Introduction

Historical sources of liberalism—Nature of liberalism—Civil society—The administrative state—Constitutional government—Political radicalism—The antirevolutionary nature of liberalism

The fundamental idea of liberalism—as the name itself indicates—is to make freedom, the freedom of the individual, a reality. Liberalism's basic approach is not creation, but negation, that is, the elimination of all that threatens the survival of individual freedom and impedes its development. It is precisely because of this approach that liberalism, compared to other programs, finds it difficult to attract support. It does not appeal to those so aptly called "activists" in modern parlance, but who are surely an eternal psychological type, turning up repeatedly throughout history, although perhaps not to the same extent as today.

As is well known, liberalism, as a developed system, superseded the absolutist police state. The term *police,* however, had a much broader meaning in the seventeenth and eighteenth centuries than later. The term was taken to mean the entire bureaucratic apparatus, all the administrative government that had developed vigorously within the centralized eighteenth-century state, discharging an extremely varied range of functions. Liberal movements, therefore, naturally aspired to reduce this administrative system with its regulations and organizations. This is precisely what justifies, at least from a historical perspective, the assertion that liberalism works by negation and not creation.

Liberalism is the product of Western European culture and before that, in essence, of the Greco-Roman world of the Mediterranean. Already known in antiquity, clearly defined concepts such as the *Rechtssubjekt* [legal subject] and rights

(especially private property), as well as institutions that provided a framework for the citizen to participate in the exercise of state power, primarily legislative power, belonged to liberalism's core ideas.[1] This foundation was rediscovered by modern Western European nations and supplemented by a number of new ideas.

The history of liberalism in the West lies outside the scope of this book, although it is essential to highlight two historical sources of Western European liberalism: feudalism and the independence of spiritual from secular power during the Middle Ages. De Ruggiero begins his *History of European Liberalism* with a quotation from Mme de Staël, who makes the comment, "In France, liberty is an old, traditional value, whereas tyranny is a recent phenomenon." He comments, "These words of Mme de Staël are historically well founded, for liberty is rooted in medieval society and thus predates the absolutism of the new monarchy." In fact, from a historical perspective, the balance of power that had developed between king and feudal barons formed the basis for liberties in Western European states. The first example of the establishment of such a balance, such a separation of powers even, was the creation of the Magnum Concilium in England. Initially, then, in Western Europe political liberty took on an aristocratic form, something the French constitutional law expert Hauriou also highlighted. He writes: "It is important to distinguish a historical law regarding states that came into existence and developed normally. These states go from aristocracy over to democracy. The political liberty that exists there takes on two successive forms—first aristocratic, then democratic freedom."[2] In the West, an equally important source of liberty was the independence of the pope vis-à-vis the holders of secular power, as this allowed the formation of a sphere of spiritual autonomy in relation to the state.

The reason I felt the need to highlight these roots of Western European liberalism is that neither of them existed in Russia. Russian church leaders never enjoyed the status of sovereign rulers, while feudalism did not exist in Russia.

Although liberalism in Russia in essence corresponded exactly to liberalism in Western Europe, including the need to defeat and replace the absolutist, bureaucratic police state, nevertheless it is important to be clear that Russian liberalism did not have these historical roots. Liberalism in Russia, as both an idea and a practical program, was effectively derivative in nature. In addition, the Russian variant of the police state, as embodied in serfdom, stood in even starker contradiction to all the principles of liberalism, compared with the Western European absolutist state, in both its political and its social structure.

