaucracy of the modern state originally took place; according to existing research, the English administration began to take shape from the time of the Norman kings, acquiring extensive development already in the reign of Henry II (1154-1189)<sup>36</sup>. At the time of the aforementioned king, the administrative organization was entrusted to the royal council and the "exchequer"; the former had the functions of council, court and administrative functions, the latter performed revenue functions<sup>37</sup>. From the twelfth, thirteenth and fourteenth centuries onwards, there was a marked differentiation of functions, producing a struggle between the different administrative departments in formation; to these discrepancies must be added the interference of the barons in the financial affairs, starting with the Magna Carta. It is interesting to note that already at that time archives began to be kept that serve to trace, to a large

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<sup>36</sup> It should be remembered that the process of centralization in England began with the Norman kings, centuries earlier than in continental Europe.

<sup>37</sup> "Chancellor of the Exchequer" is still today the title (the rest of this footnote is missing - Ed.)



extent, the administrative work of the English government. It is also worth noting the exemplary influence of the Church in this aspect; throughout the Middle Ages it was the only institution that had the appropriate conditions for the bureaucratic development essential to the administration, it had a sufficient number of literate personnel and full hierarchy, and a fairly efficient organization. Thus, in the centralizing struggle developed by the monarchy, it followed the example of the Church in everything that strengthened central power; it should also be noted that administrative centralization was one of the forms of struggle against seigniorial interference, for which the monarch tended to seek his bureaucrats outside the barony (think of Francis Bacon, as a not uncommon example).

The next steps in the formation of the bureaucracy are exemplified in the institutional history of Brandenburg-Prussia. In 1598 Joachim Frederick became Elector, initiating a centralizing campaign in his dominions, in which organizational confusion had reigned; he called Germans from other states into civil service, grouping them into a Council with general administrative functions. In this Council the freedom of speech and vote is established for the councilors, counting the votes; so that history of the deliberations remains, a protocol record is established to be consulted in necessary cases; also rigorous archives are kept, which have secret character, consequence of this is the strict vigilance that surrounds the official mail.

After the expansion, under the leadership of Prussia, the organization of the entire territory was proposed; by ordinance of 1651 the functions of the Council are extended to all the domains and what is fundamental are attributed to each certain defined and specific functions that it performs on behalf of the prince; here, too, the tendency begins to distribute the offices according to the qualifications of the servants: judicial affairs to jurists, foreign affairs to members of the nobility with experience in these matters, etc.



The following guiding principles of bureaucracy are formed with the described process: differentiation of functions, centralization of control and inspection, requirement of qualifications for the performance of public office, objectivity, precision and continuity, and discretion. The first three refer to the functional aspect of bureaucracy, the others to the conduct of the civil servant.

The principle of differentiation of functions alludes to the need to divide the administration into different fields of activity, according to the affinity of the business. We have seen that this was the first guiding rule of the administrative organization. We will say that nowadays a perfect delimitation of ministries has been established, leaving the problems of difficult classification within the Ministry of the Interior. The differentiation implies, in turn, a functional diversification within each large administrative division, resulting in an internal complexification from apex to base.

The second functional principle is centralization and inspection. Internally complex operation requires a work of centralizing integration that safeguards its development and directs its direction, in the form adjusted to the needs. This principle, intimately linked to the previous one, is related to hierarchy and discipline; the former establishes within the administration the subordination of lower positions to higher ones, as a guarantee of the execution of orders and dispositions, and the latter subjects officials to fixed rules of a corrective nature. Discipline is related to the function performed; some will require it to be more drastic than others.

Finally, the qualification of functions for the performance of public office implies the training and suitability of the technicians required by the position; the modern trend is towards the occupation of technicians,

This is a distinctive feature of the modern Western State, as opposed to the literary training required by the ancient



States.

As for the aspects referring to the conduct of the official, these are rules that are more difficult to apply and more flexible. Objectivity refers to the objective criterion that the official must develop in the fulfillment of his position, that is, the independence of judgment that is only guided by the fairness and adequacy of the means in the fulfillment of his business. Accuracy and continuity, emphasize conciseness and clarity in the measures taken and firmness in their execution, since imprecision and variation undoubtedly produce confusion and paralyze or hinder the normal administrative activity.

As for discretion, it is a flexible rule and adjusted to the public business to be carried out, it will be more demanding in some functions than in others; discretion refers to the maintenance of silence around problems and situations whose secrecy is fundamental to the success of the mission. Discretion is extended and reduced, or rigidified to the point of strict secrecy according to the times the State is going through; thus in war the secret sphere is widely extended and rigorized in order to safeguard vital interests. Let us emphasize that the establishment of secrecy is a problem of intimate link with the right of public control over the government, and that the extension of the secret sphere can stop such effective and necessary control.

