

Paweł Kaczorowski

The State in the Continental European Tradition

DOI: 10.35757/CIV.2009.11.04

Among the many substantial problems which must be resolved in the process of drafting a new constitution, one is of fundamental importance, yet often overlooked. This problem can be phrased like this: What will the political entity in possession of this constitution be? To what should the constitution pertain? Is it supposed to be the constitution of a Polish state or the constitution of the Polish civil society?

The apparent disregard for this problem in the constitutional debate does not at all mean that we remain neutral, as if in some way “above” the matter. In fact, it represents a position being taken, albeit unconsciously, which considers the State to be a political community gathered around a certain set of values. As a result, the State remains only nominally, as such, because this matter is understood differently from how the continental European tradition understands it.

The failure to address this problem can of course be the result of conscious choice stemming from what is believed to be an obvious and commonly-held belief that “we” are the State and

Paweł Kaczorowski – professor at the Institute of Political Studies of the Polish Academy of Sciences in Warsaw (Philosophy of Politics Department) and chair of the Methodology and Theory of Politics Department in Cardinal Stefan Wyszyński University in Warsaw. Editor-in-chief of the periodical “Civitas. Studia z Filozofii Polityki” (“Civitas. Studies in Philosophy of Politics”).

that the State is a self-organizing society. However, it can also be caused by irreflexion, by simply considering this matter beneath consideration. However, to act as if a problem did not exist actually means taking a position on it. This is why it is necessary to clearly define the problem in order to discern whether it was tacitly acknowledged from the outset, or it actually went unnoticed. And if unnoticed, then whether this was due to a naive belief in the simplicity of the social entity, or rather because the politicians were so engrossed by the battle for the interests of their own political factions that it crossed their minds to ask neither “What is the State?” nor “What does it mean that ‘we are the State?’” Brandishing these mottos, using them as slogans to demonstrate their political party’s self-awareness, simply gives them the opportunity to attend to their own political interests, and this is why it comes naturally to them.

The Polish State / Polish society and Polish State / Polish civil society contraposition which emerges in this problem can nonetheless be misunderstood (thus affecting how the problem is resolved) for two reasons.

First of all, in the public mindset the concept of “State” has either negative connotations or is neutral. For the middle-aged generation, the notion of “State” evokes memories of a foreign-imposed lack of sovereignty, one-party rule and privileges for members of this party, police-enforced repressions, economic chaos, shortages of goods, public two-facedness, wasteful working practices, bureaucracy, misleading and often even cynical propaganda, deceitful politics... On the other hand, the younger generation has not been taught in school that the State and things related to it are a good which is to be valued, cared for and respected. They were raised in an era of almost constant and open opposition to the State, which was all the more accepted because the State’s actions made it appear to be the very enemy of society. Only the elder generation may still retain memories of the notion of a “Polish State” as the owner of a perhaps imprecisely defined,

but important and real moral essence; an essence which had a compelling force and which could always be invoked because it was prevailing and globally accepted.

The second reason is that the contraposition of State and society can be considered unjustified and unnecessary. Since we are not dealing with a totalitarian state any longer, and since the concepts of State and of society refer to the same collective whole, to the same group of people, then why should we make an artificial distinction between them? Even so, whoever poses such a question does not understand the essence of such a distinction, and considers it only as a contraposition of two mutually distinct spheres.

Unfortunately, discussion within both political and academic circles in the Poland of the 1990's rarely witnesses attempts to eradicate the odium placed upon the concept of State. Meanwhile, mentions of the ideal State rarely demonstrate objective, comprehensive and substantial reflection upon elements of the political and social sphere which could somehow differ from a partisan or a purely ideological approach. And yet, only a distinct and clear way of thinking focuses on the concrete, on how things are, and not on how they should be. It distinguishes itself by assigning fundamental importance to the historical and spiritual realities of collective life, and by carefully attempting to correctly understand and perceive the changes these realities undergo, realities without which any reference to imponderable ideological or political concepts becomes mere wishful thinking or doctrinarism.