Liberalism is an individualistic system, giving precedence to the individual and his rights. This liberal individualism, however, is not absolute, but relative. Liberalism does not assume that man is always virtuous and motivated to strive for what is good. On the contrary, liberalism knows well that man, with a relatively free moral sense and possessing a relatively free will, can choose either good or evil. Liberalism therefore requires, in contrast to anarchism (certain variants of which can be seen as a form of absolute individualism), the creation of a positive system of law and government opposed to and binding the will of the

individual. It is therefore in favor of institutions or social structures that subsume and discipline the individual. Nevertheless, liberalism is an individualistic system, because man, as an individual, is given priority. Social structures or institutions can only be valued insofar as they can be justified from the point of view of the interests and rights of the individual and help the individual subject to achieve his aims. Thus, the basic task of the state and other social structures is to protect and secure these rights: "The aim of every political association is the preservation of the natural and imprescriptible rights of man."[3]

Liberalism sees the well-being, or quite simply the happiness, of the individual as its aim and therefore aspires to extend the possibilities for each to develop his or her personality freely in all its variety and richness. Accordingly, liberalism regards individual initiative and enterprise as the ultimate foundation of society. For this reason, a distinct feature of liberalism, as we have seen, is the reduction to a minimum of all rules and organizations that, as elements of an objective order, stand in the way of individual enterprise and initiative, forming a barrier to the energy of the individual.

All the other demands of liberalism flow from the fundamental principle that society is based on personal initiative and enterprise and justified by the protection it gives to the rights of the individual. Liberalism affirms the security and inviolability of private property vis-à-vis the state, because it sees that the unhindered possession of goods by individuals is the most effective guarantee that the individual should be able to pursue his aims and develop his potential without hindrance. The individual freed, at least to a certain degree, from the pressure of material need is able to devote himself to creating his personal happiness. According to liberalism, *beati possedentes* [blessed are those who possess]. As property is regarded as something positive, liberalism defends the freedom of those activities that are directed at acquiring and augmenting private property. Liberalism advocates the removal of all barriers hindering private initiative and enterprise that have the acquisition of property as their aim. It must be added, however, that liberalism does not just favor money-making enterprises. It supports all initiatives and forms of social enterprise, welcoming them because they are an expression and enrichment of the human personality and develop the energy and talents of the individual.

On the basis of the same fundamental principles, liberalism favors making penal law more humane. A criminal nonetheless remains an individual human being, someone who as such retains his value as a person. The task of penal law cannot consist in merely rendering this person harmless for the sake of society as a whole, even if he has shown himself to have a criminal bent and to be a danger to the public. On the contrary, the powers and means available to society, to which the criminal belongs, must serve to put him in a position to improve and reeducate himself. Liberalism considers punishment above all as a means for improvement and rehabilitation. Thus, the welfare of the individual represents the starting point for all provisions in the liberal penal system. The demand that

anyone arrested should be brought before a proper, that is, legally constituted court—and not before an extraordinary tribunal—in the shortest possible time, or at least within a period laid down in law, as well as further legal safeguards for the remainder of the process, are based on the same basic principles.

Overall, the fundamental principles of the liberal, individualistic social order are set out very precisely and succinctly (in agreeable contrast to modern attempts at declarations of rights) in the 1789 French *Déclaration des droits de l'homme et du citoyen*. This declaration identifies four fundamental rights that form the basis of this liberal order. These are the rights of (1) liberty, (2) property, (3) security, and (4) resistance to oppression (Article 2).

The rights specified here—private property, personal security, and finally the right to resist oppression—constitute what is called civil liberty. Personal freedom has two aspects: first, the rejection of private legal subordination in all its forms, and second, the upholding of the unimpeded expression of individual initiative in enterprises of all kinds—in other words, the autonomy of private initiative even in the face of the power of the state.

Insofar as these particular human rights are described as natural law, they apply in equal measure to all. De Ruggiero writes, "Natural law represents a fundamental rejection of all privilege, especially because it is based on the oldest and best-founded of all privileges, namely the privilege of being human"—which (self-evidently) applies equally to all persons.[4] The demand for equality before the law derives from the recognition that human rights or the individual's fundamental rights are based on natural law. Article 1 of the declaration states, "Men are born and remain free and equal in rights."