With regard to legislation, society has protected itself from bureaucracy by establishing the responsibility of civil servants and the equal possibility to perform public functions.

This was generally established in Art. II, in fine, and IV of the Declaration of Virginia:

II. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants and at all times amenable to them.

IV. That no man, or set of men, is entitled to exclusive or



separate emoluments or privileges from the community, but in consideration of public services; which, nor being descendible, neither ought the offices of magistrate, legislator, or judge to be hereditary.

And articles 6 and 15 of the French declaration of '89; and the precise provisions of the New Declaration of '93:

Art. 5. All citizens are equally eligible for public employment. Free peoples know no other motives of preference in their elections than virtues and talents.

Art. 24. Guarantees cannot exist if the limits of public functions are not clearly determined by law and if the responsibility of all officials is not assured.



### III. EVALUATION OF THE BOURGEOIS-DEMOCRATIC STATE

We have seen, in the development of this work, that the economic-political evolution that ended with the formation of the bourgeois democratic states was carried out by the bourgeoisie; well, let us see who these bourgeoisie were and their origin.

The word bourgeois has its origin in the medieval environment and serves to distinguish urban dwellers (burghers), from peasant dwellers; this denomination is common to all Europe: "burgess" in England, "bourgeois" in France, "Bürger" in Germany and "burgués" in Spain; and everywhere it designates the same thing: neighbor of a city. This term has juridical significance and indicates the holder of the rights and liberties corresponding to the inhabitants of the burghs; but, later, when the centralization of power took place, bourgeois no longer means city quality, but a group not belonging to the nobility nor to the peasantry, at the same time possessing certain attributes: freedom, possession, instruction and particular conduct in his work. Thus, the bourgeois becomes a member of a class, a social type with peculiarities that give him a special personality.

The word "bourgeoisie" referred to social class appears for the first time in the correspondence of the Venetian ambassador Pietro Duodo (1598), who, referring to the



French Third Estate, says that it is divided into agrarian class and bourgeoisie. Savaro des Brulons, in the eighteenth century, "defines the bourgeoisie as the social class neither noble, nor ecclesiastical, nor of the high magistracy, but as that which integrates those who 'sont néanmoins, par leur biens, par leur richesses, par les emplois honorables dont ils sont revetus, et par leur commerce, fort au dessus des artissans et de ce qu'on appelle le peuple'" (cited by Arturo E. Sampay, *La crisis del Estado liberal-burgués*, Losada 1942, p. 165)<sup>38</sup>.

Well, this class of medieval roots is the direct beneficiary of the bourgeois-democratic State, it was its driving force and its defender, because in promoting and defending it, it defended and sustained its interests. But let us see the results of the principles that underlie the structure of this State.

### **a. Freedom and equality.**

1. The principle of freedom and equality of men, as we have seen, was the foundation of the bourgeois ascendancy. This freedom was defended and specified, in addition to the thinkers mentioned above, by the representatives of the bourgeoisie in the last century, among them William von Humboldt, Benjamin Constant and J. S. Mill.

For Humboldt, man endowed with eternal reason has all the indispensable conditions to provide for the broadest and fullest development of his activities; therefore, the best State is that which allows the "citizen to develop his faculties autonomously and freely, to enjoy the most complete freedom to realize in himself and around himself, his own personality", it not being incumbent upon the State to

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<sup>38</sup> "They are nothing less than by their goods, by their wealth, by the honorable employments they serve, and by their commerce, above the artisans and what we call the people."



interfere with the free activity of the citizen as long as it does not attack the rights of others. B. Constant is more explicit, for him the basis of society is the most absolute freedom in every field: in religion, politics, philosophy, literature, industry, etc.; and he understands by freedom "the triumph of individuality both over the authority that wants to rule by despotism, and over the masses that claim the right to subjugate the minority to the majority". Mill, with even greater clarity, maintains that the substratum of all human conduct is interest, understood in the broadest sense of the word:

"The permanent interests of man as a primordial being; and, the only freedom consists in seeking the particular good of each one by the particular ways, also, and according to the understanding of each one, but as long as it does not infringe on the equal rights of the others, and, the only freedom consists in seeking the particular good of each one by the particular ways, also, particular and according to the understanding of each one, but as long as it does not infringe on the equal rights of the others." (the quotes in quotation marks are taken from A. E. Sampay, *ob. cit.*)

2. But these affirmations are only fine words that hide a dark background. What in conclusion is defended is the freedom of the bourgeoisie to govern its interests individually, without any external control and only subject to its appetites. The declarations and enunciations on freedom and equality are lyrical affirmations that speak of them in generic terms and establish a formal freedom and equality; but underneath them, the majority is subdued and cannot use that freedom because the real conditions imprison it, since freedom is not a dimension, but fundamentally a set of concrete conditions that make it possible or hinder it, conditions that can be ignored and silenced but not flouted, since they impose themselves categorically, denying the broadest and most precise declarations.