Perhaps the greatest interest in the concept of the State as such can be seen in the writings of lawyers, experts in constitutional or administrative law. However, their approach is one-sided. It reflects upon the law, which should provide the structure for the State. They investigate the legal structure of the State, the guarantees of legality, the principles of division of powers, judicial independence, the hierarchy of the sources of law, the principles of constitutional interpretation, and indirectly, the specific

political aims of the State as contained in the constitution from a perspective of enforcement... Yet, they do not ask about the State itself which is subject to this law. They do not investigate why it exists and what its purpose is, its historicity, what type of being it is. They do not ask about state authority, about what it is, what its sovereignty means, and how it is expressed in the State's functioning. They do not ask about the relationship between State and law, State and politics, State and society. Invoking the concept of a democratic State of law on the matter passes for an exhaustive answer.

This lack, or perhaps clearly seen deficiency, should nevertheless be unsurprising in Poland, because individual elements, particular basic problems related to the various aspects of the State's functioning (one could say the ingredients of the concept of the State) have appeared successively in Western-European continental politics. They have emerged one after the other since the beginning of modern times, either evolving naturally from historic breakthroughs and transformations, or having been worked out in order to provide a solid foundation for actions taken to overcome the difficulties which individual nations and their newly-created statehood faced. Thus, this evolution in political thought came from conclusions drawn as a result of processes which Poland has not experienced. It resulted from the conceptualization of experiences which Poland has not undergone.

*

Let us then briefly examine what the concept of State entails, the essential elements of its structure, and the basic stages of its development.

Its present legal-international use aside, the concept of State can be used either symbolically or with concrete meaning. In the first case, State refers to all of the permanent political relations which have existed somewhere at any given time. Thus

we can speak of the Incan State, the Spartan State, the Roman State or the Merovingian State. This extension of the meaning of State, however, deprives the concept of specificity, and with it, of all cognitive content. This is why we are more inclined to use the concept of State in its specific meaning, the one related to a concrete historical time period. Generally, this is the meaning which we commonly and intuitively associate with the concept today. The historical-systematic analysis which follows aims to unearth the full content and meaning of the concept of State as a specific ideal notion.

The concrete concept of State (this expression being borrowed from Carl Schmitt) was born on the threshold of modern times, that is, during the Renaissance, more or less at the same time as the object to which the concept refers. It is generally well-known that one of the first to write about *lo stato* (the corresponding terms *estado* and *l'état* appeared at this time as well, the exception being *der Staat*, which came later) was Machiavelli, when he set out to analyze the relations of authority in the Italian city-republics. These were the same city-republics in which Jacob Burckhardt saw history's first ever symptoms of the implementation of the idea of the State as a work of art.

Even though still undeveloped States existed earlier in Sicily, England and in the Italian republics, the first exemplary State was the absolute monarchy in France, set up and organized by Henry IV (1589–1610).

Let us attempt to list the fundamental elements of the State's structure as they have appeared throughout history. These are:

1. The fundamental novum: the sovereign authority of the State which is a purely political authority, internally superior to the many feudal or customary authorities and to social forces, and externally independent from, above all, the Papacy and the Emperor, and later, from other States.

2. The position of sovereign power as responsible for ordering the life of the collective and not, as it had been until then, only

for protecting the order which had spontaneously emerged, and of which it was but a part.

3. The concentration and centralization of public authority in one subject to whom it rightfully belonged and to whom it was assigned.

4. State monopoly on legally applied violence. Prohibition and elimination of private wars, feuds and vengeance between families, lynchings and duels.

5. Full and practically unlimited legislative power of the State.

6. The creation of the positive system of civil law.

7. The separation of public and private law.

8. The territorial (not personal, as it once was) character of public authority and of the manner of ruling. Individuals who find themselves in a certain territory defined by boundaries set by the State itself are subject to the State's authority.

9. Equal subordination to the State's authority of all persons living within its territory. Direct subordination without any intermediate feudal institutions.

10. Separation of Church and State.

11. The creation of a rational tax system which is a system for financing the State.

12. The formation of a hierarchical bureaucratic system which is directly appointed by and represents an extension of the State.