A clear distinction between civil liberty and political freedom has to be made. Political freedom consists in the right of the citizen to participate in the exercise of political power. Article 6 of the declaration states, "All citizens have the right, either personally or through their representatives, to participate in the formation of the law." Civil liberty—that is, the basic rights that, when recognized and applied, are the foundation of civil society—constitutes the supreme value in the state and its first principle. Accordingly, political freedom is regarded only as an extension of civil or civic liberty, being required only as the guarantee, albeit the sole effective one, for civil liberty and its necessary complement.[5] Hauriou writes, "It is no exaggeration to say that the whole apparatus of the state is constructed to ensure that civil society is maintained."[6]

Civil society must be seen as the foundation of civilization, because it creates the conditions required for the birth of cultural values.[7] Hauriou continues:

> Civic life, that is, life in the context and under the conditions of civil society, consists in the utilization of property. In a sense, this is a life of ease in which a person, no longer beset by economic worries thanks to the advantages and security derived from the assets he has acquired, can think of other things besides his daily needs. He can then devote himself to intel-

lectual pursuits or the free professions, turn to matters of general interest, form ideas about the state, and in general become a citizen.

Private property can thus afford the owner a certain degree of leisure. As a life of ease, however, is the prerequisite for creative concentration (it is no coincidence that the Greeks called a place of intellectual activity a *schole,* meaning "leisure"), it is correct to describe private property as the basis of, or at any rate a necessary condition for, intellectual creativity. Consequently, civil society based on private property can be regarded as the foundation of civilization. This is the real justification for this social order and confirms Hauriou's assertion that the ultimate goal of the state must be to safeguard civil society.

Aristocratic regimes too have certainly secured for their ruling elite the leisure required for creative cultural activity. These regimes, however, have permitted, or rather imposed, legally established systems of extreme harshness and brutality, namely slavery and serfdom, that are unacceptable to the humane conscience. The actual difference between the haves and the have-nots in the context of civil society is often no less than that between the master and serf in an aristocratic regime. There is nevertheless a significant difference between the two: in civil society, both haves and have-nots are equal in the eyes of the law—here there is no legal barrier to improving one's lot or status.

What is more, the state has resources at its disposal that can reduce the disadvantages resulting from this real inequality, which admittedly is associated with the nature of civil society based on private property. These resources, taken as a whole, can be found in the structure of an administrative system, a *régime administratif,* organized in parallel to civil society. In essence, the administrative system consists in the state taking over a range of practical services that were either previously performed through private enterprise or not undertaken at all. In providing these services, the proceeds that might be earned from them are of only secondary interest to the state; it is above all concerned that these services should be universally and regularly available. The fact that these services are regular and universal allows the government departments tasked with delivering them to offer to all a whole range of public provision, so neatly called *commodités publiques* in French, free of charge or for very little. In this fashion, the multiple needs of the "have-nots" can be met even better and more easily with the help of such public services than was the case before the development of administrative government, when the same needs of the "haves" were met through private enterprise. Overall, this results in a significant improvement in the living standards of the broad mass of the population without property. These are the undoubted benefits of administrative government and in fact largely justify the formidable growth of the administrative state.

If, however, meeting the individual's numerous needs is taken over by the state's administrative structure, if private enterprise is replaced by state bureaucracy, this means (as far as the present day is concerned) a return to the police

state of the absolute monarchy of the seventeenth and eighteenth centuries. At the same time, it also signifies the establishment of what is called socialism (leaving aside the mystical aura surrounding this word) and what is, from a constitutional point of view, nothing other than an extreme development of the *régime administratif,* a bureaucratization of society and, in a sense, ultimately the rebirth of the old police state. The two aspects of this evolution are thus largely two sides of the same coin.