But let us see what were the intentions of the ascending



class in seizing power and what are its results. The bourgeoisie aspired to impose the bases for its capitalist development and, having assaulted and seized the State, used it for its ends, turning it into an instrument of its demands. The conditions arising from the bourgeois-democratic revolutions developed the germs of capitalism to the maximum, producing the great industries and the great concentrations of capital; as a sample let us see the following data:

“If we take what in Germany is called industry in the broad sense of this word, i.e., including trade, roads, etc., we obtain the following table: Large enterprises 30588 out of a total of 3'265623, i.e. 0.9%. In them are employed 5.7 million workers out of a total of 14.4 million, i.e. 39.4 %; steam horsepower, 6.6 million out of 8.8, i.e. 75.3%; electric power 1.2 million kilowatts out of 1.5 million, or 77.2%!

Less than one-hundredth of the enterprises have more than three-fourths of the total amount of steam and electric power! To the 2.97 million small enterprises (up to five salaried workers) that constitute 91% of all enterprises, only 7% of electric and steam power is accounted for! The tens of thousands of large enterprises are everything; the millions of small enterprises are nothing. (Data for 1907).

“In another advanced country of contemporary capitalism, the United States, the increase in the concentration of production is even more intense. In this country, the statistics consider industry in the narrow sense of the word separately and group the establishments according to annual production. In 1904, there were 1900 large enterprises (out of 216180, i.e. 0.9%), with an output of one million dollars and more; in them the number of workers was 1.4 million (out of 5.5 million, i.e. 25.6%), and the output, 5600 million (out of 14.8 billion, i.e. 38%). Five years later, in 1909, the figures were as follows: 3060 establishments (out of 268,491, i.e. 1.1%) with two million workers (out of 6.6 million, i.e. 30.5%) and 9000 million annual production (out of 20700 million, i.e. 43.8%)” (V. Lenin,



Imperialism, Higher Stage of Capitalism, Ed. in Foreign Languages, Moscow, 1946, pp. 17 ff.).

Or the rising pace of British industry, as evidenced by the following profit and export charts.

	Excess of the annual utilities from 1853 to 1864	Growth per year
In houses	38.60%	3.50%
In quarries	84.76%	7.70%
In mines	68.85%	6.26%
In blast furnaces	39.92%	3.63%
In fisheries	57.32%	5.21%
In gas works	126.02%	11.45%
In railways	83.29%	7.57%

Exports:

Year	1846	£58,842,377
Year	1849	£63,596,052
Year	1856	£115,826,943
Year	1860	£133,842,817
Year	1865	£165,862,402
Year	1866	£188,017,563

(Karl Marx, Capital, Carthage, 1956, T. I., pp. 522 and 524).

The capitalization made possible by the new company can be seen here:

“The total sum of values in the world in 1910 is calculated by Neymarck at about 815 billion francs. Deducting more or less the repetitions, he reduces this sum to



575"600 billion. Here is the distribution by country (taking the figure of 600 billion):

FINANCIAL SECURITIES CURRENT IN 1910 (000,000,000 francs)			
Great Britain	142	Holland	12.5
United States	132	Belgium	7.5
France	110	Spain	7.5
Germany	95	Switzerland	6.25
Russia	31	Denmark	3.75
Austria-Hungary	24	Sweden,	2.5
Italy	14	Norway,	
Japan	12	Rumania, etc.	

(Lenin, ob. cit., p. 77).

As a result of this growth, the nations launched themselves into the plundering of the colonies, giving rise to the new colonialist empires, one of the determining causes of the fiercest wars that have ever been seen. Let us look at the colonies of England, France and Germany in the 19th century:

COLONIAL POSSESSIONS						
Year	Great Britain		France		Germany	
	Area (000, 000 sq. m.)	Pop. (000, 000)	Area (000, 000 sq. m.)	Pop. (000, 000)	Area (000, 000 sq. m.)	Pop. (000, 000)
1815 /30	?	126.4	0.02	0.5	—	—
186 0	2.5	145.1	0.2	3.4	—	—



1880	7.7	267.9	0.7	7.5	—	—
1899	9.3	309.0	3.7	56.4	1.0	14.7

(Lenin, *ob. cit.*, p. 101).

These brief data give us a clear idea of the predominant situation that enabled the bourgeoisie to rise to power in the eighteenth-century revolutions (for this reason we have inserted here data from the last century and the beginning of this one, since they show the most immediate connection with the eighteenth century). Thus, the freedom for which they had fought so hard and which they had won with the help of the popular masses bore little fruit for the omnipotent bourgeois class.