13. The creation of a national army and police.

The State which possesses the structure described above is a rational political organization. It is also, however, a "figment of history," and not the implementation of a reasoned, abstract, theoretical model. Necessity is the mother of this invention. It is a necessity which appeared in a specific social situation, in singular and unexpected historical, political and spiritual circumstances of social life. It is a necessity for creating and guaranteeing an order to common life, in a situation where the hitherto existing

social “regulators” of collective life do not function or are no longer sufficient; in other words, a situation where the changing society is not able to maintain a spontaneous and immanent order in a natural and “organic” way. The need for the State, then, stems from the appearance of the phenomenon of a non-spontaneous social order at a certain moment in Europe’s history.

This non-spontaneity is historical and factual, and not necessary and essential. It does not therefore characterize the essence of society as such, but only a certain stage of its transformation and, consequently, does not pertain to every society but only to the European society undergoing a process of transformation from traditional society, and a process of modernization. Or, more accurately, the Western-European society, because the process of modernization of the other parts of the continent has its own long and stormy history, which arguably continues unto this day.

The non-spontaneous nature of the social order at the threshold of modern times, which did not appear with the same intensity everywhere, has its origins in the following specific events:

1. The rapid development and appearance of new areas of human activity (capitalist economy, scientific knowledge, art, waging wars...) around which the life of the individual now revolves. The specificity of these new domains is partly that they become autonomous and separate from the old social order. Each of them serves its own purpose whose significance is often absolutised (for example, one’s profession becomes an expression of one’s vocation). This creates a necessity for reintegration, for a new consolidation of these areas of activity, and for a reordering of the new social phenomena which appear as a result.

2. The appearance of new creeds, the disintegration of the unity of the Christian world and the resulting disintegration of the medieval religious-political unity of society, which directly leads to religious wars, and to long, bloody, and destructive civil wars that must somehow be brought to an end.

3. As a result of the disputes and religious wars, a certain destabilization of the role of the clergy as an Estate in society and the loss, in the new circumstances, of the nobility's traditional social role as stewards and protectors of the peasants. As a result, a gradual disappearance of a society of Estates.

4. The appearance of new ethical values and of rational and humanist secular worldviews, which, however, are not self-sufficient as a basis for the social order, because it is not possible for a society to unite around them as a community with a single worldview.

*

The phenomena which best demonstrated the non-spontaneous nature of the post-traditional society were the religious and civil wars. Here faith, which had previously been the strongest factor of spontaneous social adhesion, all of a sudden became a question of substantial disputes and conflicts, and finally led to a virtually suicidal act, that is, to the eruption of war within what had been a homogeneous society. In this situation of religious disintegration the Church could not, in carrying out its basic religious functions automatically, *en passant* so to speak, carry out political functions, i.e. functions regulating the social order. It could not do this by then because it was *de facto* neither one nor universal.

According to many sociologists, historians and state lawyers, the religious civil wars were the direct and first cause of the creation of the State because, they maintain, its creation was the only way to establish peace and order. However, it should be added that the goal of the State was not just pacifism. It was not just about building peace for peace's sake, but also as a necessary condition for living in accordance with one's professed faith. Let us remember that the civil wars which the creation of the State brought to an end were not wars between bands of criminals, but rather conflicts between groups of ideological opponents.

The spiritual transformations of Renaissance society are another clear factor leading to what we have called the non-spontaneity of the post-traditional collectivity. We are referring to the widespread appearance of new visions of the world and of man's role within it, his nature, vocation... These views are expressed, for example, in Pico della Mirandola's famous *Oration on the Dignity of Man*. Meanwhile, new values in individual and social life appeared: equality, industriousness, knowledge, usefulness. Thomas More presents a whole catalogue of these in his *Utopia*. They are temporal and rational values, subjective in that their validity is based upon human judgment. This judgment is objective in the sense that it is based on intersubjective criteria, but it is individual, conducted by each person in and for himself. A rational judgment, but neither the sole nor the final one. These values were no longer transcendental. They were no longer revealed to all men by the one God.