Although, as previously stated, the development of the administrative system and the provision of numerous services by the bureaucratic apparatus doubtless initially yielded positive outcomes, these changes become negative and dangerous if excessive, resulting in administrative overproduction. The administrative departments even begin offering services to the public that it neither demands nor expects. "It is in the nature of public administration," writes Hauriou, "once begun, perpetually to seek to extend itself and therefore to increase the number of public services." This process takes on various forms: thus, for example, when the free professions, always fertile ground for liberal aspirations, if not liberal ideas as such, are superseded by the bureaucracy or even partly bureaucratized themselves; above all, however, when free private enterprise is replaced by state-run companies. This administrative hypertrophy or excessive socialism threatens to stifle the very principles on which the free modern state is founded, namely civil society based on individual freedom, and thus in effect to destroy the model of the state developed in Western Europe. In particular, this administrative hypertrophy is a threat to civil liberty because each government agency has, or is able to create, a monopoly in its own field, that is, to eliminate any private initiative, which, in general, is also in its interest. The agencies use administrative regulation to this end, a weapon against which the private citizen is completely powerless. In general, this results in a proliferation of the public at the expense of private law and in the crowding out of civil law through administrative law, leading to a more or less general restriction of the sphere of civil liberty.

Finally, excessive administrative development can also be a threat to political freedom, which is based, specifically, on various forms of the separation of powers. The growth of bureaucracy, however, always leads to centralization and to an extreme concentration of power, with the result that these forms of the separation of powers either go into complete decline or remain in place as mere empty shells devoid of their true substance. The freedom of public opinion too is stifled over time by the excessive burgeoning of the bureaucracy.[8]

Nevertheless, the state is, as Hauriou states, one of the institutions with the most potential. Just as the administrative system (kept within sensible limits) is an effective agency for remedying the shortcomings of an inequitable civil society, so a counterweight can be found to offset the dangers of an overdeveloped bureaucracy. This counterbalance is constitutional government. There is a marked difference between centralized bureaucratic systems and constitutional law aimed at realizing political freedom (*régime administratif* or *régime constitution-*

nel).[9] The former is based on centralization and the concentration of power, the latter on decentralization and the separation of powers. Article 16 of the *Déclaration des droits* is quite clear on this: "A society in which the observance of the law is not assured, nor the separation of powers defined, has no constitution at all." One should note that decentralization, even when it only occurs in the context of restructuring administrative functions, as for example with the replacement of centralized bureaucracy by local administration, already constitutes an expression of constitutional thinking.[10] In fact, states came to introduce constitutional government either to overcome an excessive expansion of administration in the bureaucratic monarchies with their police apparatus, as was the case with continental states, or to thwart its development, as was the case with England.[11] Thus, in principle, the constitution aims to reclaim liberty from the oppression of concentrated state power and centralized bureaucracy. Above all, therefore, it is the legal and political safeguard for civil society, the individualistic principles on which it rests, and the individualistic basic rights that it embodies.

Because of the establishment of representative constitutional government, the structure of the state becomes differentiated and enhanced. One can distinguish in it three systems or structural features:

A. Civil society: the sphere of individual rights, liberty, and private autonomy

B. The administrative system: the sphere of the centralization and concentration of state power, state welfare provision, and authoritative control

C. Constitutional government: the constitution; the sphere of the self-limitation of state power accomplished through the balance among the different organs of the state (or, preferably, *pouvoirs publics*) helped by the decentralization of sovereignty—in other words, the separation of powers

In its classic form, the separation of powers was expounded by Montesquieu in his *Esprit des lois*. This is the relative independence and juxtaposition of legislative power vis-à-vis, on the one hand, the governing power, rather loosely called the executive (I say loosely as its functions are by no means restricted to the execution of legislation), and, on the other hand, the judicial power. All these powers are constitutional and fit in the framework of the constitutional system. It should be emphasized, however, that each of these three branches is at the same time more closely associated with one of the three systems or structural features of the state mentioned above. The representative assembly, the legislative institution, is the primary organ of constitutional government. The administrative and executive branches are inextricably linked. Finally, the judiciary is especially closely associated with civil society. The courts are there, above all, to protect the rights of the individual, in the first instance from infringements by other citizens, but also from infringements by the state.