But this opulence was made with the effort and exploitation of the working classes; the workers, with the capitalist system more established, become, as Turgot had already recognized, in simple holders of their labor forces to sustain themselves. The workers, invoking freedom, are forbidden to organize for the struggle for their demands, the strike, their effective instrument of struggle, is unknown and it will take a long struggle for the proletariat to be recognized as having the right to organize and the right to strike. Thus, capitalism for its triumph subjects the workers to the most miserable living conditions and to the most violent oppression<sup>39</sup>. Conditions that if in this century have been alleviated it is by the organized and large-scale struggle that, since the last century, the working class has been developing; but conditions that still today do not deserve the qualification of acceptable. In verification of what has been said, let us look at the following data:

In the United States, in December 1945, the President of

<sup>39</sup> On the situation of the proletariat in the last century, see C. Marx, *Capital*, T. I., XXIII, S: b to e.



the Congress of C.I.O. unions, Murray, was forced to acknowledge that wages were continuing to fall. Immediately after the war, while the trusts were making fabulous profits, the wage rate had fallen from 23% to 50% depending on the profession. Since the end of the war in 1948, if we take into account the rise in the prices of basic necessities, the real wage of the American worker lost 25 to 30% of its purchasing power. In the second half of 1950, after the aggression in Korea, which gave a dizzying boost to the profits of the trusts, prices increased, on average, by 15%, and real wages fell by about 20%.

According to the same official statistics, the consequence is that 76% of the U.S. population does not have the minimum subsistence level.

The example of France is significant:

In 1951, 25% of the wage earners received wages of less than 18,000 francs per month, and 50% received wages of less than 22,000 francs per month, while all the trade union centers, including the Christian trade unions and Fuerza Obrera (whose leaders are nevertheless totally devoted to the government and their American masters, and try to remove responsibility from them), jointly fixed the vital minimum at 23,500 francs.

The purchasing power of wages today represents only 50% of that of 1938, while in 1947, before the Marshall Plan, it represented 79% of 1938.

In the national income, the share of wages is constantly decreasing, while the share of capitalist profits is constantly increasing.

The share of wage earners, which was 45% in 1937 and 43.5% in 1947, fell to 29.5% in 1950.

On the contrary, the share of capitalists, which was 29% in 1937 and 37% in 1947, rose to 54% in 1950.

Tax policy also underlines the class character of the State: while in 1938 indirect taxes, which are levied on consumption (i.e. essentially on the working classes),



accounted for only 54% of the State's budget revenues, in 1938, the State's taxation policy was based on the following factors

State, represent 62% in 1950 and 72% in 1951 (LA LIBERTAD, Roger Garaudy, p. 324 and 325).

In addition to this commodification of labor, which is a drain on the worker, there are the casualties caused by work-related accidents, which in France in 1949 amounted to 2,200 fatalities and

1,600,000 wounded; and, by 1950: 2,800 dead and 1,700,000 wounded.

The ascending exploitation, urged day by day for more and cheaper arms, assimilated women and children among its subjects. Women's work represented greater dividends as women were subjected to lower pay than men; and even today: the 17,000,000 women working in the United States, receive lower wages by 40% to 60% less than men, depending on the branches of occupation; in England, according to the Ministry of Labor, in 1953, women were paid 30% less than men, for equal work.

As for the work of children, the following quote is sufficient as an example:

"In early 1949, the U.S. Department of Labor services revealed that children under the age of 12 work in starch factories up to 12 hours a day, from six in the morning to six in the evening. In cement factories, children under the age of 16 work up to 13 hours per day. In canning factories, in sawmills, in rag shops, 50 to 75% of the personnel was made up of children" (Roger Garaudy, *ob. cit.*, p. 327).

This was the economic freedom for which they fought and which was the basis of the bourgeois declarations and constitutions. Freedom of labor, industry and commerce, by which the strong economically impose the conditions to which the free workers have to submit or "freely" starve.

Equality before the law was also another of the bourgeois-democratic conquests, but this logically had to be



another formal declaration, since there could not be equality of situations between those who have the economic power in their hands and with them all the means of production and those who only have their arms, they established equality between them but, of course, they left to the latter the aspiration to the same equality, but without the conditions previously demanded.

In conclusion, we will say that the freedom and equality sustained and enunciated in the declarations of human rights and in the constitutions that followed, was only a declamatory and formal declaration that fully responded to the aspirations of the bourgeoisie that made the State its own and set the conditions and foundations to build its system, a system that ineludibly responded to the increase and protection of its interests; interests that were evidently not those of the "man" in general as they put it.

## **b. Political activities.**

1. "Political liberty is the guarantee of individual liberty, says Constant, but it should be granted only to proprietors and merchants. One is, I think, the patriotism that gives the courage to die for the country, and another that which makes its interests known. One more condition is needed than birth and the age prescribed by law. This condition is the indispensable leisure for the acquisition of enlightenment, for the rectitude of judgment. Property only ensures this leisure, property only makes men capable of the exercise of political rights" (quote from A.E. Sampay, *ob. cit.*, p. 183).