It is precisely More's *Utopia* which critically presents these rational values, as if in a funhouse mirror. It describes a society organized according to these virtues, yet the society thus depicted is jarring in its artificiality. It is unnatural and inhuman in its regularity, immutability and perfectionism, even though the values themselves are real and natural. Thus it is not a critique of the values as such, but rather of the feasibility and sense in attempting to create a community which is wholly subordinated to them, a community in which the freedom to profess certain values imperceptibly and inadvertently leads to their tyranny.

Rational values alone will not, contrary to the beliefs of modern philosophers, provide society with spiritual cohesion. They will not transform it spontaneously into a functioning whole in which everyone understands each other without words, in which everyone will always remain united, generous, selfless, and true to his ideals, and will always naturally know what is to be done, what his personal responsibilities are and which common goals should be obtained. The obstacles to the formation of such a community are the realities of human life.

In reality there are many different rational values and different systems and hierarchies of rational values. They are interpreted in different ways and substantiated in different ways. Often their systems are internally contradictory. All this leads to controversies, disputes, conflicts, and to the creation of a situation of provisionality. Moreover, not all members of society recognize these values, not all of them understand them, not all of them want to and are capable of implementing them. All of these are well-known facts, but their consequences are not always considered. The here and now transitional situation is distinguished from the situation of political normalization which is supposed to arrive in the future. This ideal situation becomes the point of reference in the present transitional situation of being and acting. This provokes a separation between action and thought.

The fundamental conclusion from all of this, which is a solution in-between political cynicism and political utopia, is that rational values such as the common good, liberty and justice are necessary for social order, but that their axiological validity will not institute this order. Social order will result from an enthusiastic and unanimous acceptance of certain ideals. Even if this were possible, then such a community would still have to deal with the important above-mentioned paradox: the fact that the bond of the unanimously professed values and the unity of belief is, on the one hand, a synonym for liberty, and on the other, a mark of the imposition of virtues in whose name an individual or a majority in a specific group will later act against some of this group's members. A purely ideological community is a community whose members act of free and uncoerced will, but at the same time a community of defined ideals which (as the people who profess them will say) are mandatory and objective, meaning that one can and should draw definitive consequences from them, and treat them as an imperative to which one's life should be wholly and entirely subordinated.

*

To summarize, the non-spontaneous nature of the post-traditional society which we have described above is a consequence of the realities of life, i.e.:

- the disintegration of the collective's order built on transcendental, i.e. religious, values;
- the decline of traditions and customs proper to small, local communities;
- the emergence of religious, national and social conflicts;
- the appearance of new branches of human activity, progressive division of labor, demographic growth, increased interdependence between individuals, and stronger social relations;
- the appearance of political rationalism, whose widespread ideas and values are not able to create an independent and spontaneous order.

All of these phenomena exist today as well, although in different form and with varying, sometimes much greater, intensity. They provide the most general explanation for why and to what purpose the State emerged and continues to be. This was to maintain the order established by these phenomena, an order which ensures peace and guarantees the presence of a certain set of rational values in society. This order, which is necessary due to the aforementioned non-spontaneity of social order, can for this very same reason be only established by a sovereign authority in society, which does mean that this authority is hostile, foreign, adversarial, dictatorial or authoritarian... On the contrary, it is an authority which guarantees that the basic values of collective life will be respected, protects society against anarchy and ensures the fulfillment of the political ideals professed by the majority of the population which can also determine the State's policy in particular areas of society.

The existence of such an order is necessary, but (and this must be fully emphasized) the content of its fundamental

elements is not predetermined, both as regards the political ideals upon which the social order will be built, and the subject which will exercise the sovereign authority. In other words, it can be a monarchy or a democratic, liberal or social state. This latter depends on purely political choices, which should foremost consider and fully accept the will of the society. It must nonetheless be a state.

*

The State's structure, which we described at the beginning, is an organizational framework which must be filled with axiological substance. This framework is necessary due to the aforementioned non-spontaneity of the social life, because it is the *sine qua non* condition for ensuring in the public and, in a lesser degree, in the private sphere, the existence of the inalienable values of man's spiritual existence – inalienable because of the dignity of the human being, inalienable in the moral sense. The organizational framework itself is axiologically neutral insofar as it allows for different political ideals or values to be established within it. It cannot and should not exist without them, because it came into existence as the only means for guaranteeing the circumstances necessary for their implementation.