Protection of the individual's rights from infringement by the state has not been developed to the same extent and in the same form in all countries with established constitutional systems. In most countries, this is limited to protecting

the individual's rights from violation by the administrative branch of government. Only in the United States does the judiciary have the task not only of protecting the justly acquired rights of the citizen against the illegal actions of government agencies, but also of safeguarding the whole of civil society and the individualistic legal principles on which it rests against attack from the legislature. The courts in the United States have the authority to refuse to apply new laws passed by the legislature, if these contradict the basic principles of individualistic civil society and are incompatible with the Bill of Rights, which is regarded as the basis of the nation's constitution. It means that the rights included in the declaration and the basic principles of an individualistic liberal social order proclaimed through it are regarded as inviolable natural law. Consequently, the legislature may only pass laws that are compatible with these fundamental principles, which acquire the significance of a constitutional superlegality. Here, where the power of the judiciary is accorded such preeminence in the constitutional framework, what emerges more clearly than elsewhere is that one of the most important tasks of constitutional government is to serve as a guarantee for civil society.[12]

The relationship between constitutional government and civil society, just discussed by us above, following the modern constitutional lawyer Hauriou, is a confirmation of classical liberalism's view, based primarily on the teachings of Montesquieu, that political rights are principally an extension of civil rights and that political liberty above all constitutes a guarantee of civil liberty.[13]

This relationship between civil society and the constitution, between civil and political liberty, results in a fundamental limitation of legislative power, essentially binding that power to the principles of the individualistic civil order even where there are no legal guarantees to back it up. Furthermore, this bond exists even if these principles are not explicitly set out in constitutional law.[14]

It is possible, however, to consider the political rights or liberty of members of the body politic as an unqualified, even absolute value. One can therefore assume that the legislative or, at any rate, constitutive power in the state is not bound by any inviolable legal principles, that there is in the state an institution with this power, through whose will, irrespective of such ties, true law is always crafted when legislation is decided. In this case, it matters little to what extent the content of new legislation accords with the fundamental principles of the individualistic legal order or how far decisions enacted by government or legislature in the form of legislation are in fact law, because it is assumed a priori that is what they are. According to this view, legislative acts must always be regarded as law, because it is assumed that law is the product of the will of the people and that there exists an institution in the state that precisely articulates this.

The primary source for this point of view is Rousseau's *Du contrat social*.[15] Rousseau doubtless concedes (Book II, chapter IV) that besides the *personne publique,* private individuals (*personnes privées)* also need to be taken into consideration and that their life and liberty are by nature independent of the *personne publique*. He also discusses natural law, which characterizes the citizen as a human

being. Yet Rousseau develops a complete doctrine of the general will that is always right and always in the common interest. Accordingly, this general will, the will of the *communauté* or the people, is the source of true laws. These laws can thus never be unjust, "for no one is unjust to himself." It is the essence of the *volonté générale,* and the *contrat social* it establishes, that "so long as the subjects have to submit only to conventions of this sort, they obey no one but their own will" (Book II, chapter IV). Logically it follows that "the sovereign, being formed wholly of the individuals who compose it, neither has nor can have any interest contrary to theirs; and consequently the sovereign power need give no guarantee to its subjects" (Book I, chapter VII). In general, the *contrat social* removes any necessity for a particular guarantee of the rights of the individual vis-à-vis the society of which he has become a member. All the clauses of the *contrat social* can be reduced to a single one, namely "the total alienation of each associate, together with all his rights, to the whole community" (Book I, chapter VI). This alienation is "without reserve; the union is as perfect as it can be, and no associate has anything more to demand" (Book I, chapter VI). The difficulty that arises, which certainly did not escape Rousseau's attention, is how to be certain in each specific instance that whoever wields the sovereign power (of the people) "acts as sovereign and not as magistrate," that is, that he really does represent the general will (Book II, chapter IV). Rousseau skates over this problem rather than resolving it.[16] Nevertheless, Rousseau's doctrines were enough to persuade his optimistic followers that they could presume that democratic representation would fundamentally reflect the general will through its laws and that vis-à-vis the former there would be no need to guarantee either the rights of the individual or the basic principles of the individualistic legal order.