This criterion so clearly set forth by B. Constant was the one followed by the ruling classes, since their assumption of power, to close the way to the insurgent masses of the new class that was forming and growing strong. As early as the distant date of 1791 we see the French bourgeoisie establishing the census vote as a precaution for its interests;



such an example has been developed and perfected in the eagerness to contain the popular masses in their march toward state organization.

2. In England, since the revolution of the XVIII century, voting was established only for the wealthy; let us remember that already in Cromwell's times it was established in the "Exposition of the people of England":

"Third: ...1." That the electors...not be persons who receive relief, but who satisfy their quota for the contribution of the poor, nor are they servants, nor do they receive salary from any private person".

The history of the right of suffrage is that of a long struggle of the working classes for the recognition of their status as citizens with the power to participate in the formation of governmental bodies. It was not until 1832, in the face of the campaigns developed by the lower strata and through the mediation of the liberals, that the vote was obtained for the middle class, modifying the old system of election and representation.

The requirement of income or tribute to exercise the electoral right extended the electoral possibility to the working class, year 1867. In 1872, the Gladstone ministry introduced the secret ballot; in 188... universal suffrage was given and, finally in 1918, the vote for women. But in all these conquests there was a background of popular pressure that compelled the English system to make gradual concessions. This does not imply equality of electoral possibilities for all classes, since in political activity other elements come into play from which those who are not economically well off are marginalized.

3. In France the Constitution of 1791, which pretended to recognize universal rights, recognized the political right only to the rich, denying it not only to the poor, but also to all people of color, that is to say, to all peoples subjected to colonialism. The Constitution of '93 gave universal suffrage, but it did not come to rule; and the Thermidorian



reaction, stopping these excesses, returned to the principles of '91. The Restoration recognized the vote to fifty thousand Frenchmen, out of thirty million inhabitants; and the possibility of being voted to fifteen thousand people. And it took a revolution, the liberal one of 1830, for the French voters to ascend to

Two hundred and fifty thousand voters!; another revolution, that of 1948, in which the working masses exerted tremendous pressure, resulted in universal suffrage which, naturally, excluded women. This conquest suffered several vicissitudes, finding that in the Third Republic, after the Commune, the vote corresponded to 27% of the metropolis and 1% in the colonies. Not only was the system described above tending to exclude the majorities in the last century, but even today, with the system of "two rounds" elections, the distribution of territorial constituencies and "coalitions", the popular political weight in the governmental bodies continues to be set aside and hindered.

4. The United States is where the systems of exclusion of the masses in the electoral process have been most perfected; suffice it to make the following references: of the 48 states of the Union, in 13 of them the unemployed or the subsidized are deprived of forming the electoral lists; in 8, the Indians lack the vote; and, in 7 they are not allowed to vote.

those who do not pay a certain poll tax are included on the voter rolls. To this must be added the qualification required in some states to be able to vote: in Georgia, it is necessary to read and write.

An article of the Constitution "correctly"; in Alabama, it will also have to be interpreted correctly; in Louisiana, "to give a reasonable interpretation". These conditions, because of their flexibility, are inexhaustible sources of evasion of the illiterate; moreover, in other states the illiterate will be recognized the right to vote if they meet the requirements of "morality", a term of greater difficulty and



flexibility, as a result of which Louisiana, in 1949, gave the right to vote to 50,000 whites and only 2 blacks.

The results of all this management are clear in the following data:

“Here are the results obtained with such simple electoral manipulations: in 11 States of the South, 7,700,000 citizens were unable to take part in the voting because they had not paid the poll tax; 2,800,000 were eliminated as

“2,000,000 were unable to vote because they did not meet the conditions of “time of residence”; these were workers who were forced to move from one town to another because of unemployment.

If we add to this 24,000,000 abstentions, we arrive at the following average figures; 30% of voters for congressional elections, 50% for presidential elections.

In some states, voter turnout is practically nil: in South Carolina in 1950, there were 25,000 votes for 500,000 registered voters; in Mississippi 14%, in Georgia 17.6%. (R. Garaudy, *ob. cit.*, pp. 306 and 7).

However, this is not the end of the electoral frauds and tricks, we should add the activity of the “bosses”, welded crooks who traffic with the electoral processes, receiving money from the industrial magnates and who collect votes and electors to the liking of their masters and interests; as an example of the maneuvers of these political gangsters, let us cite the feat of one of them, Pendergast, “boss” of Kansas City.

“... Of Pendergast’s election frauds, suffice it to recall that, when Harry Truman was elected Senator from Missouri, it was established that of the 130,000 votes attributed to him, there had been 60,000 votes of already dead voters!” (Garaudy, *ob. cit.*, p. 308).