Therefore, the State is a historical creation. It has a specific existential cause and purpose, and a set organizational framework within which its entire ethical and political substance must be inscribed. Should we, however, view this framework as a Procrustean bed for all types of political ideas, those regarding the social order as well as those regarding the subject of authority and the means for exercising this authority? Only to a certain degree. The framework and the substance of the State are distinct spheres, and the awareness of the distinction between these two spheres is important. At the same time, they can only be distinguished in the abstract. In reality one cannot separate them

or glimpse them functioning separately, as if on different levels. In reality both dimensions interpenetrate and are mixed together. The organizational dimension only exists as a condition for the axiological, albeit a necessary condition. The other, axiological dimension is also necessary, but in a different way. The first is necessary because of the realities of life, the real situation. The second is necessary in the moral sense. Necessity in the moral sense is immutable, whereas the necessity of an organizational framework depends on the historical-social situation and can therefore change. Thus, if the conditions, circumstances or the factual situation should change, then the organizational framework could actually turn out to be useless, whereas the values and ideals remained necessary.

These two spheres, the organizational framework of the State and its axiological substance, were born co-defined by each other: the necessity of organization stems from the non-spontaneity of values as a force to regulate society. They should therefore remain in a mutual equilibrium: there should not be more or less elements of the organizational structure than what the current social realities require in order to realize set political ideals. Any domination or unjustified and disproportionate growth of the organizational and disciplinary structures means that the State has been transformed into a regime. It signifies the instrumentalization of the political values upon which a political order should be based. They are instrumentalized for the goals of the governing group, of some other independent group or of some group representing another state (consider for example the regimes and practices in the former communist-block countries). At the same time, “overloading” the national order with axiological content, especially when this content has not been clearly identified or when the national organizational infrastructure is not sufficient for it, is also dangerous for society. An example of this are the experiences of the Weimar Republic or of Spain between 1936–1939.

Thus both of these objective elements of the state order, the concrete forms which they assume when first created, their “dimensions” and “content,” must be correlated and balanced. However, considering that they are alien elements, distinct from each other, yet in reality and in practice inseparable, one sees that the attainment of equilibrium and of a mutual adequacy in which each sphere has meaning, not just in itself, but also insofar as it optimizes the function of the other, is an exceptionally difficult problem both practically and intellectually. Arguably it is the fundamental problem of state politics, and the history of the modern State in Europe can be explained with a detailed examination of how this problem has been resolved in different cases. This is especially so because only the order-organizing sphere, its form and its way of functioning, can be determined by the will of the legislator. The ethical content is actually or potentially provided by society.

The main difficulty of this problem is that, while both of the above-mentioned spheres should adhere to each other, strengthen each other and in a way justify each other, not every form they both can assume equally allows for this cooperation. To illustrate this problem we can say that, from a logical point of view, if we consider the matter in the abstract (because social tendencies can make it quite different in reality), the functional efficiency of the State’s organization of society is high if it is a monarchy, an absolute monarchy, which implements religious or national substance in society, or, in other words, relates to strongly integrated social groups. On the other hand, a liberal democracy, a pluralist democracy, greatly restricts the possibilities of practically installing and intellectually justifying the organizational form of the State.

We should, however, once again remind ourselves of the fact that the independization or autonomization of either of these two elements of the State, the organizational framework or the axiological content, is from the point of view of historical reality

an ad hoc action which leads to distortions. In essence, the idea of the European State is not the idea of some type of order for order's sake, which would be ensured solely by the functioning organizational structure, nor is it the idea of a homogeneous and romantic worldview community, a "republic of friends," constituted in society based solely on the authority of a certain set of values. The true idea of the State in Europe is to be encountered in its own particular "in-between," between both of these extremes we have mentioned.