Consequently, the principle of the separation of powers would largely lose its significance. If the legislature, the democratic assembly, is the real locus of the *volonté générale,* then the other powers, the executive and the judiciary, should not be seen as factors of equal importance. They must be regarded, rather, as delegated powers derived from the legislature. It thus becomes impossible to speak of the separation of powers in its original meaning, but merely of an allocation of functions among different institutions. The separation of powers as understood by Montesquieu, of course, includes an allocation of function. Essentially, however, the separation of powers includes the idea that a real social force stands behind each power and acts through it. Furthermore, the separation of powers can exist without a division of function. Thus, the separation of powers between two consuls in Rome was a genuine separation of powers even though there was no division of function. Equally, the creation in 1215 in England of the Magnum Concilium that later developed into the English Parliament amounted to a separation of powers. An element of the power of the throne, which was wrested from the king, was transferred to the council. It would be wrong, however, to think of this division or decentralization of power as a mere distribution of function. What counted here was not the division of function, but the fact that both the

power of the king and the power of the aristocracy as represented in the Magnum Concilium constituted two independent forces.[17]

Rousseau's doctrine, therefore, makes law and the legislator all powerful. The old adage "Quod principi placuit, legis habet vigorem" [What pleases the ruler has the force of law] seems to apply here, although the word *princeps* should be replaced by "parliamentary democracy," the majority in a democratic assembly elected on the basis of universal, direct, equal, and secret suffrage. Inviolable legal principles cannot apply or be upheld against such a law decided by this majority. Legislation is law because it embodies the general will. Interestingly enough, this notion was even retained after the doctrine of the general will had largely been abandoned. All that was needed to make this possible was to substitute for the *volonté générale* the will of the state understood as a legal person.

Over time, interest in the question of the separation of powers declined even further. This is quite natural, insofar as there was no longer any interest in the inviolability of the individualistic legal principles that acted as a sort of social premise and created a foundation, so to speak, for the political constitution. The purpose of the separation of powers is to limit and moderate the impact of one power through another, all in the name of the individualistic principles of the legal order. What is the point of the separation of powers if one no longer attaches any decisive importance to these principles? Thus, the sense is lost of Montesquieu's statement, reiterated in the *Déclaration des droits* (Article 16), namely, "A society in which the observance of the law is not assured, nor the separation of powers defined, has no constitution at all." This leads to a new and fundamentally different concept of the constitution. Constitutions begin to develop in such a way that they soon can become internal parliamentary rules of procedure, whose purpose is to make it easy for a particular majority to implement its program with as little resistance as possible. This political and legal approach can no longer be qualified as liberalism, but rather as radicalism. This contrasts with liberalism, which has as its aim the preservation, once in place, of the individualistic legal order, as well as the existing acquired rights of the individual.

In fact, no social program or legal principles stand behind political freedom seen as an end in itself. All possibilities are open. In this fashion, the individualistic legal order of the liberal social constitution can be replaced by the resurrection of the most extreme interventionism and bureaucracy, indeed even pure collectivism. The replacement of the individualistic legal order through collectivism signifies much more than the adoption of a few legal principles. It means the dissolution of a complete civilization, a profound rupture in an entire cultural tradition. This is what Stolypin, one of the last significant representatives of the old Russia, sensed and expressed in a speech to the Second Duma in 1907. He said that the destruction of the existing legal order in Russia in the name of socialism meant that later, out of its ruins, a new and unfamiliar fatherland would have to be constructed.