We do not refer to the electoral processes of our country because we do not have statistical data at hand; suffice it to say that in Peru illiterate people do not vote, which represent more than 50% of the national population, and this



according to official calculations, since others attribute to us more than two thirds of illiterate people.

5. Finally, we will say that not only the handling of the electoral laws are the only determinants in the concurrence of the citizens to the governmental spheres; but there are also the economic forces that controlling the press, the radio and all the means of diffusion, are better equipped for the electoral combat than the masses lacking them; especially if we take into account the substantial sums demanded by the electoral campaigns in which public opinion plays such an important role, and let us think of the way in which public opinion is constructed and guided according to the interests of the dominant classes.

Thus, the fundamental political freedom, which the bourgeois proclaimed as vital to the members of society, is also restricted, if not denied to the great economically subjugated masses and therefore diminished in their quality of citizenship. In such a way popular sovereignty and representation are hidden<sup>40</sup>.

### **c. Expiration of the bourgeois-democratic state.**

From all that has been developed we can conclude that the bourgeois-democratic State has reached its end. Like every social process it has been the historical journey of a class that struggled tenaciously, for a long time, until it reached power; but having accomplished its historical mission today it is exhausted, incapable of developing new forms, since it gave all it could give, it developed capitalism and brought us to imperialism, it developed all the possibilities that it contained and made possible the great economic rise of contemporary times. But its triumph had as a tortured foundation the majorities subjected to its exploitation and usufruct; subjugation that in addition to the

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<sup>40</sup> On suffrage see Roger Garaudy, *La Liberté*, III, part A.



exhaustion of its own peoples, demanded the black and crushing plundering of the colonial peoples. That capitalism raised great empires, but its brilliance was the exaltation of the least and the abasement of the most.

The revolutionary ideas of the seventeenth and eighteenth centuries established liberties for all, for man as such, but as a result, in reality, liberty and equality for the least; and simple hope for the most, a remote hope like an elusive and unattainable horizon. It is that to forget the real foundations that sustain or should have sustained the freedoms and rights that they hoisted; because the forms, no matter how high-sounding and lucid they may be, vanish if they do not have a solid concrete foundation that protects and sustains them.

The error, understandable and explicable bourgeois aspiration, was in considering property as a primary and inalienable right of man, ignoring the undeniable historical formation of this concept; and, moreover, obscuring and embellishing the authentic motives of protection of property, placing it next to other rights that are distinct from it.

On the other hand, bourgeois democracy corresponds historically to the rising bourgeoisie; but the latter engenders the proletariat, a class antithetical to the former, both radically opposed in their interests, since the increase of one implies the decrease of the other and vice versa. The bourgeois system, in order to defend itself from the new insurgent class, had to renounce the rights and liberties it considered yesterday unrenounceable, thus giving itself the most resounding lie to its principles; reaching what Marx pointed out in 1852:

that to preserve its social power intact its political power must be broken; that the individual bourgeois can continue to exploit the other classes and to enjoy undisturbed property, family, religion, and order only on condition that their class be condemned along with the other classes to like political nullity." (The 18th Brumaire of Louis



Napoleon, Ed. Foreign Languages, 1941, p. 46).

This would eventually give rise to fascism and Nazism, as a defensive wall of bourgeois interests threatened with death, but no longer the individual interests of yesterday but those of the great financial monopolies that hold the world firmly and sinisterly in their grip. At this stage the State is only an instrument at the service of reaction and a machine of oppression and subjugation.

The bourgeois-democratic state that arose to guarantee the primordial and inalienable rights of man, and to safeguard and benefit the collectivity, has shown itself, then, incapable of fulfilling and guaranteeing the clauses of the hypothetical social pact; having, therefore, failed in its mission and *raison d'être*. It is unquestionable that since the declarations and constitutions of those revolutionary times, the social movement has printed from struggle to struggle more considerations as a brake to crude individualism, a socializing impulse that is accentuated in this century; but these occasions are nothing more than tactical and measured retreats of the directive class, before the onslaughts of the social forces today revolutionary. And, in addition, the concessions suffer mockery and repression insofar as the main point is avoided, and insofar as property continues to be considered as a "natural and inalienable right of man".

The bourgeoisie, evidently, fulfilled a stage of history: it demolished the feudal system, that is one of its positive results; in that task it sealed popular sovereignty: the destiny of the peoples resides in the peoples themselves, and no one but them has the right to order and decide their course, that is the greatest conquest that we owe to the historical moment that is already consumed and is coming to an end. New winds are rising and inflame the unbribable soul of the peoples; humanity is shuddering and shining new societies in its inextinguishable and unbeatable ascending march towards better times. But this, already, exceeds our



pretensions and proposed limits.



## CONCLUSIONS

The conclusions that follow are clarifications of the topics developed and condensed characterizations, condensing the points that have been reached.