*

The State is a rational construct. It is a rational organization of society. It is rational in a three-fold sense. First of all, the State is not an autotelic construct, but is rather called into being in order to accomplish certain social goals. Aristotle wrote that the polis exists so that its citizens can live and lead a beautiful life. The same can be said of the State, but the difference resides in that while Aristotle believed that it is the life of the citizen within the polis which constitutes a beautiful life worthy of man, today's citizens construct the State so that it can help implement values and ideals which they themselves independently and freely recognize as rational individuals, and not as beings who are predestined to exist as members of a certain collective. Secondly, the State is a thoroughly premeditated order which has been intentionally designed and implemented. In other words, it is an artificial creation, a man-made construct. It is not an integral part of the metaphysical unity of being. It is not an immutable element of the order of Nature or the Cosmos. Finally, the State's rationality also means that its most appropriate values, in other words, the values which are most easily implemented by State order, are rational and temporal values, such as wealth, liberty, equality and justice, and not the evangelical values of faith, hope and charity.

*

Beside the transformations in axiological content which the State has undergone in the past – the Christian State, the liberal State, the social State, the monarchic State, the democratic State – one can also identify another classification in the history of the State on the European continent. If we consider the essential changes in the hierarchy of the importance of its structural elements, we can identify the authoritative State, the State of law and the partisan or political State.

The authoritative State is one in which the aforementioned organizational framework is only an existing factual situation, a situation which might be called the material framework of the State. Authority is what this type of State maintains in existence, and this authority is understood to be closely linked to violence employed for socially-accepted political purposes. The State's center of mass rests on authority, which is a primordial fact, predetermined and not constituted. This authority is potentially the whole of the established order. It is the concentration of creative energy in a subject whose action can nevertheless be improvised, unforeseen, punctual and selective. This subject of authority establishes the law, but is not itself subject to this law. Its rightful rule is decided by social acclaim (legitimization) which the subject has been able to gain while already possessing and exercising authority, and not by conformation with already binding law (legality). On many important points the laws in an authoritarian State involve decisions and determinations which, because they were made by someone, presuppose the pre-existence of the authority which established them. Their validity depends on the validity of their source and not on their independent validity as norms. Of course, the authoritarian State is still an ethical State. It is ethical in the sense that the exercise of authority is determined by a certain ideal (e.g. a monarchy) which is socially recognized, and in that the State aims to implement certain

rational values in society, such as peace, security and justice. However, one could say that in the authoritarian State the fact that certain ethical values continue as goals pursued by the State is only guaranteed by the good will of the magnanimous ruler.

In contrast to the authoritarian State, in the State of law the organizational framework is a factual, but also and above all a lawful condition. It is described by the law, and this law is to govern instead of a specific person. Public authority is not instilled from above but rather established by constituted law (a constitution). Authority above all legally establishes laws instead of applying violence. Violence is only used to ensure the observance of laws. In a way, authority meets the law and the law confers legitimacy on authority. The validity of the law is independent because it is a general and abstract norm of which lawful (!) authority only guarantees observance. The entire state order is not something realized by a concrete subject of authority, but rather it is the order of law. The subject of authority is now only one of its elements, a legal person, while the State's general principles and basic substance is contained in the fundamental law (constitution). The main discipline-ensuring factor is not the police, but rather the citizens' awareness and recognition of the legitimacy of the laws in force. The ethical substance of established order is guaranteed in the State of law precisely by the law. Above all, these are values which stem from the very fact that authority is subordinated to law. In other words, they stem from the protection of individual liberty and the establishment of individuals' trust in the State.

Finally, in the political State the primary aim is to create a united political will in a conglomeration of many collective institutions, especially political parties, which are active politically and each enjoy an equal chance at authority. The unity of political will was almost entirely guaranteed in the authoritarian State by one specific subject of authority. In the 19th-century State it was guaranteed by a strong executive or an elite legislative