This evolution in constitutional ideas bears with it the seeds of the destruc-

tion, or better still the self-destruction, of the modern Western European constitutional state. If a purely formal or absolute democracy or democratic absolutism supersedes liberal democracy, that is, a state in whose constitution the fundamental principles of the individualistic social order are incorporated in the form of basic rights as a form of superlegality, then the way is open for the development of the imperial form of democracy.[18] In fact, all the aspects of the development discussed above prepare the way for the emergence of imperial democracy. If laws no longer take account of the basic legal principles of the individualistic social order and the existing rights that are embedded in it, but merely embody the legislator's will, subject to certain formal conditions, it no longer matters whether this legislator is an elected representative of the holders of individual rights, that is, the citizens, or a ruler who, regardless of any election, sees himself called upon to express the legislative will of the nation. Furthermore, if the principle of the true separation of powers is destroyed, and the government considers itself to be merely the executor of the legislature or a sort of executive board of the legislature, the latter will acquiesce much more easily in the growth of administration, the concentration of bureaucratic power. It is quite clear, however, that the existence of a strongly developed, centralized bureaucratic apparatus is advantageous for the development of an imperial form of government. Ultimately, it becomes particularly easy for this tendency to win the day, if the development of administrative government has passed a certain threshold, and nationalization, that is, the displacement of civil society, has consequently reached a certain level. After all, this eliminates one of the most important and fundamental separations of power, namely the division between political and economic power.[19]

The extensive destruction of civil society, as well as the concentration of economic power in the hands of the state, puts virtually unlimited power at the state's disposal. Who could seriously dispute that such a huge increase in the power of government favors the formation of dictatorial governments and tyrannical state power? In my article "Abhängigkeit und Selbständigkeit bei der Gewaltenteilung," I paid particular attention to this division between economic and political power.[20] I pointed out that while economic power is in the hands of capitalists in the private enterprise system, in a socialist state, by contrast, it is combined with political power in the hands of the state, in effect the bureaucracy. This, however, eliminates a separation of powers, which had been, and had to be, advantageous not just, as is self-evident, for the independence of the middle class but also for the freedom of the working class, because the separation of powers always has liberating results for the individual. By way of a greater justification for this assertion, I quote in extenso a passage from Hauriou's *Principes de droit public,* a work that has still not received enough attention in Germany:

> Economic power has the capacity to secure the means of subsistence in its sphere. Economic power is exercised by someone, whether the owner of a modern industrial concern, the proprietor of a large estate, or the leader of

> a military force, who, in one form or another, possesses a stock of essential goods that he can distribute as he wishes among his servants, dependents, and clients. Political power has the potential to create valuable positions in the legal system, thus providing these post-holders access to the means of subsistence. In a sense, therefore, power boils down to satisfying these needs, a concern that is universal, except that economic power can affect subsistence more directly than political power.
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> . . . In most state systems, political and economic powers can be separate and usually are. In the context of a free-market economy, wealth is accumulated, and as a result, wealthy people emerge with property and money at their disposal; they provide work and reward it; through their wages, thousands depend on it for their living. In a word, capitalists emerge whose power can be exercised ruthlessly. Nevertheless, capitalists do not necessarily have to wield political power; others can come to power through the mechanisms of the constitution. These will occupy high office in the state and be able to distribute benefits and titles. In addition, having the power to create posts in the legal system, they will make use of it, not to consolidate the actual power of the wealthy but rather to restrict it. A state of equilibrium will result from the separation of these two forms of power to the benefit of the mass of individuals. Some will benefit from capitalists, others from politicians, the rest from general measures or from laws to protect the many various interests. In this state of equilibrium a certain freedom for the majority of individuals can be established; a middle class can be formed.
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> Outside such a state system, by contrast, in both the patrimonial institutions that preceded it and the collectivist societies that threaten to succeed it, these guarantees of liberty disappear because political and economic powers fall into the same hands. Under feudalism, it has been classically observed, property and power were joined together. It is the same for collectivist societies. The administrative personnel in such a society would have a firm grip on the keys of state warehouses from which everyone would be expected to obtain their subsistence; the same officials would also have the legal power to create advantageous jobs; they would have the most complete power that ever existed. It is hard to imagine what could act as an effective counterweight to such power.[21]