1. The ancient oriental State is a form of despotic-theocratic government, limited by norms that give greater or lesser capacity to the individual, and to whose state apparatus the majorities do not have access, but the closed caste.

2. The Hellenic State is a unitary State, of organic and cultural unity, to whose government the citizens concur and whose members are governed by laws and in which the citizens enjoy a free sphere of action.

3. The Roman State has the same characteristics as the Greek State, being, in addition, the generator of the concepts of "imperium" and "princeps"; in it the conformity to law and the sphere of free action for citizens is more accentuated.

4. The support of every ancient State was slavery, only on the citizens fell the State direction; but notwithstanding the precise definition of the citizen, this was never presented in antiquity as a subject of inalienable rights.

5. The feudal State was built on the basis of the monarchy as a centralizing force in its early days; from the 13th century onwards, the State of the Estates was consolidated, reflecting the strict hierarchy of the prevailing feudal



system.

6. The modern State arises on the new economic relations of mercantilism, emerging as a process of centralization, and whose essential characteristics are the constitutionality of the State and the recognition of a set of rights connatural to the individual, which determines the delimitation of the private and state spheres of activity.

7. England underwent its revolutionary process throughout the 17th century, through which bloody struggles took place, culminating in the noble-bourgeois alliance of 1688, which strengthened the power of Parliament and the recognition of inalienable rights.

The documents where such conquests were established are the "Bill" of Rights of 1688 and the Act of Establishment of 1701.

8. The United States presents its revolutionary period in the decade of 70-80; this nation appears with the advantage of lacking feudalism, which facilitated its development. It was the first nation that forged a written constitution giving space to the revolutionary principles. A document of vital importance is the Declaration of Virginia of 1776.

9. France presents the sharpest revolutionary process and of more bloody characters; in this country the revolutionary principles were given in their more pristine and defined form. Its most important political documents are the Declaration of the Rights of Man and the citizen and the Constitution of 89 and 91, respectively; as well as the New Declaration and Constitution of 93.

10. All these revolutions had a fundamental driving force: the new economic relations of production and the thriving bourgeois class that fought tenaciously against the feudal regime. The bourgeoisie in this struggle was aided by the peasantry and the proletariat in formation.

11. The Spanish-American independence was the maturation of a process initiated some time before, which



suffered the influence of the previous revolutions, making use for its liberation of the European dissensions, especially French-English.

12. The structure of the bourgeois-democratic state, the State established by the bourgeoisie in possession of power, adheres to ideological and organizational principles, which were the product of long evolution and political experience.

13. Among the ideological principles we have freedom and equality, the sovereignty of the people and fundamental rights; among the organizational ones, the separation of powers, representation and bureaucracy.

14. Freedom and equality establish the free and equal birth of men, freedom and equality that continues in the life of man; these human qualities are inalienable inasmuch as they are innate and correspond to man as such.

15. The sovereignty of the people implies that the supreme authority resides in the people, which as a collectivity recognizes no greater power than its own, from which all governmental faculties emanate. Sovereignty has the character of absolute power, which today can be seen in the constituent power.

16. The fundamental rights are the primary faculties that correspond to man as a human being, being therefore prior to any human grouping. Among such rights are: freedom, property, security and resistance to oppression.

17. Freedom is the faculty of action that man has as long as he does not infringe on the free sphere of his fellow men; property is the right that man has to "enjoy and dispose at will of his income, his goods and the fruit of his work and his industries"; security is the right to be protected by society in his person, his rights and his property; and resistance to oppression is the elementary right to oppose the trampling of his rights; it is a derivation of the inalienable rights of man.

18. The separation of powers implies the division of



power into three: executive, judicial and legislative, as a counterweight and balance that guarantees the freedom of the individual, as opposed to the concentration of powers that leads to despotism.

19. Representation is one of the formal political principles, it is a product of the impossibility of the direct exercise of political rights by each member of society.

20. The bureaucracy is the civil service of the State indispensable for the fulfillment of the administration. The bureaucracy is subject to the following principles: differentiation of functions, centralization of control and inspection, requirement of qualifications for the performance of public functions, objectivity, precision and continuity, and discretion.

21. All the ideological and organizational principles were put in the different declarations and constitutions were put in the different bourgeois democratic declarations and constitutions; having, since then, presided over the development of the State.

22. The freedom and equality consigned in the bourgeois-democratic documents are formal declarations, which remained lyrical declarations when not giving the concrete conditions that the exercise of those previously demanded.

23. The enunciated principled freedom was directly benefited by the bourgeoisie, using it, supported by the state apparatus it held, to develop capitalism at the expense of the poor, working masses, free in principle but marginalized in fact.

24. The equality offered did not serve everyone as it was postulated, because there cannot be effective equality between those who have in their power all the economic means and those who have only their labor force.