institution. In the 20th-century State the unity of will of the political parties is not and cannot be guaranteed in this way. This is why its creation is a complicated process. At the same time, it is important to note that the notion of politics assumes a double meaning. In the State, the concept of politics appears with both the fundamental meanings it has had in the history of European political thought since the Renaissance. These are politics as the aspiration to implement a specific ethical ideal society, and politics as the art of effective rule and the struggle for power. These two definitions of politics are not completely alien to each other. In a way they are joined or added together. This is because an ethically-oriented politics must respect the principles of effective action and must also be the politics of a state; that is, it must first gain power. Politics in both of these senses only appears when there are many political subjects, because only then is there a struggle for power, and only then does the capacity to rule efficiently take on a particular meaning. The essential difference between the political State and the authoritarian State is that the latter was constructed in such a way as to eliminate the plurality of subjects, to remove them from authority. Thus its aim was to eliminate the political situation described by Machiavelli, and to create the necessary conditions for politics to become the art of transforming social tendencies and goals into the substance of law. The creation of a unitary political will in a state ruled by political parties essentially depends on whether the necessary conditions are created for a politics lacking the characteristics of a struggle for power, but rather manifesting itself as the art of achieving a lasting compromise that is less a collection of eclectic elements than a true fulfillment of the pure concepts of common good.

Another danger for the state order just as serious as the possibility of splitting the State into parties or of creating a State within the State through a coalition of parties is the artificial and illusory creation of political unity through the subordination of the State's goals and actions to the will of the one party which has

obtained power. This is a real danger, especially when the State and its idea contained in the constitution is undefined, unclear, and its real position is unstable. It is a danger when instead of being the fundamental structure of politics it is only “one of the players on the political scene,” subject to the latest results of the ongoing struggle for power.

*

Finally, in anticipation of those who see in the State a dangerous hegemony of society, we should once again emphasize that the specificity of the State’s being resides in the fact that its essence expresses itself in action, that the State’s being and functioning are not two separate categories. The State is... what it is for the citizens. Due to its axiological content it is built perhaps not completely, but in large measure on, as Hermann Heller reminded us, a referendum carried out each day among the citizens, a *plebiscité de tous les jours*. This also means the State’s existence depends on and fulfills itself in correlation with the functioning of the different dimensions of the State order. These are above all the “profound structures” of the organizational framework and the axiological substance of the State order. However the dimensions of the State as a State of law and of the State as the territory of action of political parties are equally important. For precision’s sake we should add that obviously the State’s structure formed by these elements must also take into account relativizing elements, such as the local or regional governments, and the interdependence of states within the framework of international organizations, such as the European Union.

*

Coming back to the matter we dealt with at the outset – the drafting of a constitution – we can state that the idea of the State

considered as the fundamental premise for how politics is generally viewed within it, as has been described above, is general, but is nevertheless relevant to every important constitutional question. For example's sake, we might mention just a few which stem directly from the idea of State: the clarity and integrity of the text of the constitution, its drafting by an apolitical group of experts, a relatively well-developed preamble, the irreducibility of the constitution to mere juridical content, the clear indication of the subject of sovereign authority, the clear and precise description of the principles of the sovereign's representation, the guarantee of unity of the strictly divided branches of governmental power, the emphasis placed on the politician's obligation to represent the will of the nation and not of the group of citizens who elected him, the indication of the ethical principles for the parliamentarians, and an emphasis placed on the dignity and apolitical nature of public institutions...

The idea of the State described here is the idea proper to the European continent. Another idea which presents a different type of political order is, one could say, the Anglo-American idea of *government*, which supposes the existence of an order born out of a self-organizing society. Here is not the place to compare these two ideas and to discuss in what respects they are different. However, two points are worth mentioning. First, that these are not pure, abstract and systematic ideas. Therefore, they are not essentially universal. On the contrary, they are created by concrete people in a specific time and place, while taking into account different realities of life. Second, the deciding factor for the here and now existence of a given political entity, be it State or Government, is the amount of dissonance between the ideals and the reality of historical and social existence. This depends not just on what this reality is like, but also on what the postulated ideals are, on whether they are strictly worldview ideals or if they are pragmatic. Sometimes the attainment of these ideals in itself already signifies that the collectivity has secured the right to its own political entity.

The State in the Continental European Tradition

In fact, the State is also the self-organization of society in the broad sense, which does not, however, consist in an attempt to carelessly implement the proposed postulates or self-interested desires of particular political parties. Rather, it is a self-organization carried out with reflection, with a consideration for the realities of life, and with social self-criticism; in short, with realism.

Translated by Paweł Janowski

First edition: *Państwo w europejskiej tradycji kontynentalnej*, "Civitas. Studia z Filozofii Polityki" 1997, vol. 1, pp. 81–102.