Human willpower can of course counteract this development. If it cannot be completely halted, at least it can be slowed down considerably through deliberate resistance. In Hauriou's opinion, the recognition of the way things can develop does not absolve us of the intellectual duty to commit ourselves to the preservation of political liberty. "We know quite well," Hauriou concludes, "that we are going to die, and yet we make the effort to survive."[22] Consistently upholding the individualistic principles of civil society, above all the principle of private property, can certainly prolong the survival of political freedom and democracy, because it

is one of the few effective means of resisting the excessive growth in bureaucracy and the evisceration of constitutional powers.

As we have seen, liberalism's approach is abolition. This ought not to take the form of a violent upheaval or, indeed, destruction. There is always something in the status quo that should be retained and that can be stimulated to develop through the removal of external barriers or perfected and made fruitful through restructuring. Furthermore, liberalism does not seek abolition in every area. According to the liberal point of view, what have to be abolished are primarily the unrestricted powers of the state, which enable it to place itself above the law and allow it either to disregard the existing order or to alter it through arbitrary legislation as it sees fit. Equally, it would abolish the excessive accumulation of regulation, planning rules, and administrative authorities that hamper the individual's economic and cultural freedom of action. On the other hand, liberalism is especially concerned with defending the rights of the individual. Liberalism regards the protection of existing rights and their unhindered exercise as the basic duty of the state. In general, oppressive intervention in the individual's actual circumstances and the destruction of traditional ways of life are completely alien to the liberal state. An authentically liberal state would never agree to the expulsion of a population, not even from a defeated and conquered country, or the resettlement within a state of individual ethnic groups, whatever political or economic motives lay behind it.

There is, however, a further consequence arising from this. Liberalism must act with the utmost prudence even when taking steps to abolish components of the administrative apparatus that it believes to be superfluous or even detrimental. Traditional forms of administration are always bound closely to some particular interest or other. The interests and positions of individuals (e.g., of personnel) connected with the administrative structures to be abolished should not be violated so abruptly or ruthlessly that it has a destructive effect on the sphere of these individuals' civil rights.

In addition, even those historical forms of government predating liberalism should not be overthrown by revolution, but reformed. Liberalism knows that violent revolution often only destroys the more valuable aspects of the old regime, while, on the other hand, the primary substance of any state, naked power, remains in place. Consequently, the conditions are created for government rule to take on an even more brutal form, not alleviated by anything, not even by old traditions. Furthermore, from a liberal perspective, the fact that a form of government, albeit not as perfect as a liberal state with a constitution, can often survive over a long period proves that the conditions are still absent in the nation or the people for a transition to liberal constitutional government and a liberal social order. Such conditions are not created, of course, by violent action.

This antirevolutionary position taken by liberalism derives essentially from the following consideration: if a state, not constructed on liberal principles but also not completely dictatorial or despotic, survives for a lengthy period, then this

long existence helps traditions to emerge that can moderate the way power is exercised. It also leads to this type of state acquiring and consolidating some of the positive characteristics of states in general. This observation is rooted in turn in the conservative theory of progress, related to liberalism, namely the theory that "la force de fixation est la force progressive," that is, the theory according to which progress consists in establishing a model, and developing and perfecting its features, and not in the evolutionary substitution of one model for another.[23] From a historical point of view, and considering all these points, liberalism would unhesitatingly prefer enlightened absolutism to revolutionary dictatorship.

These considerations compel me to distinguish rigorously between liberalism and radicalism and to regard conservative liberalism as true liberalism.