25. The political freedom that bourgeois theoreticians consider fundamental, as in the previous cases, only serves the holders of economic power; on the other hand, the



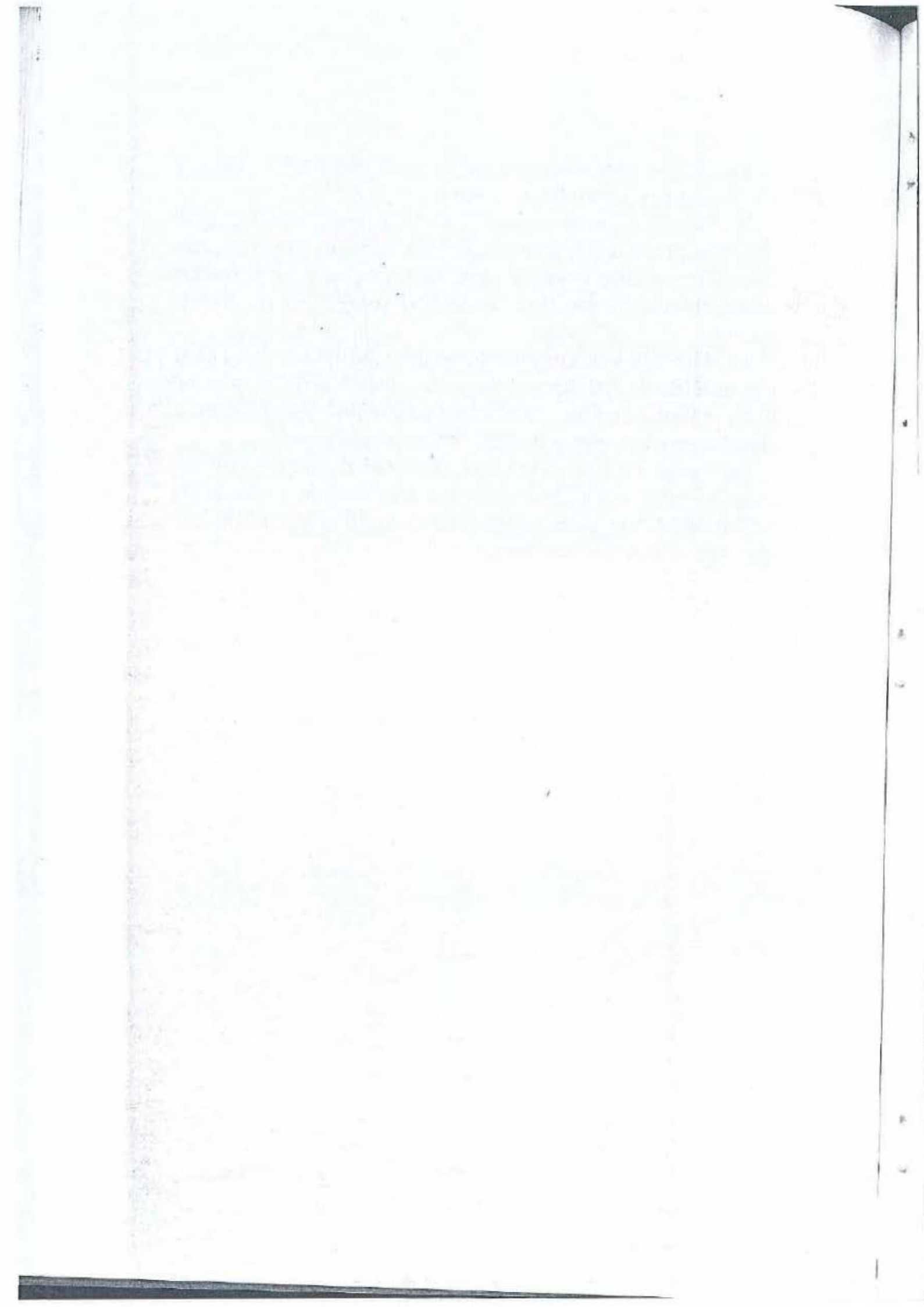
bourgeoisie has always abused its power to contain the political aspirations of the workers.

26. The bourgeois economy in its development engenders the proletariat, an antagonistic class to the bourgeoisie, before whose vigorous rise the bourgeoisie is forced to deny the principles that it itself defended in its rise to power.

27. The whole state system structured by the bourgeoisie, as a result, has served the satisfaction of its class interests; and the concessions it has made have been wrested from it by the masses in their liberating struggle.

28. From all that has been said and developed we can conclude the expiration of the bourgeois-democratic state, a State that has given of itself all it could give and that today shows itself exhausted.









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Thesis of Chairman Gonzalo for his degree in law at the National University of San Agustín of Arequipa, written in 1961, at the age of 27.

One of his earliest political works, this book documents the development of the Chairman's thoughts when he was a young revolutionary and democrat.

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